

FIFTY-NINTH DAY

Monday, May 3, 2004

The Senate of the Twenty-Second Legislature of the State of Hawaii, Regular Session of 2004, convened at 10:17 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by Pastor Cal Takara, Kaimuki Christian Church, after which the Roll was called showing all Senators present.

The President announced that he had read and approved the Journal of the Fifty-Eighth Day.

HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 720 to 728) were read by the Clerk and were placed on file:

Hse. Com. No. 720, informing the Senate that the House has reconsidered H.B. No. 1797, heretofore vetoed as set forth in a Governor's Message dated April 27, 2004, and approved said bill by an affirmative vote of two-thirds of all members of which the House of Representatives of the Twenty-Second Legislature of the State of Hawaii is entitled.

Hse. Com. No. 721, informing the Senate that the House has reconsidered H.B. No. 2003, H.D. 1, S.D. 1, heretofore vetoed as set forth in a Governor's Message dated April 30, 2004, and approved said bill by an affirmative vote of two-thirds of all members of which the House of Representatives of the Twenty-Second Legislature of the State of Hawaii is entitled.

Hse. Com. No. 722, informing the Senate that the following bills passed Final Reading in the House of Representatives on April 30, 2004:

H.B. No. 1259, H.D. 1, S.D. 1, C.D. 1;
 H.B. No. 1765, H.D. 1, S.D. 1, C.D. 1;
 H.B. No. 1770, H.D. 1, S.D. 2, C.D. 1;
 H.B. No. 1980, H.D. 1, S.D. 1, C.D. 1;
 H.B. No. 2013, S.D. 2, C.D. 1;
 H.B. No. 2020, H.D. 1, S.D. 2, C.D. 1;
 H.B. No. 2023, H.D. 2, S.D. 2, C.D. 1;
 H.B. No. 2254, S.D. 1, C.D. 1;
 H.B. No. 2472, H.D. 2, S.D. 1, C.D. 1;
 H.B. No. 2674, H.D. 1, S.D. 1, C.D. 1;
 H.B. No. 2683, S.D. 1, C.D. 1;
 H.B. No. 2739, H.D. 1, S.D. 2, C.D. 1;
 H.B. No. 2814, H.D. 2, S.D. 1, C.D. 1;
 S.B. No. 2377, S.D. 1, H.D. 1, C.D. 1;
 S.B. No. 2380, S.D. 1, H.D. 1, C.D. 1;
 S.B. No. 2586, S.D. 2, H.D. 2, C.D. 1;
 S.B. No. 2608, S.D. 1, H.D. 1, C.D. 1;
 S.B. No. 2748, S.D. 1, H.D. 2, C.D. 1;
 S.B. No. 2782, S.D. 1, H.D. 1, C.D. 1;
 S.B. No. 2840, S.D. 2, H.D. 2, C.D. 1;
 S.B. No. 2861, S.D. 1, H.D. 2, C.D. 1;
 S.B. No. 2908, S.D. 1, H.D. 1, C.D. 1;
 S.B. No. 2929, S.D. 1, H.D. 1, C.D. 1;
 S.B. No. 2948, S.D. 2, H.D. 1, C.D. 1;
 S.B. No. 3025, H.D. 1, C.D. 1;
 S.B. No. 3085, S.D. 2, H.D. 2, C.D. 1;
 S.B. No. 3113, S.D. 1, H.D. 1, C.D. 1; and
 S.B. No. 3156, S.D. 1, H.D. 1, C.D. 1.

Hse. Com. No. 723, informing the Senate that the House has agreed to the amendments proposed by the Senate to H.B. No.

2397, H.D. 1, and H.B. No. 2397, H.D. 1, S.D. 1, passed Final Reading in the House of Representatives on April 30, 2004.

Hse. Com. No. 724, informing the Senate that the House has agreed to the amendments proposed by the Senate to H.B. No. 2375, H.D. 1, and H.B. No. 2375, H.D. 1, S.D. 1, passed Final Reading in the House of Representatives on April 30, 2004.

Hse. Com. No. 725, informing the Senate that the House reconsidered its actions taken on April 15, 2004, in disagreeing to the amendments proposed by the Senate to the following House bills:

H.B. No. 2170, H.D. 1 (S.D. 1); and
 H.B. No. 2286, H.D. 1 (S.D. 1).

Hse. Com. No. 726, informing the Senate that the House has agreed to the amendments proposed by the Senate to the following House bills and said bills passed Final Reading in the House on April 30, 2004:

H.B. No. 2301, H.D. 1, S.D. 1;
 H.B. No. 2645, H.D. 2, S.D. 1; and
 H.B. No. 2748, S.D. 1.

Hse. Com. No. 727, informing the Senate that the House has agreed to the amendments proposed by the Senate to H.B. No. 2206, H.D. 1, and H.B. No. 2206, H.D. 1, S.D. 1, passed Final Reading in the House of Representatives on April 30, 2004.

Hse. Com. No. 728, informing the Senate that the House reconsidered its actions taken in disagreeing to the amendments proposed by the Senate to the following House concurrent resolutions and the amendments proposed by the Senate were agreed to by the House and said concurrent resolutions were finally adopted in the House of Representatives on April 30, 2004:

H.C.R. No. 49, H.D. 1, S.D. 1;
 H.C.R. No. 54, H.D. 1, S.D. 1;
 H.C.R. No. 83, S.D. 1;
 H.C.R. No. 138, H.D. 1, S.D. 1;
 H.C.R. No. 165, S.D. 1;
 H.C.R. No. 245, H.D. 1, S.D. 1; and
 H.C.R. No. 261, H.D. 1, S.D. 1.

STANDING COMMITTEE REPORTS

Senator Taniguchi, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 3531) recommending that the Senate advise and consent to the nomination of CAROL ANN BURDICK to the Board of Taxation Review, 2nd Taxation District (Maui), in accordance with Gov. Msg. No. 295.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3531 and Gov. Msg. No. 295 was deferred until Thursday, May 6, 2004.

Senator Taniguchi, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 3532) recommending that the Senate advise and consent to the nomination of DICK ISOO OSHIMA to the Board of Taxation Review, 1st Taxation District (Oahu), in accordance with Gov. Msg. No. 294.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3532 and Gov. Msg. No. 294 was deferred until Thursday, May 6, 2004.

Senator Taniguchi, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 3533) recommending that the Senate advise and consent to the nomination of WILLIAM FRANCIS DAILEY to the Board of Taxation Review, 2nd Taxation District (Maui), in accordance with Gov. Msg. No. 296.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3533 and Gov. Msg. No. 296 was deferred until Thursday, May 6, 2004.

Senator Sakamoto, for the Committee on Education, presented a report (Stand. Com. Rep. No. 3534) recommending that the Senate advise and consent to the nomination of ROBERTA M. RICHARDS to the Western Interstate Commission for Higher Education (WICHE), in accordance with Gov. Msg. No. 309.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3534 and Gov. Msg. No. 309 was deferred until Thursday, May 6, 2004.

Senators Chun Oakland and Hanabusa, for the Committee on Human Services and the Committee on Judiciary and Hawaiian Affairs, presented a joint report (Stand. Com. Rep. No. 3535) recommending that S.R. No. 40, as amended in S.D. 1, be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 3535 and S.R. No. 40, S.D. 1, entitled: "SENATE RESOLUTION REQUESTING THE SENATE COMMITTEE ON HUMAN SERVICES TO CONVENE INTERIM HEARINGS ON THE MISUSE OF LEGAL INTERVENTIONS AVAILABLE TO THE FAMILY COURT," was deferred until Thursday, May 6, 2004.

Senator Kim, for the Committee on Tourism, presented a report (Stand. Com. Rep. No. 3536) recommending that the Senate advise and consent to the nominations to the Board of Directors of the Hawai'i Tourism Authority of the following:

GAIL Y. HARAGUCHI, in accordance with Gov. Msg. No. 487; and

KAWAIKAPUOKALANI K. HEWETT, in accordance with Gov. Msg. No. 488.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3536 and Gov. Msg. Nos. 487 and 488 was deferred until Thursday, May 6, 2004.

ORDER OF THE DAY

ADVISE AND CONSENT

Stand. Com. Rep. No. 3526 (Gov. Msg. No. 410):

Senator English moved that Stand. Com. Rep. No. 3526 be received and placed on file, seconded by Senator Kokubun and carried.

Senator English then moved that the Senate advise and consent to the nomination of WAYNE A. SALAS to the Board of Certification of Operating Personnel in Wastewater Treatment Plants, term to expire June 30, 2008, seconded by Senator Kokubun.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Menor).

Stand. Com. Rep. No. 3527 (Gov. Msg. No. 468):

Senator Inouye moved that Stand. Com. Rep. No. 3527 be received and placed on file, seconded by Senator Espero and carried.

Senator Inouye then moved that the Senate advise and consent to the nomination of RON AGOR to the Board of Land and Natural Resources, term to expire June 30, 2008, seconded by Senator Espero.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Menor).

Stand. Com. Rep. No. 3529 (Gov. Msg. Nos. 165 and 166):

Senator Sakamoto moved that Stand. Com. Rep. No. 3529 be received and placed on file, seconded by Senator Hooser and carried.

Senator Sakamoto then moved that the Senate advise and consent to the nominations to the Board of Regents of the University of Hawai'i of the following:

JAMES J.C. HAYNES II, term to expire June 30, 2006 (Gov. Msg. No. 165); and

JANE B. TATIBOUET, term to expire June 30, 2007 (Gov. Msg. No. 166),

seconded by Senator Hooser.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Menor).

Stand. Com. Rep. No. 3530 (Gov. Msg. No. 489):

Senator Sakamoto moved that Stand. Com. Rep. No. 3530 be received and placed on file, seconded by Senator Hooser and carried.

Senator Sakamoto then moved that the Senate advise and consent to the nomination of ANDRES ALBANO JR. to the University of Hawaii Board of Regents, term to expire June 30, 2008, seconded by Senator Hooser.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Menor).

At 10:23 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 10:43 o'clock a.m.

FINAL READING

Conf. Com. Rep. No. 51-04 (S.B. No. 2704, H.D. 1, C.D. 1):

On motion by Senator Menor, seconded by Senator Hanabusa and carried, Conf. Com. Rep. No. 51-04 was adopted and S.B. No. 2704, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MANDATORY SELLER DISCLOSURES," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Hogue).

Conf. Com. Rep. No. 52-04 (S.B. No. 2909, S.D. 1, H.D. 1, C.D. 1):

On motion by Senator Menor, seconded by Senator Espero and carried, Conf. Com. Rep. No. 52-04 was adopted and S.B. No. 2909, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO APPLICATIONS SEEKING GENERAL RATE INCREASES FILED BY PUBLIC UTILITIES HAVING ANNUAL GROSS REVENUES OF LESS THAN \$2,000,000," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Hogue).

Conf. Com. Rep. No. 53-04 (S.B. No. 2951, S.D. 1, H.D. 1, C.D. 1):

Senator Menor moved that Conf. Com. Rep. No. 53-04 be adopted and S.B. No. 2951, S.D. 1, H.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Baker.

Senator Trimble rose to speak in opposition to the measure and stated:

"Mr. President, I rise in opposition to S.B. No. 2951.

"This bill provides for a fine of \$2,000 a day, each day being a separate offense for a violation of law or rules. A rule might be that they have to post the sign of their license. So, if we had an earthquake or if they moved offices or somehow their license fell behind a filing cabinet, they could be fined \$2,000 a day. This seems rather onerous. I suggest that it is inappropriate.

"Thank you."

The motion was put by the Chair and carried, Conf. Com. Rep. No. 53-04 was adopted and S.B. No. 2951, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO RADIOLOGIC TECHNOLOGY," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, 1 (Trimble). Excused, 1 (Hogue).

Conf. Com. Rep. No. 54-04 (H.B. No. 2786, H.D. 1, S.D. 2, C.D. 1):

On motion by Senator Menor, seconded by Senator Hanabusa and carried, Conf. Com. Rep. No. 54-04 was adopted and H.B. No. 2786, H.D. 1, S.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ARBITRATION," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Hogue).

Conf. Com. Rep. No. 55-04 (S.B. No. 2834, S.D. 2, H.D. 2, C.D. 1):

Senator Hanabusa moved that Conf. Com. Rep. No. 55-04 be adopted and S.B. No. 2834, S.D. 2, H.D. 2, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Taniguchi.

Senator Slom rose to speak in support of the measure with reservations and said:

"Mr. President, I rise in support of the bill with reservations.

"In the past I have voted against this annual bill. We watch as we go through this Session, it goes from six million to ten million to thirteen million where it is right now. And I think the problem is that we always see the State as deep pockets. We don't have a situation where we have true tort reform and everybody comes to the State or they attach the State in lawsuits where there's supposed to be individual responsibility. And basically we are paying nuisance fees to make the suits go away. And the fact that these people take smaller amounts again indicates that they have no case, they have no claim, but because of the deep pockets they're able to do this.

"So, I'll vote with reservations, but again, I urge that the State provide legislation to make it more difficult for people to sue the State when they don't have legitimate claims.

"Thank you."

The motion was put by the Chair and carried, Conf. Com. Rep. No. 55-04 was adopted and S.B. No. 2834, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Hogue).

Conf. Com. Rep. No. 56-04 (S.B. No. 3185, S.D. 1, H.D. 1, C.D. 1):

Senator Hanabusa moved that Conf. Com. Rep. No. 56-04 be adopted and S.B. No. 3185, S.D. 1, H.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Kawamoto.

Senator Trimble rose to speak in opposition as follows:

"Mr. President, I rise in opposition to this measure.

"In fact, I think several other people were about to rise also. Sometimes the good Lord gives us a second chance. We have a second chance. Is the Senator from Hawaii Kai upset because his microphone is again not working today?"

"You know, it is bad law to pass a law because of one or two or three individuals. It is a worse law if we pass that law because somebody managed to push our buttons so well that we got incensed. It is bad law when we start to become arrogant and forget that we are not special people that have the power to legislate as it appeals to us, but we are ordinary people tasked with a very special responsibility – and that is to act for the good of society.

"There are three bills that we have considered this year that dealt with the Office of Information Practices. They were all bad. The problem with this bill is that it was trying to correct the problem the wrong way. It is also wrong to give the Office of Information Practices, which is housed in the executive branch of the administration, the power or the potential opportunity to pollute with other branches in the executive branch to deny people information and access to that information.

"I urge my colleagues to use the second chance that you were given to vote against this measure.

"Thank you, Mr. President."

Senator Ihara rose to speak in opposition to the measure and stated:

“Mr. President, I rise in opposition to this measure.

“With all due respect to the supporters of S.B. No. 3185, Mr. President, I believe this bill is unnecessary, and overkill, and a misuse of Hawaii’s freedom of information laws for the purpose of stopping unlawful acts of harassment against state employees.

“I fully believe that any citizen who takes vexatious or harassing action of any kind, not only in requesting government records, should be stopped and be subject to penalty. This is precisely what just happened last Thursday to a vexer, someone who was the inspiration of this bill. Actually, ‘the person’ who is the inspiration of this bill. This person pled guilty to four counts of harassment last week Thursday. He submitted a letter of apology to 35 state agencies, public officials and staff and is now prohibited from calling, faxing or e-mailing these entities for six months. His apology states in part, ‘please accept this letter as an apology to anyone that considered my actions as being harassing.’

“So, Mr. President, there are ways to stop vexatious behavior against public agencies and officials, but this bill should not be one of them.

“Mr. President, this bill fails to accomplish what its proponents want. This bill only allows an agency to ignore requests from a person who’s been labeled a vexatious requester. This bill will not stop harassment of our state employees. This bill will not stop those types of vexatious actions. This bill is dangerous because it takes away a person’s freedom of information rights for up to two years, based on vague and overbroad criteria and deny their rights for actions that may be entirely legitimate.

“I fully respect the Office of Information Practices and its able director. And for the most part, I trust their judgment on freedom of information matters. However, I do not think citizens should trust any agency for denying their rights based on overly broad criteria without a hearing and a situation where OIP itself is a party of vexatious requester proceedings because of a conflict of interest.

“This bill would give a state agency the power to deprive citizens their right to access government records without a reasonable basis, without adequate criteria, without any requirement of proof, and without a hearing. This agency could even take away citizen rights for actions that are entirely legitimate. And to appeal a decision, a citizen would have to go to court. I think it should be the other way around. I think that government should have to go to court to take away citizens’ rights.

“S.B. No. 3185 says, and I’ll quote, ‘The Office of Information Practices may declare that a person is a vexatious requester if it determines that the person has established a pattern of conduct that excessively interferes with the agency’s legitimate responsibilities under this chapter,’ end quote. I’ll continue quoting, but what it basically says is that ‘OIP may declare someone a vexatious requester if that person . . .’ actually, I’m repeating. This is very good language to illustrate what we are about to do today. We’re about to pass a law, and I hope we don’t, that basically gives the Office of Information Practices powers. All lawmaking powers in the state rest with the Legislature, and we are giving this office the power to declare someone a vexatious requester if that person has established a pattern of conduct that excessively interferes with an agency’s legitimate responsibilities.

“It’s amazing what the Legislature can do with such simple words to take away people’s rights. But there must be criteria, there must be a reasonable and rational basis for taking away someone’s rights. Probably none of us will be affected, nor the media, nor anyone important. It’s the rights of the nobodies I’m concerned about. Say it ain’t so, please.

“But as much as I trust OIP, I’m sorry to report that the criteria in this bill are an abomination an unwarranted attack on citizens’ rights. I know they’re harsh words, but wait. For OIP to determine – that’s the word used, ‘determine’ – a vexatious pattern of conduct, all it would have to do is to determine that someone has at least two of what’s called factors. Two factors and a pattern, and you’re out.

“I’m going to read and I’ll paraphrase a little to make it easier to understand, but it’s accurate so you don’t have to believe me. You can pull out the bill, its on page 2, and read it for yourself. Among the criteria, a minimum of two required for denying someone’s right to see a government document includes . . . and there is actually seven criteria and I’m giving one away. One of the seven is – repetitive requests of the same request given repetitively when an agency has already responded. I’ll give that one. That shouldn’t happen, and they could do it nicely so it’s not harassing, but the other six, I question. And remember, all you need is two.

1. The person has submitted a large quantity of requests.
2. The person has split requests to minimize cost.
3. The person has abandoned requests when the fee is not waived. You can ask for a waiver and if it’s declined and you abandon it, watch out.
4. The person has appealed the request without reasonable basis. So, if you lose, watch out.
5. The person’s request only marginally promotes the public interest.
6. The person has submitted requests for purposes other than obtaining access to records.

“I happen to work with many citizen watchdogs, Mr. President. In fact, I’m trying to help support the new Hawaii Citizens Watchdog Network. I believe our state needs more citizen watchdogs. But, this bill would have a chilling effect on them.

“I’m going to go over those six factors here. Bear with me. Actually, I’m competing with the Senator from Moanalua.

1. Citizen watchdogs tend to submit large quantities of documented requests, as it is their right, but not under this bill if we pass it.
2. Watchdogs and researchers often seek ways to minimize copy costs by splitting large research into affordable segments. And I believe it should be permitted. And that’s the second factor that could be declared a vexatious requester.
3. I know some watchdogs seek copy fee waivers on the basis that they plan to distribute their research, but they might have to abandon their request if the fees are too high. You make a request and you ask for a waiver because you are going to publish something or you’re going to give it to the media or serve your watchdog function, and so you may abandon your request because you just don’t have enough funds. And because of this, someone could be more vulnerable of becoming a vexatious requester. I believe the other three factors provide an inappropriate basis for denying citizens their right to access public records.
4. If a person’s document request is denied by an agency, they may submit an appeal to OIP precisely because

they believe they have a reasonable case. But if they lose and OIP says that they are wrong and have no reasonable basis for making an appeal . . . This is an appeal – you make a request to an agency, the agency says ‘no’ or does not respond, which is often the case, believe it or not, and you make an appeal and for some reason at the judgment of OIP they say that you, in fact, in their belief, do not have reasonable basis, you can become a vexatious requester. If OIP thinks that no reasonable basis is required to submit an appeal, wouldn’t it be better to require a reasonable basis rather than threatening to take away someone’s rights if they don’t have one?

5. Hawaii’s open record laws do not require citizens to review their identity, nor does it require citizens to give a reason for making a records request. This is as it should be. But, to avoid becoming a vexatious requester under this bill, citizens may need to reveal and prove how their records request promotes the public interest, because if it only marginally does this, if you make a request that is only marginally promoting the public request, your right to make future requests may be in jeopardy. How sad this would be.
6. And finally, with no hearing, OIP could decide that a citizen has been making requests for purposes other than obtaining access to records. A citizen could become a vexatious requester. No proof is required; no review by anyone else is required, and the person deemed a vexatious requester can only get their day in court in an actual courtroom. You have to go find a lawyer, you have to file the papers, file the filing fees to get back your rights to request public documents. How very unfair that would be.

“Mr. President, I believe this bill sets a dangerously low threshold for denying people’s rights. This bill will have a chilling effect on the people, I believe, we need most – government watchdogs, researchers and people whose mission it is to keep an eye out on public agencies. And I count myself among this group. I believe this bill gives OIP too much power, too much leeway, and it’s too much of a threat to legitimate watchdogs of our public agencies. This bill does not relieve agency staff from harassment and I urge Senators to defeat this bill today.

“Thank you.”

Senator Aduja rose to speak in opposition as follows:

“Mr. President, I rise in opposition to this measure.

“Mr. President, S.B. No. 3185 would allow the State Office of Information Practices to declare someone a vexatious requester if in the opinion of the Office of Information Practices the person has a pattern of abusing the state’s open records laws. The definition of a vexatious requester is so broad and subjective it would apply to people who have a legitimate interest in government accountability and performance. As written, the measure could be adopted to apply to nearly anyone.

“Under this measure, a government agency must show the Office of Information Practices that an individual has a pattern of abusing the request process by using a set of criteria, and the individual would be given a chance to respond. These factors or set of criteria are vague and subjective, as indicated by Senator Ihara so I won’t go through that again.

“If the office finds someone has met only two of these factors, it may declare that person is a vexatious requester and restrict such person’s exercise to his or her rights to government

records under Chapter 92 for two years. A vexatious requester may ask the state ombudsman to review the offices action and the person may appeal in the State Circuit Court. But, Mr. President, do we really want to flood our already overburden court system with such appeals in circuit court just to obtain government records.

“Mr. President, citizens are free to be vexatious requesters. It is our constitutional right. In fact, our Governor upon winning her election said, and I quote, ‘The whole idea is openness, opening the government up. I want a government that all people feel that they have access to.’ However, Mr. President, this bill introduced by several Majority and Minority Senators is practically identical to a measure included in Governor Linda Lingle’s administrative package of proposals.

“Over the past three years the public’s right to know has been diminished due to governments ability to withhold information under the broad claim of tourism and national security. S.B. No. 3185 represents an even greater threat to public access in Hawaii. If enacted, S.B. No. 3185 will have a permanent negative impact on the rights of our citizens and set a dangerous precedent for the future.

“The State’s Office of Information Practices, an agency under the Lieutenant Governor’s Office, is charged with issuing advisory opinions on open records law and mediating disputes between the public and government agencies over the release of government records. The OIP exists because in the past, government agencies abused their authority and unlawfully denied or impeded the public’s access to information. However, some state agencies are currently operating outside of the rules of the Uniform Information Practices Act, the law which allows access to governmental records.

“Through the Uniform Information Practices Act a citizen has ability to uncover numerous illegal acts of waste, fraud and abuse within our government agencies. However, to accomplish this, a private citizen may encounter and endure delays, denials, fragmenting of requests and even the destruction of records by government agencies. The OIP is charged with administering the Uniform Information Practices Act and not creating roadblocks that impede the public’s right to information. By definition, citizens and watchdog organizations could easily be deemed vexatious. Any attempt to hold government entities accountable could easily be considered annoying and vexatious.

“Leslie Kondo, director of OIP, cites only one example where an individual repeatedly faxed an agency requesting such agency to time stamp and return faxed copies. That one individual tied up fax machines with hundreds and hundreds of pages. Supposedly, this measure was introduced to address this type of request.

“However, this measure is overly broad and far reaching. As written, it enables the Office of Information Practices and government agencies to obstruct and deprive the public of its right to public records. The passage of this measure would therefore set a dangerous precedent and invite abuse of power. In addition, this measure has been estimated to directly affect only two to three people at this point in time. Why is it then that we as Legislators lend ourselves to punishing three people at the expense of the public’s right to access public records? Why doesn’t the OIP deal with these individuals outright instead of triggering the Legislative action? This proposed law is akin to using dynamite to kill a mosquito.

“Mr. President, as you well know, there are many individuals of organizations who have utilized the Uniform Information Practices Act to obtain insight into government policy,

programs and unlawful behavior. A number of agencies do produce their records in a timely manner. However, such records may be sanitized by removing or withholding a portion of the file often without notifying the requester that documents were withheld, thereby hindering or eliminating the requester's right to appeal. Other agencies have delayed or denied production of records by claiming they are not familiar with the Uniform Information Practices Act.

"Government agencies are already allowed to determine the public's access by charging arbitrary excessive fees. The agencies have been given the authority to charge up to \$5 for 15 minutes of research, plus up to 50 cents per page. If an agency is poor at record keeping, as we have learned through many reports by Marion Higa, the State Auditor, the cost of research and production of public records can be very high, thus presenting another impediment to public access.

"Further, agencies are inconsistent in the fees that they charge. For example, a division of the Department of Planning and Permitting for the City and County of Honolulu charges \$5 for the first 10 minutes of research time, 50 cents for the first page, and 25 cents for each page thereafter. The Division of Treasury charges up to \$4.50 for the first 10 minutes, and 50 cents per page. Some agencies, after receiving a request for information, simply pass the request to the Deputy Attorney General and then afterwards fail to inform the requester of their decision. The requester will only learn of such agency's decision if the requester inquires about such delay. When the requester learns that his or her request has been denied, a complaint with the Office of Information Practices must then be filed.

"The Office of Information Practices has a very large backlog of issuing opinions on appeals by requesters. The OIP also has significant complaints from requesters relating to abusive authority by agencies. Yet the OIP failed to introduce legislation to take any actions to address the government's improper treatment of OIP requests.

"Robin Loomis, President of Hawaii's Pro-Democracy Initiative believes that it is dangerous to go down this path. 'Unless this bill is more narrowly restrictive,' she says, 'I think it would limit people's right to open government. If they narrow it down, perhaps it would be good. But why are we doing this? There may be a few people who are abusing the process, but I can't imagine that there are tons of people doing this.'

"This bill could easily apply to individuals interested in government accountability and government performance,' said Beverly Keever, a University of Hawaii journalist and professor. 'It's a very subjective thing and I don't think it's worth worrying about if the agencies perform as they're supposed to be doing, and many of them are not.' Professor Keever continued by saying, 'I think it's frivolous on the part of the Legislature to get so involved. And it's frivolous on the part of OIP to push this when their fundamental purpose is spelled out to provide access and to protect citizens' rights. This is a bill that's written for the bureaucrats not written for the citizens.'

"I agree that there are some instances where requests for public records may cause damage to an agency such as information pertinent to ongoing legal proceedings or information that could damage defense security or international relations of the State or the economic interest or financial welfare of the State. However, this measure does not include such specific reasons for refusal. Neither does this measure provide for a very important and broad public override. If a record shows evidence of a breach of the law or serious public

safety or environmental risk, this should be an exception to this measure.

"The sponsors of S.B. No. 3185 suggest that the vexatious requester they have in mind is an unpleasant individual who makes himself or herself a pest to state offices tying up staff time and attention. But, Mr. President, this is an age-old problem for anyone who deals with the public and there are existing public nuisance laws to rely on.

"We have a Governor who promised she would bring a new government and clean up the old, along with waste, fraud, and abuse. We must ask ourselves, are we working for the public good? An inconvenient request for information may now result in a complete denial of public records under this measure, as only a few individuals would have the time or resources to fight for the constitutional right to public information in our courts.

"For the above reasons, Mr. President, I oppose this measure and I respectfully request that my colleagues also do the same.

"Thank you."

Senator Hanabusa rose to speak in favor of the measure and said:

"Mr. President, I rise in favor of the measure.

"Mr. President, I've heard the concerns about the fact that this bill would have a chilling effect. I've heard concerns about the definition of what a person may deem is a vexatious requester and whether this bill is necessary.

"We received testimony on not only S.B. No. 3185, but also on another measure as well. Let me read you one of the testimonies that we received from our Senate Majority Attorney who said, 'I appreciate the opportunity to testify in support of S.B. No. 3185. I'm submitting this testimony on behalf of the Senate staff, members, and agencies who've told me of how their offices have been prevented from doing their work due to the actions of vexatious requesters. I have found that all of the staff who contacted me, whether Democratic, Republican, or nonpartisan, share a sincere desire to serve the public and respond to their legitimate requests. No one has expressed a desire to deny access to records under the UIPA for these people. The UIPA law, Chapter 92F, is a good law that contains many provisions protecting the public's right to these records. Unfortunately, the UIPA law did not contemplate how abusively the process might be used against a government agency and thus did not put forth protections for agencies from abuse of process.'

"Mr. President, that's the sentiment which is behind S.B. No. 3185. We hear the concern about the chilling effect. And Mr. President, it's a legitimate concern. But let me tell you, I believe that there is no more chilling effect than putting someone through a criminal proceeding. What we have here is people being charged criminally under harassment. Some may find that they desire it. Some may find that's the way we should go. But Mr. President, if we've got a problem, let's handle it and let's address it in a way that is less punitive than to have someone have to make a decision as to whether they are going to plead guilty or accept the DAG or a DAG plea, instead of going through a whole criminal proceeding and potentially end up with a criminal record for being a harasser versus a vexatious requester.

"This bill, which came out of Conference, requires a person's pattern of conduct to include the following factors, and they list the seven factors. But no one factor alone shall be sufficient to

find excessive interference with an agency's responsibility – no one factor.

“Also, Mr. President, the Office of Information Practices must give notice. In addition, there's a duration. In other words, it can only go for two years. The individual also has the opportunity to request of the Ombudsman a review of what OIP may or may not have done.

“And finally, that requester has the right to challenge this in a civil court. Mr. President, I contend that a civil proceeding is a lot less onerous than to be charged criminally and to have the Attorney General's Office or the Prosecutor's Office come after you as a harasser.

“We must also not forget that what we're dealing with here is the fact that when one person becomes a vexatious requester, that person is taking away the rights of others. So, we must also bear in mind that there are other people out there who may want access, who can't get access because someone has chosen to tie-up whether its fax lines or fill-up someone's e-mail or whatever it is that the other people, our other constituents, are not able to have access to. What about their rights?

“Again, Mr. President, harassment whether its one count, four counts, ten counts, whatever it is, it's still a criminal proceeding. You've talked about a chilling effect, if someone goes before a criminal court and is looking at a criminal charge, it's a lot different than looking at potentially appealing a decision by the OIP.

“For that reason, Mr. President, if we are going to be concerned about everyone's rights and we are trying to balance this issue regarding someone who may be abusing it, a vexatious requester, and the rights of other constituents, let's do it in a way that is less onerous. Let's address the problem because we have the problem as set forth by our Senate Majority Office, who has had the complaints from both sides of the aisle on this problem. Let's do it where they can feel free to challenge it and not have hanging over their heads a criminal proceeding.

“Thank you, Mr. President.”

Senator Hemmings rose to speak in favor of the measure as follows:

“Mr. President, I rise to speak in favor of S.B. No. 3185.

“I'm rising because I think that the good Senator from Honolulu's efforts to kill this bill in a filibuster have to be addressed.

“First of all, the implication in that dissertation was that somehow this bill is problematic because it received bipartisan support. I seem to think that that's probably the halcyon thing this bill has. It has people of both sides of the aisle recognizing that people's rights are being taken away by vexers or vexators, whatever you wish to call them.

“I'd like to underscore that point because one person tying up the system does cost the taxpayers a tremendous amount of money in the amount of time of work Legislators, public employees have to deal with vexers. This also, as pointed out by the good Senator from Waianae, denies access to other people – people that have legitimate concerns and want legitimate information oftentimes do not get it or don't get it in a timely manner because one or two people can tie the whole system up.

“This effort is really an effort to curb abuse, not by a couple of mosquitoes but by a couple of very selfish people. It was pointed out that an apology was offered by the person that was practicing this. Nevertheless, the damage was done and it should not be an additional cost to the taxpayers to have to file a criminal lawsuit to implement common sense.

“This bill does have adequate criteria to protect the general public's interest to access to public information and it does have safeguards, appeals, and other ways that someone who has been put on the list as a vexer can appeal the process.

“All things considered, this is a balanced bill that really helps the public and helps public access and not the opposite. I urge my colleagues to support it.”

Senator Inouye rose to speak in opposition as follows:

“Mr. President, I speak in opposition of this bill.

“Mr. President, will you direct the Clerk to enter into the Journal the words of the Senator from Kaimuki/Kapahulu as if they were my own.

“Thank you.”

The Chair so ordered.

Senator Trimble rose to speak in rebuttal and stated:

“Mr. President, I rise in brief rebuttal.

“Colleagues, how do you want history to remember this day? Do you want history to remember that government was brought to its knees by the actions of one individual? Do we pass law to take care of one individual? The Senator from Kaimuki laid out very clearly that when an individual crosses the line, there are other statutes to deal with the issue. I suggest that there is no need to pass this law.

“Thank you.”

Senator Ihara rose to speak in rebuttal and said:

“Mr. President, a brief rebuttal.

“Mr. President, we are dealing with a problem and this problem is behavior that is criminal conduct. Be certain that a vexatious requester's actions are criminal actions. I challenge anyone to name me or explain to me an action that is of a vexatious requester that is not criminal. It is the harassment, it is the nastiness, it is all of that that is criminal against public officials that should be stopped. But this bill does nothing – this bill does nothing – to stop harassing, vexatious, mean spirited, vindictive actions by citizens who need to calm down sometimes, lost it sometimes. Not only does it attempt to deal with the problem, but it doesn't address the problem at all. Instead, it takes away people's rights.

“I won't repeat my speech, but it seems that the debate will go on. If this bill passes we'll continue to debate because I think this issue and this policy that we're setting and the vague and subjective parameters for determining a vexatious requester, I think it will be a healthy and vigorous debate if this bill passes.

“I again urge my colleagues to vote 'no' on this bill. Thank you.”

Senator Sakamoto rose in support of the measure and said:

"Mr. President, I rise in support of this bill.

"Mr. President, I rise in support of this bill and I rise in support of government workers. I believe if we're saying that we don't trust our agencies and the Office of Information Practices from doing the right thing – from the ability to determine, well, this is just because they want to have less photo copy costs or is it just because perhaps they're trying to be efficient, therefore we're going to task them and call them a vexatious requester – I believe not. I believe we're asking our government workers at the front counters, at the copy machines of many places to do a good job, to do more with less.

"I believe this measure will help them do more with what they have without having to be distracted with whether it's one wasp, one yellow jacket, one bumble bee, or a whole beehive. And I believe and I trust that our government workers and the Office of Information Practices will be fair and use this appropriately."

Senator Hogue rose to speak in support of the measure and stated:

"Mr. President, I rise in support.

"I would say that the good Senator from Kaimuki laid out some great arguments, but in one area I do believe he's wrong. In this day of technology with the advancements in computers, it is possible for a requester to be vexatious without ever making any personal contact whatsoever to offices. They could have their computers now do all of their work for them and tie up government offices needlessly. This bill will address that problem.

"The harassment charges aren't addressed, okay, because these people would never even contact, they would contact just from e-mail and the computers would do everything. So, this bill handles the advancements in technology, which could tie up our government offices for a long, long time. So this bill is much needed.

"It is the right kind of bill and I trust the director of OIP, who is also up in the audience.

"Thank you very much, Mr. President."

The President then made the following announcement:

"The Chair feels we're going to have a lot of debate, but the Chair wants to limit the debate. It's been a good debate but we will limit the debate to one more speaker."

Senator Hooser rose to speak in opposition to the measure and stated:

"Mr. President, I'll keep mine brief. I rise in opposition.

"I would like the words of the Senator from Kaimuki reflected in the Journal as if they were my own.

"Thank you."

The Chair so ordered.

Senator Menor rose and said:

"Mr. President, I just want to have the Clerk note for the record that I will be voting in favor with reservations."

The Chair so ordered.

Senator Aduja rose and said:

"Mr. President, I would like request a Roll Call."

Senators Baker and Menor requested their votes be cast "aye, with reservations," and the Chair so ordered.

The motion was put by the Chair and carried, Conf. Com. Rep. No. 56-04 was adopted and S.B. No. 3185, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INFORMATION PRACTICES," having been read throughout, and Roll Call vote having been requested, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 16. Noes, 9 (Aduja, Chun Oakland, Espero, Fukunaga, Hooser, Ige, Ihara, Inouye, Trimble).

Conf. Com. Rep. No. 57-04 (S.B. No. 2077, S.D. 2, H.D. 1, C.D. 1):

On motion by Senator Fukunaga, seconded by Senator Kawamoto and carried, Conf. Com. Rep. No. 57-04 was adopted and S.B. No. 2077, S.D. 2, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PLANNING," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 58-04 (S.B. No. 2926, S.D. 1, H.D. 2, C.D. 1):

On motion by Senator Menor, seconded by Senator Taniguchi and carried, Conf. Com. Rep. No. 58-04 was adopted and S.B. No. 2926, S.D. 1, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HOUSING LOAN AND MORTGAGE PROGRAMS," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 59-04 (S.B. No. 2928, H.D. 2, C.D. 1):

By unanimous consent, action on Conf. Com. Rep. No. 59-04 and S.B. No. 2928, H.D. 2, C.D. 1, was deferred to the end of the calendar.

Conf. Com. Rep. No. 60-04 (S.B. No. 473, S.D. 1, H.D. 3, C.D. 1):

Senator Hanabusa moved that Conf. Com. Rep. No. 60-04 be adopted and S.B. No. 473, S.D. 1, H.D. 3, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Kawamoto.

Senator Slom rose to speak in support of the measure as follows:

"Mr. President, I rise in support of this bill.

"I just wanted to point out that this bill, unlike the ice bill that was vetoed the other day and overridden the other night, has a provision in it about halfway houses and this is how you do the bill right. This has a provision for zoning and permit requirements and everything else. And one of the major objections we had to the ice bill was that it did exactly the opposite. It forced those rehabilitation drug houses into neighborhoods that necessarily had no opportunity to discuss them or do anything about them.

"Thank you."

The motion was put by the Chair and carried, Conf. Com. Rep. No. 60-04 was adopted and S.B. No. 473, S.D. 1, H.D. 3, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HALFWAY HOUSES," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 61-04 (S.B. No. 2887, S.D. 2, H.D. 2, C.D. 1):

On motion by Senator Menor, seconded by Senator Taniguchi and carried, Conf. Com. Rep. No. 61-04 was adopted and S.B. No. 2887, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INTERSTATE INSURANCE COMPACT," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 62-04 (S.B. No. 2839, S.D. 2, H.D. 2, C.D. 1):

Senator Menor moved that Conf. Com. Rep. No. 62-04 be adopted and S.B. No. 2839, S.D. 2, H.D. 2, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Hanabusa.

Senator Slom rose to speak in opposition to the measure and stated:

"Mr. President, I rise in opposition to this bill.

"This bill has a good intent but it has two undesirable features. One is that it increases fees from \$50 to \$250. The second is that it produces a new special fund.

"Thank you."

The motion was put by the Chair and carried, Conf. Com. Rep. No. 62-04 was adopted and S.B. No. 2839, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO SOLICITATION OF FUNDS FOR CHARITABLE PURPOSES," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, 4 (Hemmings, Hogue, Slom, Trimble).

Conf. Com. Rep. No. 63-04 (S.B. No. 2606, S.D. 1, H.D. 2, C.D. 1):

On motion by Senator Fukunaga, seconded by Senator Menor and carried, Conf. Com. Rep. No. 63-04 was adopted and S.B. No. 2606, S.D. 1, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO BREWPUB LICENSES," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 64-04 (S.B. No. 3170, S.D. 2, H.D. 2, C.D. 1):

Senator Fukunaga moved that Conf. Com. Rep. No. 64-04 be adopted and S.B. No. 3170, S.D. 2, H.D. 2, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Menor.

Senator Hemmings rose to speak against the measure as follows:

"Mr. President, I rise to speak against S.B. No. 3170.

"Mr. President, this bill is so we can feel good for the environmentalists, but in fact it would be harmful for the environment for a number of reasons.

"Number one is that it will sustain the growth of a crop that has a tremendous impact on the environment most especially in the ever increasing shortage of water. As we all know, sugar is an incredibly thirsty crop.

"Secondly, the costs are against the environment also. The cost and the impact on the environment of harvesting and collecting this product for energy does not make sense, so much so that the normally astute observations of what many consider a rather liberal magazine, *Harper's Magazine*, says the ratio amount of energy generated by one gallon of ethanol to the amount of energy required to produce it is 1.09, which means it costs us about as much energy to produce ethanol as the ethanol we get. So, the bottom line is that we're at no net gain energy wise and environmentally.

"Thirdly, it does something much more egregious to the environment. It extends the life of fossil fuels. If we were taking this energy and this work and the incentive is to really get behind future technologies, such as hydrogen and renewable energies like geothermal in the Hawaiian Islands, we'd be going a long way to making ourselves energy independent from fossil fuels.

"What this bill really does is by adding an expensive ethanol addition to gasoline it extends the life and our dependency on fossil fuels and the geopolitical problems that are related to oil. So, for many reasons, and most especially environmentally, this bill should not pass. I urge my colleagues to consider the environment, consider the cost implications, and vote 'no.'"

Senator English rose in support of the measure and said:

"Mr. President, I rise in support of the measure.

"Just so that our colleagues and people out there understand what this does, it mandates up to a 10 percent blend of ethanol in our gas. Many of the people that talk about this compare it to North America. The problem with that is the ethanol from North America is made from corn. In Hawaii we're talking about making the ethanol from sugarcane and the cane products – the cane juice, the gas and the molasses that comes from that.

"You know, in an island state such as ours, we have to try everything possible to reduce our dependency on fossil fuels, and by reducing at least 10 percent of the import, it will help us to bring down that dependency. But there are other reasons to support asking for a blend in our gasoline.

"Just to be clear, members, this bill is tied to three other bills that will be coming up. So, the previous speaker addressed it universally, but didn't take it up in each bill. I'll take up each point as we come to the bills, but for this particular one, it's good for our energy policy. It will help us to reach our renewable portfolio standard goals and will help us to create local jobs and to keep many of our green fields green.

"So, this is a win, win, win in three different areas for Hawaii. I ask that you support this particular bill and again this one mandates an up to 10 percent blend of ethanol in our fuel.

"Thank you."

Senator Hooser rose to speak in support of the measure and stated:

"Mr. President, I rise in support.

"Just to speak briefly, this is an important bill, Mr. President. I urge my colleagues to support it. It's important especially in my district, Kauai and Niihau, District 7. It's important to preserving agriculture, preserving sugar. It creates jobs. It's good for economic development. It increases our energy independence and our energy security. It has been a part of our state's policy for the last 10 years, and it's time that we move forward with this policy.

"I urge my colleagues to vote in support. Thank you."

The motion was put by the Chair and carried, Conf. Com. Rep. No. 64-04 was adopted and S.B. No. 3170, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PETROLEUM PRODUCTS," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, 2 (Hemmings, Slom).

Conf. Com. Rep. No. 65-04 (S.B. No. 1238, S.D. 2, H.D. 2, C.D. 1):

Senator Baker moved that Conf. Com. Rep. No. 65-04 be adopted and S.B. No. 1238, S.D. 2, H.D. 2, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Kokubun.

Senator Trimble rose to speak in opposition as follows:

"Mr. President, I rise in opposition to this measure.

"If you read the bill, what concerns me is a person's right to revoke who he has decided to be his guardian. If you look on page 10, it says that a person who has capacity at the time they revoke or change guardianship. I contend that there are many people at times when they do not have capacity, know the difference between who can act in their interest and who cannot. And so, I do not think it is appropriate for a person to forfeit that right under this bill.

"Thank you."

Senator Baker rose to speak in support of the measure as follows:

"Mr. President, I rise in support of this measure.

"Mr. President, with all due respect, I believe the Senator from Waikiki has misread this bill. This is a pro-consumer bill. It ensures that the advance directives, mental health directives of an individual when they are capable are paramount, and it references notifying the agent or somebody who has got to fulfill their advance directives as well as the healthcare provider. A guardianship is a court proceeding and this bill makes sure that the individual's agent must follow those directives even if there is a guardianship, unless there is a court ruling that overturns it.

"I think that this is a pro-consumer bill. It was certainly supported by all the advocacy groups. It's a measure that's long overdue, and I urge all my colleagues to vote in favor of this measure.

"Thank you."

The motion was put by the Chair and carried, Conf. Com. Rep. No. 65-04 was adopted and S.B. No. 1238, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MENTAL HEALTH," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Trimble).

Conf. Com. Rep. No. 66-04 (S.B. No. 2056, S.D. 1, H.D. 2, C.D. 1):

On motion by Senator Sakamoto, seconded by Senator Baker and carried, Conf. Com. Rep. No. 66-04 was adopted and S.B. No. 2056, S.D. 1, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE AUDITOR," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 67-04 (S.B. No. 2200, H.D. 1, C.D. 1):

Senator Sakamoto moved that Conf. Com. Rep. No. 67-04 be adopted and S.B. No. 2200, H.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Hanabusa.

Senator Trimble rose to oppose the measure and said:

"Mr. President, I rise in opposition to this measure.

"It would provide an exclusion for the Department of Education at the University of Hawaii for rule making in this regard. I think that is inappropriate.

"Thank you."

The motion was put by the Chair and carried, Conf. Com. Rep. No. 67-04 was adopted and S.B. No. 2200, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, 1 (Trimble). Excused, 1 (Slom).

At 11:43 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:48 o'clock a.m.

Conf. Com. Rep. No. 68-04 (S.B. No. 2425, S.D. 1, H.D. 1, C.D. 1):

By unanimous consent, action on Conf. Com. Rep. No. 68-04 and S.B. No. 2425, S.D. 1, H.D. 1, C.D. 1, was deferred to the end of the calendar.

Conf. Com. Rep. No. 69-04 (S.B. No. 2716, S.D. 1, H.D. 2, C.D. 1):

On motion by Senator Sakamoto, seconded by Senator Chun Oakland and carried, Conf. Com. Rep. No. 69-04 was adopted and S.B. No. 2716, S.D. 1, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Ihara, Inouye).

Conf. Com. Rep. No. 70-04 (S.B. No. 2538, S.D. 1, H.D. 1, C.D. 1):

On motion by Senator Sakamoto, seconded by Senator Taniguchi and carried, Conf. Com. Rep. No. 70-04 was adopted and S.B. No. 2538, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS FOR IOLANI SCHOOL," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, 2 (Hooser, Tsutsui). Excused, 2 (Ihara, Inouye).

Conf. Com. Rep. No. 71-04 (S.B. No. 2671, S.D. 1, H.D. 1, C.D. 1):

On motion by Senator Sakamoto, seconded by Senator Taniguchi and carried, Conf. Com. Rep. No. 71-04 was adopted and S.B. No. 2671, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS FOR THE CONGREGATION OF CHRISTIAN BROTHERS, INC. DBA DAMIEN MEMORIAL HIGH SCHOOL," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 20. Noes, 3 (Baker, Hooser, Tsutsui). Excused, 2 (Ihara, Inouye).

Conf. Com. Rep. No. 72-04 (S.B. No. 2790, S.D. 1, H.D. 1, C.D. 1):

Senator Sakamoto moved that Conf. Com. Rep. No. 72-04 be adopted and S.B. No. 2790, S.D. 1, H.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Taniguchi.

Senator English rose to speak in support of the measure as follows:

"Mr. President, I rise in support.

"You know, members, I really have to say 'thank you' for supporting me on this. As you know, I fought vigorously against the constitutional amendment that allowed for this type of SPRBs to go through. (Laughter.) However, being a good statesman, I also understand that the schools in my district need to use the tools that are available to them, and since it was passed and the voters have approved it, I introduced a bill for them.

"So, I'm asking for your support for the Haleakala Waldorf School special purpose revenue bond, even though I'm fundamentally opposed to the mechanism that allowed for them to use it. (Laughter.)

"You know, that's what statesmen do, right? So, anyway, I just have to explain this, and Mr. President, I will be standing up to speak on the next SPRB as well.

"Thank you."

Senator Slom rose on a point of information and said:

"Yes, point of information, Mr. President.

"I'm just wondering if this was a continuation of our discussion on Friday night about the fundamental philosophical differences between the Majority Party and the Minority Party and whether this is really statesmanship or political partisanship?"

Senator English rose and said:

"You know, I have to point out that most of the residents of the area is trending in the other party's favor in that district, so if it is partisanship, it's me helping the other party. But you know, a good statesman is also a good politician. (Laughter.) That's what's been missing in the entire debate. That is what has been missing in this whole thing about statesman versus politician. The reality is it's statesman and politician and the mix of that makes us effective.

"So, in response to that quip, we have to understand that partisanship aside, it is our duty to take care of the needs of all of our people no matter what their political persuasion is and to take the best interest of our population into account. And that's what I have done here.

"Thank you, Mr. President."

Senator Tsutsui rose and said:

"Mr. President, I've been somewhat persuaded by my colleague from Maui and therefore I would like to have the Clerk to register a soft 'no.'" (Laughter.)

The motion was put by the Chair and carried, Conf. Com. Rep. No. 72-04 was adopted and S.B. No. 2790, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS FOR HALEAKALA WALDORF SCHOOL," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, 3 (Baker, Hooser, Tsutsui). Excused, 1 (Ihara).

Conf. Com. Rep. No. 73-04 (S.B. No. 2791, S.D. 1, H.D. 1, C.D. 1):

Senator Sakamoto moved that Conf. Com. Rep. No. 73-04 be adopted and S.B. No. 2791, S.D. 1, H.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Taniguchi.

Senator English rose to speak in support of the measure as follows:

"Mr. President, I rise in support.

"I'd like to just simply say that the exact same situation for the last bill applies to this one. Montessori School is in my district. I introduced the bill for them and I ask for your support.

"Thank you."

The motion was put by the Chair and carried, Conf. Com. Rep. No. 73-04 was adopted and S.B. No. 2791, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS FOR MONTESSORI SCHOOL OF MAUI, INC.," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, 3 (Baker, Hooser, Tsutsui).

Conf. Com. Rep. No. 74-04 (S.B. No. 3086, H.D. 1, C.D. 1):

On motion by Senator Sakamoto, seconded by Senator Taniguchi and carried, Conf. Com. Rep. No. 74-04 was adopted and S.B. No. 3086, H.D. 1, C.D. 1, entitled: "A BILL FOR AN

ACT RELATING TO SPECIAL PURPOSE REVENUE BONDS FOR ISLAND PACIFIC ACADEMY," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, 3 (Baker, Hooser, Tsutsui).

Conf. Com. Rep. No. 75-04 (S.B. No. 2968, S.D. 1, H.D. 1, C.D. 1):

On motion by Senator Inouye, seconded by Senator Hanabusa and carried, Conf. Com. Rep. No. 75-04 was adopted and S.B. No. 2968, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO NATURAL RESOURCE VIOLATIONS," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 76-04 (S.B. No. 2063, S.D. 2, H.D. 2, C.D. 1):

Senator Sakamoto moved that Conf. Com. Rep. No. 76-04 be adopted and S.B. No. 2063, S.D. 2, H.D. 2, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Taniguchi.

Senator Slom rose to inquire as follows:

"Mr. President, my inclination is to vote for this bill, but I have an informational question for the Chair of the Education Committee. I noticed that within this bill there's a new term that's called 'special account' and I want to make sure that it doesn't bear any resemblance to special fund. So therefore, I'd like a definitional explanation between special account and special fund.

"Thank you, Mr. Chairman."

Senator Sakamoto rose in response and stated:

"It wasn't the intention from my part for it to rise to the level of a special fund depending on the department to keep track of the funds so that they can account for it as opposed to setting it aside in a different pot."

Senator Slom rose and stated:

"Yes, just for further clarification. Does the Department of Education understand the difference when you say that you're relying on them to just keep it apart and not rise to the evilness of a special fund?"

Senator Sakamoto rose to respond and said:

"I would hope so, sir. But, if you'd like, we can follow-up with a request that they do so if that's something you would like to pursue."

The motion was put by the Chair and carried, Conf. Com. Rep. No. 76-04 was adopted and S.B. No. 2063, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 77-04 (S.B. No. 2358, S.D. 2, H.D. 1, C.D. 1):

On motion by Senator Menor, seconded by Senator Hanabusa and carried, Conf. Com. Rep. No. 77-04 was adopted and S.B. No. 2358, S.D. 2, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CONSTRUCTION CLAIMS," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 78-04 (S.B. No. 3092, S.D. 1, H.D. 1, C.D. 1):

Senator English moved that Conf. Com. Rep. No. 78-04 be adopted and S.B. No. 3092, S.D. 1, H.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Kokubun.

Senator Trimble rose to speak in favor of the measure with reservations and stated:

"Mr. President, I rise with reservations on this measure.

"It seems like we could best call this legitimizing bounty hunting. It may be effective in the short run in terms of reducing waste, but I think the long term social costs of promoting this type of enforcement is undesirable.

"Second, if bounty hunting were so effective, we'd already be using it in a lot of other areas. When the Department of Health reports back to us the cost of dissention among those that are trying to collect the rewards and how much it is costing them, maybe we'll reconsider the desirable nature of this bill.

"Thank you."

The motion was put by the Chair and carried, Conf. Com. Rep. No. 78-04 was adopted and S.B. No. 3092, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO SOLID WASTE MANAGEMENT," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 79-04 (H.B. No. 1756, H.D. 2, S.D. 1, C.D. 1):

Senator Ige moved that Conf. Com. Rep. No. 79-04 be adopted and H.B. No. 1756, H.D. 2, S.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Taniguchi.

Senator Espero rose to speak in support of the measure and stated:

"Mr. President, I'd like to rise in support of this measure.

"This measure may bring the high technology industry to the Ewa Plain to Kalaeloa, formerly Barber's Point. The company is looking at building unmanned aerial systems to help with the defense of our nation and our homeland security. I urge my colleagues to support this bill.

"Thank you, Mr. President."

The motion was put by the Chair and carried, Conf. Com. Rep. No. 79-04 was adopted and H.B. No. 1756, H.D. 2, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS TO ASSIST HIGH TECHNOLOGY INDUSTRIAL

ENTERPRISES,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 80-04 (H.B. No. 1710, H.D. 2, S.D. 2, C.D. 1):

Senator Sakamoto moved that Conf. Com. Rep. No. 80-04 be adopted and H.B. No. 1710, H.D. 2, S.D. 2, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Taniguchi.

Senator Slom rose to speak in opposition to the measure and stated:

“Mr. President, I rise in opposition to this bill.

“This bill is very clear, it does in fact establish a new special fund for student scholarship and assistance special fund. Thank you.”

Senator Trimble rose on a point of information and said:

“Mr. President, I have a point of information.

“It seems that the intent of this bill is to . . . it’s more or less like an accounting change, instead of having tuition waivers we’ll call them scholarships and then go out and look for matching money. The bill had \$20 million in it and I was just curious if this was new money and where it came from?”

Senator Sakamoto rose to respond and stated:

“This isn’t money that we’re providing from the general fund. Part of the intention or the financial assistance globally, most schools don’t give waivers, they give financial assistance. The money goes back. They may give someone \$3,200 and the \$3,200 comes right back as they pay their tuition. So, part of this is the mechanics to change to that type of system.”

The motion was put by the Chair and carried, Conf. Com. Rep. No. 80-04 was adopted and H.B. No. 1710, H.D. 2, S.D. 2, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Slom).

Conf. Com. Rep. No. 81-04 (H.B. No. 1786, H.D. 1, S.D. 2, C.D. 1):

Senator Kanno moved that Conf. Com. Rep. No. 81-04 be adopted and H.B. No. 1786, H.D. 1, S.D. 2, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Taniguchi.

Senator Trimble rose to speak in opposition to the measure as follows:

“Mr. President, I rise in opposition to H.B. No. 1786.

“This appears to be a back door in terms of granting people civil service stature without having to go through the process that every other civil service employee had to do. I think it’s bad policy and we should oppose it every time it comes up.

“Thank you.”

The motion was put by the Chair and carried, Conf. Com. Rep. No. 81-04 was adopted and H.B. No. 1786, H.D. 1, S.D. 2, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO EXEMPT EMPLOYEES,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 20. Noes, 5 (Hemmings, Hogue, Slom, Trimble, Whalen).

Conf. Com. Rep. No. 82-04 (H.B. No. 2911, H.D. 2, S.D. 1, C.D. 1):

On motion by Senator Sakamoto, seconded by Senator Taniguchi and carried, Conf. Com. Rep. No. 82-04 was adopted and H.B. No. 2911, H.D. 2, S.D. 1, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO CHARTER SCHOOLS,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 83-04 (H.B. No. 1929, H.D. 1, S.D. 2, C.D. 1):

On motion by Senator Sakamoto, seconded by Senator Taniguchi and carried, Conf. Com. Rep. No. 83-04 was adopted and H.B. No. 1929, H.D. 1, S.D. 2, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO SCHOOL REPAIR AND MAINTENANCE,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 84-04 (H.B. No. 2049, H.D. 1, S.D. 2, C.D. 1):

On motion by Senator English, seconded by Senator Ige and carried, Conf. Com. Rep. No. 84-04 was adopted and H.B. No. 2049, H.D. 1, S.D. 2, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO ENERGY,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 85-04 (H.B. No. 1820, H.D. 1, S.D. 1, C.D. 1):

Senator Menor moved that Conf. Com. Rep. No. 85-04 be adopted and H.B. No. 1820, H.D. 1, S.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Espero.

Senator Kanno rose to speak in support of the measure as follows:

“Mr. President, I rise in support of the measure.

“I just wanted to take a minute to commend the Chair for his work on this measure. He was in a very difficult position taking a measure into Conference and representing a Senate position that was not in the Senate draft of the bill. He also had the difficulty of negotiating with the House, where the House at all times during the negotiation could walk away because they could always agree to the Senate version of the bill, which really was the position they were advocating for.

“So, the Chair of our Consumer Protection Committee had an almost impossible task and he prevailed, and I wanted to thank him for that.

“Thank you.”

The motion was put by the Chair and carried, Conf. Com. Rep. No. 85-04 was adopted and H.B. No. 1820, H.D. 1, S.D. 1, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO MOTOR VEHICLE INSURANCE,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 86-04 (H.B. No. 2143, H.D. 2, S.D. 1, C.D. 1):

Senator Menor moved that Conf. Com. Rep. No. 86-04 be adopted and H.B. No. 2143, H.D. 2, S.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Espero.

Senator Tsutsui rose to speak in opposition to the measure and stated:

“Mr. President, I rise in opposition to this measure.

“Just real briefly, I just want to say that I think it takes away from the small business’s ability to create their own gift certificate policy. Thank you.”

The motion was put by the Chair and carried, Conf. Com. Rep. No. 86-04 was adopted and H.B. No. 2143, H.D. 2, S.D. 1, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO BUSINESS REGULATION,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Tsutsui).

Conf. Com. Rep. No. 87-04 (H.B. No. 2773, H.D. 1, S.D. 1, C.D. 1):

On motion by Senator Menor, seconded by Senator Espero and carried, Conf. Com. Rep. No. 87-04 was adopted and H.B. No. 2773, H.D. 1, S.D. 1, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO CONDOMINIUM PROPERTY REGIMES,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 88-04 (H.B. No. 2774, H.D. 1, S.D. 1, C.D. 1):

On motion by Senator Menor, seconded by Senator Espero and carried, Conf. Com. Rep. No. 88-04 was adopted and H.B. No. 2774, H.D. 1, S.D. 1, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO SUBDIVISIONS,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 89-04 (H.B. No. 2074, H.D. 1, S.D. 1, C.D. 1):

Senator English moved that Conf. Com. Rep. No. 89-04 be adopted and H.B. No. 2074, H.D. 1, S.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Fukunaga.

Senator English rose in support of the measure and said:

“Mr. President, I rise in support.

“Members, this bill went through protracted negotiations because, well, let me say what it does. First of all, it says that the ability of small business to apply for a waiver reduction of penalties if they violate certain laws designed to protect the environmental cultural resources will not be granted. And it also carves out specific sections of Chapter 200, which relates to our boaters to help the commercial boating industry.

“You know on its surface it seems that this is maybe harmful to small business. But in reality, it is a bill that will help all of us. And here’s what it does – it says that we as a society had placed the environmental protections above all else and we will not allow big business, small business, any kind of business to get away with destroying our environment. We will not allow them to apply for an administrative waiver of reduction of fees if they violate these certain areas.

“Now, we came to Chapter 200, and we had to be, the term I would use is ‘surgical’ with it because the dilemma that we had was that the small boating division was maybe the worst offender – the division itself – and they were passing on this bad habit to a lot of the boaters. So, the boaters were telling us, look . . . and by the way, not one of the boaters have ever used the waiver reduction. It’s never been used by that community. But yet they had the perception of wanting to use this and said, ‘We need protection. We want to protect the environment but we need protections from the small boating division of DLNR. We’re going to be good to the environment. We’re going to make sure that we take care of the environment, but the small boating division is making us do all sorts of things under the threat of great penalty.’

“At first, I was a bit skeptical, but after looking into it and understanding, I believe, that three out of four harbor masters are under indictment and there’s all sorts of other things going on, I realize that there are indeed problems there. So, we went in.

“I want to thank Senator Fukunaga for working diligently on this. We carved out sections of Chapter 200 that will protect the boaters from the small boating division of DLNR and at the same time not allow them to get waivers if and should they violate the environmental laws.

“So in the end, what we’ve achieved here is something that will benefit the environmental sector and the boating sector and both sides are pleased with the end result of this. So, I ask for the member’s support of this measure. It supports our strong belief that the environment must be protected and that those that go out and harm the environment must pay the consequences for that.

“Thank you.”

Senator Slom rose to speak in opposition to the measure as follows:

“Mr. President, I rise to speak in opposition to this bill.

“I’m always interested when people get up to say that things are good for small business and they don’t have any small business background. And also, let’s make a differentiation between the environment and environmental special interest organizations, because that’s who supported this measure.

“It does do harm to small businesses. And when somebody says it lumps small businesses together with people that have been indicted and says that we’re not going to let them get away with ‘destroying our environment,’ unquote, they don’t have a

very good view or realistic view of small businesses. And what small business has to contend with is a continuing barrage of new laws, new actions which puts them in violation not for destroying anything, but for not dotting the 'I's or crossing the 'T's. Previously, small businesses under the original act were subject to or allowable for specific waivers if they could show harm or non-cause for environmental and safety requirements. This bill has gone farther than that and now has environmental, health, and cultural preservation laws.

"Small businesses don't have lawyers on retainers. Small businesses generally are trying to run their business and occasionally may run afoul of a particular bureaucratic regulation. But, what we're doing is lumping them together with all big businesses and, as the gentleman from Maui said, with those people that have been under indictment and we're putting the same onus on them without giving them any opportunity to differentiate themselves. And there is a difference between small business and big business. And there is a difference between honest small businesses and indicted harbor workers.

"Thank you, Mr. President."

The motion was put by the Chair and carried, Conf. Com. Rep. No. 89-04 was adopted and H.B. No. 2074, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PENALTIES OF HEALTH, ENVIRONMENTAL, AND CULTURAL PRESERVATION LAWS," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, 3 (Hogue, Slom, Whalen).

Conf. Com. Rep. No. 90-04 (S.B. No. 2976, S.D. 1, H.D. 1, C.D. 1):

On motion by Senator Hanabusa, seconded by Senator Taniguchi and carried, Conf. Com. Rep. No. 90-04 was adopted and S.B. No. 2976, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT MAKING AN EMERGENCY APPROPRIATION FOR THE DEPARTMENT OF PUBLIC SAFETY," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 91-04 (H.B. No. 680, H.D. 2, S.D. 1, C.D. 1):

Senator Kawamoto moved that Conf. Com. Rep. No. 91-04 be adopted and H.B. No. 680, H.D. 2, S.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Taniguchi.

Senator Slom rose to speak in opposition as follows:

"Mr. President, I rise in opposition to this bill.

"We've discussed this bill before. I think this is a vexatious bill. I think that it is totally unwarranted as I said before. People in public office, just like people in business, people in other areas, should know the differences between right and wrong. We have agencies and we have penalties for them.

"The only thing I can figure out is that because the Majority has had so much experience in this area that they feel that they need more training and they want us to have training as well. I don't think that we need the training. Let the public judge us by our actions in and out of the Legislature.

"Thank you."

Senator Espero rose in support of the measure and said:

"Mr. President, I would like to rise in support of this bill.

"I think only a vexatious speaker may think that this is a vexatious bill. However, what we're talking about is just good government, Mr. President. This is a bill which will provide ethics training for Legislators, for members of the Board of Education, members of OHA, or high appointees in the administration. It will give us the tools, the knowledge, the understanding of our complicated ethics laws. It will provide us good training and education so that the people can see that we are making an attempt to restore ourselves and bring back good government.

"Many people have made mistakes. Right now the administration is under investigation as far as the Care Education Reform Committee which was in the Governor's Office, which probably if this bill had been in effect the administration would have known that maybe that's not the best thing to do at this time.

"So, I urge all of us to support this bill and I hope that those who are in opposition will consider it. Thank you."

Senator Hemmings rose to speak against the measure as follows:

"Mr. President, I rise to speak against this bill.

"I wish we could have addressed this issue without partisanship. I wish the previous speaker had not tried to skewer the administration for allegations that have not borne any fruit, for allegations that are at best just allegations.

"Tying ethics training and a need for it to the Governor's Office is petty partisanship. But since the previous speaker chose to do so, I wish to enter into the record why ethics training may be necessary for the Majority Party. The roll call of people that should have had ethics training from the Majority Party, includes: Nathan Suzuki, tax fraud; Rene Mansho, two counts of theft; John . . ."

President Bunda interjected:

"Can we have a short recess please."

At 12:13 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:16 o'clock p.m.

Senator Hemmings continued:

"Mr. President, in the interest of the bipartisan cooperation, I'll gladly withdraw my reading of this list if the previous speaker will withdraw his remarks trying to tie ethics training not to the convictions or indictments but just to the accusations regarding the Governor's Office."

The President called on Senator Espero, and Senator Espero said:

"So be it."

Senator Trimble rose to speak in favor of the measure and said:

"Mr. President, I rise in favor of this measure.

"It appears that we almost had a good discussion, and there appeared to be two sides to the issue, not necessarily political parties, but two sides, two conflicting values. On one hand you had honor and on the other hand you had shame. Perhaps Ted Hung, when he characterized the culture of fear, was referring to shame. Will Rogers, I think, once said that the petty crooks are in jail but the really big thieves are in Washington. Perhaps we're somewhere in the middle.

"The value of ethics training at the very least is not that it makes us more honest. It has the same value as sending people to jail who come out better crooks. These two hours of ethics training ought to teach most people how to avoid the most common mistakes that other people make and at least be more subtle. I don't think it's going to change the nature of the individual at all. But, it might save this institution some embarrassment and two hours worth of training is a small price to pay.

"Thank you."

Senator Hooser rose to speak in support of the measure and stated:

"Mr. President, I rise in support.

"I'd just like to say briefly for the record, Mr. President, that I don't believe that ethics training, integrity or morality is party specific. I believe it's party blind, it's color blind, and it's gender blind and that we all, each of us, look ourselves in the mirror everyday and each of us do the very best that we can. Sometimes we make mistakes and certainly we can all be better at this. And I believe it should be our goal to all be better at this. I believe this ethics training will help us all make better decisions in the future.

"Thank you."

The motion was put by the Chair and carried, Conf. Com. Rep. No. 91-04 was adopted and H.B. No. 680, H.D. 2, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ETHICS," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, 3 (Hemmings, Slom, Whalen). Excused, 1 (Hogue).

Conf. Com. Rep. No. 92-04 (S.B. No. 1611, H.D. 2, C.D. 1):

Senator English moved that Conf. Com. Rep. No. 92-04 be adopted and S.B. No. 1611, H.D. 2, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Kokubun.

Senator Slom rose to speak in opposition to the measure and stated:

"Mr. President, I rise in strong opposition to this bill.

"This bill is not an environmental bill, this bill is a tax. I hope my colleagues had an opportunity to read Lowell Kalapa's column yesterday. In any event, we've been arguing about this bill for over a year. Some of the salient points – it was sold to the public as a way of helping our landfills and yet it would only affect 2 percent of the materials that go into the landfill. We've all been paying a tax already in terms of setting up the administration for this super structure. There's going to be more public employees hired to operate it. Yet at this point we still don't know how it's going to operate, particularly the little sticky point about we pay the money and we're suppose to get the money back. We're suppose pay 5 cents plus 1 to 1½ cents

and we're supposed to get the 5 cents back. But there's no mechanism to return the 5 cents.

"There are still the problems as was brought to all of our colleagues' attention by the various retailers large and small – the problem of storage; the problem of health; the problem of not being able to market their other products; and putting them in charge and putting them responsible for not only the handling of the materials, but also for the collecting of money and the remitting of money.

"It is a bad bill. But besides that, the people in the industry are willing to work it out. They asked for time to consider some of their objections and they were derided for raising issues that are very real issues. There have been no answers. All there is a rush to increase this tax.

"Thank you."

Senator English rose to speak in support of the measure as follows:

"Mr. President, I rise in support.

"Mr. President, this particular measure incorporates many of the concerns of the bottlers and the retailers. In fact that's what it does, it's a fixed bill for them. You know, just so people understand, if this measure doesn't go, the original bottle bill stands. This fixes parts, amends parts of that and makes it better. And it does things like makes it easier for businesses to comply with the redemption center requirements. It also delays the implementation for retailers to act as redemption centers until July 1, 2005.

"Many people think that all of their retail stores have to become redemption centers. That's not true. In fact, within a 2 miles radius you have to have one redemption center. And there are probably only two places on Oahu that don't need this. One is Manoa, and I understand that the University of Hawaii is looking at becoming the redemption center because they see a revenue enhancement opportunity in this.

"I also have to point out some of the tactics used by the bottle companies, bottlers here to provide this information. It was a very, very good strategy and it actually worked. I actually asked them to give me the databases. They have all of the mom and pop stores in my district, and my district is East Maui, Molokai, and Lanai. They had a lot of them and took them letters and said, please send this letter to Senator English and the other Senators and ask them to repeal the bottle bill law because its going to make us, the store owners, become redemption centers and take in all of the bottles, and many of the arguments laid out by the previous speaker. One little point though, the original bottle bill exempts the rural and remote areas from this.

"So it gave me an opportunity to talk to my constituents in my district that own these mom and pop stores. And I said, 'Do you realize that you were manipulated and used by the bottlers? By Anheuser-Busch, by Coca-Cola, by all of these companies?' And they were appalled. They said, 'they wouldn't lie to us, now, would they?' So, I showed them the law and I said here's what the law says. You don't have to become a redemption center. You don't have to take these bottles. You may want to in the future and we're leaving that up to the market. We're leaving that choice to the free market. Because if a customer comes in and says, 'I bought a six pack of beer bottles that I'd like to redeem and I may pick up another six pack of beer or something else, but you don't have redemption center. Well, I'm going to go somewhere to redeem it and while I'm there I'll

pick up something else.' But really it's truly up to the market to decide that.

"The redemption centers will be in place and we've heard many of the issues around it. And we said let them have it delayed for six months so that they can have time to build the infrastructure that's needed, obtain the needed permits, etc.

"Now, onto this issue of 'is it a tax or is it not a tax?' Well, this is what I can say to that – there is a responsibility between the consumers, retailers, and government for the disposition of the trash created. On average, each man, woman, child in Hawaii produces two to three containers a day. That's what we throw out. It's a huge number. And if we can recycle that and bring down the amount of consumables we throw away, it will help our environment. It will help us to spend less in tax revenues in creating new landfills, in processing the discarded containers into the landfill. You know, either way you end up paying. People of Hawaii ends up paying.

"If we deal with it as simply throwing it away and putting it into the waste stream, then we end up paying because we have to pay for the pickup, the hauling, the processing of the rubbish and putting it into the landfills. If we do it this way, there's a small fee, yes, one cent. But it helps people to develop a recycling conservation ethic, first. Secondly, it does provide for, in a small way, a transference of wealth, in a very small way, because you'll see many people out there picking up containers now. Cans, many organizations are using these as fundraisers. So, in a small way it helps to transfer some wealth to some of the least fortunate people in our society.

"I ask that you support this measure because it helps us to make it easier for the retailers, for the bottlers, and for those on the implementing side to move this bottle bill, move the implementation of it forward. And just as a side point, we've done two things in here to help make it a lot easier – we've adopted administrative rules in the statutes and we said that these rules will be repealed by March 31, 2005 to give the administration time to promulgate rules on their own. That's been a sticking point. The bottlers have said we cannot go ahead because we don't have rules. The administration has said we can't go ahead with rules because it's onerous for us to do it. So, what we've done is adopted it. We've worked with the Department of Health. We've come up with a series of administrative rules. It's in place. The bottlers know what's expected. Everyone knows what's expected, and if the Department of Health so chooses, they can go ahead and promulgate new rules to supersede these.

"I think we have addressed many of the concerns of the retailers and the bottlers in this particular measure. I ask for your support of it and also point out that if this measure does not move, then the existing bill will be effectuated, which is much more onerous for the bottlers and for the retailers.

"Thank you."

Senator Hemmings rose to speak on a point of personal privilege and said:

"Mr. President, I rise in a point of personal privilege.

"I want the record to reflect that the mistake of identifying the good Senator from Hana, Maui for myself is indeed a compliment to him and to myself. (Laughter.)

"Thank you."

Senator English rose on a point of personal privilege and stated:

"Mr. President, point of personal privilege.

"You know, early on the Senator from Kailua said you should be my hanai son, and I said, you know, in the modern day and age, if you leave half to me, I'll accept that title. Thank you."

Senator Kanno rose to speak against the measure as follows:

"Mr. President, I rise to speak against this measure.

"Mr. President, I am concerned about litter in our community, and I am concerned about our landfills, and I do care about our environment. I am concerned, however, that this bill will hurt people. Who will this bill hurt? It will hurt all people who don't recycle their cans, bottles and containers.

"So, who will recycle?

"Possibly, middle income families. Maybe individuals buying for a large group – for example, those involved with a youth sports team. And I do believe a portion of low-income families will be recycling.

"Who won't recycle? Or rather, who will be hurt by this bill?

"I believe that the largest group of people who won't recycle are the people who can least afford it? I'm speaking out for those people who will not have the wherewithal to recycle their beverage containers.

"How big an impact is it? If you look just at the 5 cents deposit, a regular case of soda which may cost \$8 would now be \$9.20. That's a 15 percent increase. That seems like a lot. A case of soda that's on sale, however, which would cost \$3.98 would now cost \$5.18. So, from \$3.98 to \$5.18 that is a 30 percent price increase.

"Members of the public may believe that this bill won't cost them anything because they'll get their nickel back on every can, bottle or container. But, unfortunately, they are wrong. They may not see the 1/2 cent container fee because it's paid directly by the beverage distributor. This fee will be passed on to the consumer.

"Let's go back to that case of soda on sale. That would amount to an additional 36 cents for the 1/2 cent container fee. For those who recycle who will get their nickel back, that's still a 9 percent increase in price that they won't ever get back. The case, which used to cost \$3.98 will now cost \$5.54, which means a whopping 39 percent increase in price for a case of soda.

"Some may fault those individuals who won't recycle their beverage containers. If you do that, would you also fault those who buy soda when it's not on sale? Would you also fault those who pay full price for a movie ticket when discount ticket options are available? I would not. When I shop at the supermarket it frustrates me that the only prices that seem reasonable are when items are on sale. It works when consumers are able to wait until an item goes on sale and then buy in bulk. That's in an ideal world. In the real world, moms and dads need to buy diapers and baby formula and pay full price. Clipping coupons, waiting for sales, and recycling cans takes time.

"There are people who work two or three jobs who are struggling to make ends meet and who have it hard enough setting aside quality time for their children. Families may not

have the time to recycle their cans. Should they be hurt financially because recycling is not their family's top priority? These are the individuals and families that this bill hurts.

"What this bill does is create a mandated financial imposition to get the public to recycle. However, since not everyone will have the time or the ability or the wherewithal to recycle, it is an unfair mandated financial burden.

"I support curbside recycling and I believe that families would find it a lot easier to collect their cans and leave it at the curbside. I think by imposing something that's difficult like this, in a process that's uncertain where we're going to be taking our cans and how difficult it will be, in all likelihood not at the stores that we shop at, we are actually creating a bad impression for people about recycling by forcing them to enter into a system which is going to be inconvenient, difficult and cost them money. I think we should be looking at recycling options that are going to be convenient as easy as going to your curbside.

"My concern is that redemption centers will not be convenient. Years ago when I started work at the boys and girls club, one of my jobs was restocking the soda machine. And so, it was my bright idea to collect cans as a way to raise more money for the boys and girls club. I will tell you that it was probably one of the worst undertakings of my life. We set up bins. We collected cans. I will tell you that it was the most foul mess on our property. It was sticky. It was stink. There were bees and other creatures. And it was incredibly time consuming. And after months of trying to make this work, we had to give it up because the bees that were attracted to the cans were not safe for the children.

"I do hope that the implementation of this bill will be smooth and seamless for the public. It is unfortunate that for a measure that was passed two years ago in 2002, at this point the administration still had not had the rules approved. And that's why the Legislators had to stick the rules into this legislation to put something in effect to help the law take effect at the end of this year. It's just troubling to me that it takes so long to get rules published and I just hope that this isn't a precedent for every other piece of legislation that we pass – that we're going to have to be sticking rules into other bills to have rules be implemented.

"When the collection of the deposit begins, \$40 million is the projected revenue from the 5 cents deposit. The proponents are targeting 80 percent of the containers to be recycled, which means that \$32 million of that will be going back out to the public. Under this projection \$8 million stays with the State. If the program has to be implemented, the program should be run from this money that stays with the State. Instead, a container fee of 1½ cents per container will charge the public an additional \$12 million to run this program. If the redemption rate does not hit 70 percent, the container fee would be 1 cent instead of the 1½ cents. This will be a 7.7 percent reduction in the amount collected on each can, bottle, or container. Would this mean that in order to keep the program from running a deficit the 5 cents deposit would later need to be raised to a 10 cents deposit per container like one of the states on the mainland.

"Another set of figures show that \$56 million in total will be collected based on an 80 percent reduction rate. Of that \$56 million, \$32 million will go back to the consumers. \$56 million minus \$32 million means that \$24 million does not go back to the consumer. \$24 million, that's what the public is funding into this program to make this program work. Of that, \$13 million will be going to redemption centers and \$6 million will be going to administer the program. There's a missing \$5

million in there somewhere. But basically, if you think about it, the \$24 million is funded by the working class families who can't make recycling their top priority because of possibly having two to three jobs, who have it hard enough time setting aside quality time for their children.

"Mr. President, is it fair to charge a 39 percent increase for a case of soda to the families in our state that are already struggling to make ends meet? I urge my colleagues to vote 'no' on this measure.

"Thank you."

Senator Slom rose to speak in rebuttal and said:

"Mr. President, I appreciate the last speaker's use of figures and rash testimony. However, I have to go back to the previous speaker, the good Senator from Maui. I'm still a little confused. I don't know if he's the son of one of our colleagues here or if he knows the difference between a tax and non-tax. He's trying to tell us that a tax is not a tax. This is a tax.

"He's also trying to tell us and to infer that the businesses are so much better off with this piece of legislation than the existing legislation and that they even embrace it. Then something must be wrong because there is a full-page ad that they took out yesterday asking that this bill not be passed and talking not about tactics, but the \$20 million – more than \$20 million – that the consumers are going to pay.

"My good colleague said that he answered the questions, but he didn't answer the questions. He didn't answer about the recycling centers. He didn't answer about how we get the refunds. He didn't answer about all of the money. And deriding the 1 cent or 1½ cents, which he forgot to tell us was per container.

"Every time we've had any kind of tax or fee, we notice that it doesn't stand at 1 cent or 1½ cents. All we have to do is look at gasoline or tobacco to be our most prominent guides. The main thing is here again we are trying to talk about the issue that was raised two years ago – landfills, and these particular products take between 2 to 3 percent of the landfill. They are not going to solve that problem. They are not going to solve other problems, but they're going to create problems at tremendous costs not only for businesses, which will be passed on to the extent that can to consumers, but to the consumers also.

"And as the previous speaker said, we are giving false hopes and expectations to the consumers. This is not an environmental bill. This is a tax bill."

Senator English rose to speak in rebuttal and stated:

"Mr. President, in rebuttal.

"I wasn't under the impression that I was answering anyone's questions. I was laying out the arguments why I think we should be doing this. So, the previous speaker was terribly mistaken in his assumption.

"But let me just take on one thing here and that's this – no matter how you look at it, the bottle bill will go into effect. So, what's before us is will it go into effect as it stands or will it go into effect as we have changed it here? That's what is before us.

"Two speakers ago tried to lay out an argument that this would put it in place, but the problem with that is that it's already in place. This makes it easier. So, laying out those

arguments while interesting, kind of interesting premise as well, doesn't really address what this bill does.

"I just have to point out this as well, that even though there's a little bit of money being collected now, the Governor proposed to raid those funds in a March 12th Governor's message to us. If you remember, part of her proposal is to raid funds, and understand that it does not need legislative approval, it's simply telling us that she will be taking these moneys to use. Let's take \$5 million out of the fund for the redemption of these bottles. The problem with that is that there is only \$3 million in the fund. How can you take more than is actually there? I guess it was a projection that by the time they get around to taking that money to raiding this fund, there will be \$5 million there.

"So what we've done in here is we put in some language asking that the auditor who under the previous version of the bill, the bill that was passed, certify that any excess moneys, if there are excess moneys, certify it, and saying that okay this is excess. The way that the bill was constructed, by my assumptions and by my calculations, there should be very little or nothing in excess. But it requires the auditor in her audits of this fund, every year for the first two years and then every other year after that, to certify if there's excess funds and only that would be allowed to be raided by either the executive or the legislative branch. So we built in some protections for the 5 cents that is held in trust in this deposit, in this fund for every bottle and container out there.

"Be very clear what this is. It's a bill that makes it easier for the retailers. You know, they put a wonderful full-page ad, which I haven't seen, saying that this should die. But you know, what they want and all of us want is for this whole bill to die completely and want a repeal of it. So, like they did with my small mom and pop stores, they told them something that wasn't true and asked them to communicate with me based on that non-truth and it gave me an opportunity to talk to them and to explain to them what the truth is. I think that their ad is wonderful for the newspapers. They make some money. It's wonderful I think for the debate on this. But, understand that their propaganda is simply that – propaganda. They want to see the bottle bill repealed. And make no mistake about it; this will go into effect – this will go into effect – with or without these amendments here.

"I ask you to support this measure. Thank you."

Senator Kanno rose in rebuttal and said:

"Mr. President, a rebuttal.

"I just wanted to add in opposition to the bill that one of the things that the bill does is take the burden off of many retailers to say that redemption center only has to be within a 2 mile radius. What that does, in effect, is make it harder for everyone to redeem their cans.

"I also wanted to mention that I really truly do hope that when this program is implemented that it is a smooth and seamless transition. And to me, there were so many possible things to go wrong, so many possible frustrations for the community, so much potential anger for government, retailers, the bottlers, everyone to deal with. I just ask everyone involved with this to do all they can to make the public aware of what is happening and when. I think it's very frustrating for the public, if they understand it, that they've already been paying these moneys, that they'll start to be paying more and more, and they won't be able to redeem their cans until a certain time. So all of the timing issues add to the frustration of the public.

"As we implemented a new system with ERS this year, they built in a year-and-a-half time to communicate to public employees that they are going to have an important choice to make about their pensions, about switching to a new pension system or retaining their old system. That's the kind of up front work that needs to be done with something as important this because we're talking about people's pocketbooks. And we're talking about a difficult process where people are going to have to add stops along the way to the supermarket to redeem their cans somewhere in order for them to get their 5 cents back.

"I don't know if all of you see it, I see a huge potential difficulty in the implementation of this. My message is not to complain about it, but to ask all the parties involved to do everything physically possible to do it in an informed and smooth transition because I am fearing the worst.

"Thank you."

Senator Hogue rose in support with reservations and stated:

"Mr. President, I rise in support with reservations.

"I don't like the fee portion of this particular bill, but I've lived in states that had the bottle bill and I've seen it work. Actually, it was not only good for the environment, but it ended up being good for many of the businesses involved. You gather all of your bottles and cans and you went down to the store and in many cases you end up spending a lot more money there than you would of otherwise.

"So, for those reasons and many more, I think this is ultimately a good idea. Its time has come. Its time is now to support it and I will. Thank you."

Senator Menor rose with reservations as follows:

"Mr. President, I just want to enter my support with reservations."

The Chair so ordered.

The motion was put by the Chair and carried, Conf. Com. Rep. No. 92-04 was adopted and S.B. No. 1611, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE DEPOSIT BEVERAGE CONTAINER PROGRAM," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 20. Noes, 5 (Hemmings, Kanno, Kawamoto, Slom, Trimble).

At 12:46 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 2:09 o'clock p.m.

Conf. Com. Rep. No. 93-04 (S.B. No. 17, S.D. 1, H.D. 1, C.D. 2):

Senator Sakamoto moved that Conf. Com. Rep. No. 93-04 be adopted and S.B. No. 17, S.D. 1, H.D. 1, C.D. 2, having been read throughout, pass Final Reading, seconded by Senator Taniguchi.

Senator Kanno rose to speak in support of the measure as follows:

"Mr. President, I rise in support.

"Mr. President, I'd like to commend the Chair and the Vice Chair of the Education Committee for their efforts on this measure. I think they worked very hard at addressing a number of the concerns and fighting for the Senate position. I'm looking forward with a lot of hope to the implementation of this bill.

"I think the focus is on student achievement and I think as we continue our discussions about education reform, student achievement should continue to be a focal point for us. I hope that as the bill moves forward and gets implemented, we continue our efforts to improve student achievement and continue to look at steps toward making universal preschool a reality. Because if we are talking about looking at the brain research that shows a remarkable growth in a child's brain before the child is five and the large number of children who do not have the benefit of a structured preschool, one way for us to make structural improvements to our school system that would have a direct impact on student achievement is to provide for additional avenues for more children to attend preschool.

"Thank you."

Senator Baker rose in support of the measure and said:

"Mr. President, I have some remarks in support of this measure I'd like to have inserted into the Journal."

The Chair having so ordered, Senator Baker's remarks read as follows:

"Mr. President, S.B. No. 17, S.D. 1, H.D. 1, C.D. 1; Relating to Education, changes the minimum age requirement for children entering kindergarten. The intent of this bill is to ensure that all children be provided an appropriate start in their public school careers. Children in Hawaii deserve the best opportunity to succeed in kindergarten and subsequent scholastic experiences. By changing the minimum age requirement, children will be better prepared for kindergarten.

"Currently Hawaii's keiki are allowed to enter kindergarten at the age of four. Studies have shown that children who enter a highly structured environment too early are unable to maintain focus. There is a demonstrable difference in children who are only six months older. In addition, many children who are unable to focus in class are classified as having a learning disability.

"The benefits of changing the minimum requirement age for Hawaii's children to enter kindergarten will be students who would achieve higher scores on academic achievement tests. In addition, research on early childhood development indicate there may be an added benefit to male students who will be more engaged in school and become much more successful in dealing with like situations. Also, teachers are able to teach more effectively to classes that are appropriately mature. This bill will give our children a better chance in the beginning of their education."

The motion was put by the Chair and carried, Conf. Com. Rep. No. 93-04 was adopted and S.B. No. 17, S.D. 1, H.D. 1, C.D. 2, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, 1 (Slom). Excused, 1 (Fukunaga).

Conf. Com. Rep. No. 94-04 (S.B. No. 3182, H.D. 1, C.D. 1):

Senator Taniguchi moved that Conf. Com. Rep. No. 94-04 be adopted and S.B. No. 3182, H.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Kim.

Senator Trimble rose to speak in opposition to the measure and stated:

"Mr. President, I rise in opposition of H.B. No. 2748."

President Bunda stated:

"We're on S.B. No. 3182, Senator Trimble.

Senator Trimble continued:

"Well, you know, when that bill was here, I voted for it, but what came back and is in front of us today is H.B. No. 2748."

The President interjected:

"Can we have a short recess?"

At 2:11 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 2:12 o'clock p.m.

Senator Trimble rose and said:

"Mr. President, I am sorry for my mistake. What we are discussing is S.B. No. 3182 in its new form and one of the problems is that when committee reports are filed on a Friday and it's a weekend, people don't have a chance to see what we're going to be discussing today and give us input."

President Bunda interjected:

"Senator Trimble are you going up or down on this bill?"

Senator Trimble replied as follows:

"I am speaking in opposition to S.B. No. 3182. It is an old issue. Some people would like to make it out to be an issue relating to the Business Action Center. I have the greatest respect for Milton Kwok and the rest of the team at the Business Action Center, but what this bill does is it confers civil service status on the people in the Business Action Center outside of the recruitment process and I think that is bad policy.

"Thank you, Mr. President."

The motion was put by the Chair and carried, Conf. Com. Rep. No. 94-04 was adopted and S.B. No. 3182, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE STATE OF HAWAII," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, 2 (Trimble, Whalen).

Conf. Com. Rep. No. 95-04 (S.B. No. 2995, S.D. 2, H.D. 1, C.D. 1):

On motion by Senator Kawamoto, seconded by Senator Hanabusa and carried, Conf. Com. Rep. No. 95-04 was adopted and S.B. No. 2995, S.D. 2, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO COMMERCIAL DRIVER LICENSING," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 96-04 (S.B. No. 3080, S.D. 2, H.D. 2, C.D. 1):

On motion by Senator Kawamoto, seconded by Senator Kim and carried, Conf. Com. Rep. No. 96-04 was adopted and S.B. No. 3080, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TRANSPORTATION," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 97-04 (S.B. No. 2281, S.D. 1, H.D. 1, C.D. 1):

Senator Ige moved that Conf. Com. Rep. No. 97-04 be adopted and S.B. No. 2281, S.D. 1, H.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Fukunaga.

Senator Trimble rose to speak with reservations and said:

"Mr. President, I'm voting with reservations on this bill.

"This bill permits the High Technology Corporation to deposit monies that it collects for monies that is not owed and puts it in a special bank account. I'm not sure why the High Technology Development Company is collecting monies that is not owed and therefore needs to put it in a special bank account. And I'm not sure what this type of thing will be used for in the future.

"Thank you, Mr. President."

The motion was put by the Chair and carried, Conf. Com. Rep. No. 97-04 was adopted and S.B. No. 2281, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HIGH TECHNOLOGY DEVELOPMENT CORPORATION," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 98-04 (S.B. No. 2690, S.D. 2, H.D. 2, C.D. 1):

Senator Baker moved that Conf. Com. Rep. No. 98-04 be adopted and S.B. No. 2690, S.D. 2, H.D. 2, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Kokubun.

Senator Slom rose to speak in opposition as follows:

"Mr. President, I rise in opposition to this bill.

"The purpose is worthy. We want to support air ambulance, but not at the expense of another increase in motor vehicle registration fees plus the addition of yet another new special fund.

"Thank you."

Senator Baker rose to speak in support of the measure and stated:

"Mr. President, I rise in support of this measure.

"Mr. President, this measure is to expand our emergency medical services ground ambulance component. The helicopter ambulance was in another bill. This measure will give us the wherewithal to expand those much needed services. If we left it

only with our current resources in the general fund we would not be able to expand to the top five areas that have been identified with objective criteria that need additional ground ambulance service in this state.

"Many other jurisdictions use a portion of their vehicle registration fee, a one-time yearly fee that will enable us to provide those services because there is a clear nexus between traffic accidents, trauma, and the need for emergency medical services. We have some 940,000 cars in the state that pay a fee. The state fee has not been raised since the early nineties. It's \$20, we're raising it \$5. It's less than a pack of soda, a lunch, a pack of anything else, a movie and I believe, in the terms of the people that I have talked to, a very small and almost insignificant amount to pay for the increased services on Oahu, on the Big Island, and on Maui, as well as providing for much needed training, professional development for our paramedics.

"One of the things that the paramedics identified as an important feature for them to be able to continue to recruit and bring additional paramedics in was to provide training on the neighbor islands. Right now, if you want to be a paramedic, you want to upgrade your skills, go from one level to the next level, you end up having to spend some 15 to 18 months on Oahu. That's very disruptive for people who have a career and have to relocate over to this island in order to upgrade their skills. We need more emergency medical service personnel and if we don't have measures like this, we're not going to be able to retain and recruit others.

"Mr. President, I think that this is such an important measure that it should have universal support. I understand the Senator from Hawaii Kai doesn't like special funds. If there was another way to do it, I think we would have sought to do so. But this is something that is going to enable us to expand services in the future; it places it next to the service that really causes the additional need for emergency medical services. And it's one that I certainly hope all of my colleagues will support.

Before I sit down, I just want to acknowledge two people in the gallery with us today. One of Honolulu's finest paramedics, June Greenwood, and another gentleman who's helped me not only on this measure but on the air medical one, a wonderful paramedic from the island of Molokai, Scotty Schaefer. Thank you folks very much.

"Thank you, Mr. President."

The motion was put by the Chair and carried, Conf. Com. Rep. No. 98-04 was adopted and S.B. No. 2690, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EMERGENCY MEDICAL SERVICES," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 20. Noes, 5 (Hemmings, Hogue, Slom, Trimble, Whalen).

Conf. Com. Rep. No. 99-04 (S.B. No. 2134, H.D. 1, C.D. 1):

Senator English moved that Conf. Com. Rep. No. 99-04 be adopted and S.B. No. 2134, H.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Kokubun.

Senator English rose in support of the measure and said:

"Mr. President, I rise in support of the measure.

"Mr. President, this measure moves from the Session Laws of Hawaii to the Hawaii Revised Statutes the legislation

creating the Emergency Environment Workforce. And as you know, this was a measure that is very successful in Hawaii in eradicating such invasive as dengue fever and helping us to deal with typhus and other types of emergencies in Maui County and throughout the state.

"While we were unable to secure the needed funding for this measure in the measure itself, the committee report says that we are authorizing the use of monies to the Hawaii Invasive Species Council that we created earlier to implement this. And if you look at the proviso that we put in the budget on the \$4 million that went to Hawaii Invasive Species Council, we authorized them to work with various agencies to implement that mandate.

"So, while some may say that we did not gain funding for it, I think what we can say is that we allowed for Hawaii Invasive Species Council at their call to fund this should they choose to and to implement it when they deem it appropriate. So I think it allows for the greatest amount of flexibility and salvages the workforce in the statutes and allows us to move the idea forward in giving the Hawaii Invasive Species Council a rapid response team on the ground.

"I ask the members of the Senate to support its passage. Thank you."

The motion was put by the Chair and carried, Conf. Com. Rep. No. 99-04 was adopted and S.B. No. 2134, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE ENVIRONMENT," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Taniguchi).

Conf. Com. Rep. No. 100-04 (S.B. No. 2440, S.D. 1, H.D. 1, C.D. 1):

On motion by Senator Inouye, seconded by Senator Hanabusa and carried, Conf. Com. Rep. No. 100-04 was adopted and S.B. No. 2440, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC LANDS," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 101-04 (S.B. No. 3049, S.D. 2, H.D. 2, C.D. 1):

Senator Menor moved that Conf. Com. Rep. No. 101-04 be adopted and S.B. No. 3049, S.D. 2, H.D. 2, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Taniguchi.

Senator Trimble rose to oppose the measure and said:

"Mr. President, I stand in opposition to S.B. No. 3049.

"The committee report reflected that this measure would make it easier for charitable organizations to raise money by offering charitable gift annuities. That may be so, but I at the moment am also interested in what protection will be provided to the donors. The people that typically make charitable gift annuities tend to be elderly and tend to rely upon the annuity to provide them with their income for the rest of their life.

"This tool in the hands of people that may not be totally scrupulous, for example, maybe a Ronald Rewald, could raise amazing amounts of money, cause havoc to society by doing it

in a pyramiding or ponzi scheme that would have potentially disastrous effects to our elderly population.

"I urge you to consider a 'no' vote on this measure."

The motion was put by the Chair and carried, Conf. Com. Rep. No. 101-04 was adopted and S.B. No. 3049, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CHARITABLE ANNUITIES," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Trimble).

Conf. Com. Rep. No. 102-04 (S.B. No. 2396, S.D. 1, H.D. 1, C.D. 1):

On motion by Senator Kim, seconded by Senator Taniguchi and carried, Conf. Com. Rep. No. 102-04 was adopted and S.B. No. 2396, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE GENERAL EXCISE TAX," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Trimble).

Conf. Com. Rep. No. 103-04 (S.B. No. 2529, H.D. 1, C.D. 1):

On motion by Senator Taniguchi, seconded by Senator Kokubun and carried, Conf. Com. Rep. No. 103-04 was adopted and S.B. No. 2529, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO SECURITIES FOR THE PROTECTION OF PUBLIC FUNDS," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 104-04 (S.B. No. 2045, S.D. 2, H.D. 1, C.D. 1):

On motion by Senator Kawamoto, seconded by Senator Taniguchi and carried, Conf. Com. Rep. No. 104-04 was adopted and S.B. No. 2045, S.D. 2, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION TO THE HAWAII CIVIL AIR PATROL," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 105-04 (S.B. No. 2165, S.D. 1, H.D. 1, C.D. 1):

On motion by Senator Chun Oakland, seconded by Senator Baker and carried, Conf. Com. Rep. No. 105-04 was adopted and S.B. No. 2165, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CHILD ABUSE AND PROTECTION," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 106-04 (S.B. No. 2936, S.D. 2, H.D. 1, C.D. 1):

On motion by Senator Chun Oakland, seconded by Senator Taniguchi and carried, Conf. Com. Rep. No. 106-04 was adopted and S.B. No. 2936, S.D. 2, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MEDICAL ASSISTANCE FOR PREGNANT LEGAL IMMIGRANTS,"

having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 107-04 (S.B. No. 779, S.D. 2, H.D. 2, C.D. 1):

On motion by Senator Kanno, seconded by Senator Taniguchi and carried, Conf. Com. Rep. No. 107-04 was adopted and S.B. No. 779, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 108-04 (S.B. No. 2930, S.D. 2, H.D. 1, C.D. 1):

On motion by Senator Chun Oakland, seconded by Senator Baker and carried, Conf. Com. Rep. No. 108-04 was adopted and S.B. No. 2930, S.D. 2, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HOME AND COMMUNITY-BASED SERVICES," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 109-04 (S.B. No. 3230, S.D. 2, H.D. 1, C.D. 1):

On motion by Senator Chun Oakland, seconded by Senator Sakamoto and carried, Conf. Com. Rep. No. 109-04 was adopted and S.B. No. 3230, S.D. 2, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EARLY CHILDHOOD CARE," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

At 2:25 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 2:27 o'clock p.m. with the Vice President in the Chair.

Conf. Com. Rep. No. 110-04 (S.B. No. 1239, S.D. 1, H.D. 2, C.D. 1):

On motion by Senator English, seconded by Senator Kokubun and carried, Conf. Com. Rep. No. 110-04 was adopted and S.B. No. 1239, S.D. 1, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ENERGY," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Bunda).

Conf. Com. Rep. No. 111-04 (S.B. No. 3162, S.D. 1, H.D. 1, C.D. 1):

Senator English moved that Conf. Com. Rep. No. 111-04 be adopted and S.B. No. 3162, S.D. 1, H.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Kokubun.

Senator English rose to speak in support of the measure and stated:

"Madame President, I rise in support of the measure.

"This measure clarifies that financial institutions, S corporations, partnerships, estates, and trusts are eligible to claim a renewable energy technology tax credit and to use any unused credits in subsequent taxable years until it is exhausted. This is fixing something that we put in the solar tax bill last year. It has no fiscal impact, I repeat, no fiscal impact on the budget because it simply corrects something we did in a previous bill.

"I ask the members to support the measure. Thank you."

The motion was put by the Chair and carried, Conf. Com. Rep. No. 111-04 was adopted and S.B. No. 3162, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO RENEWABLE ENERGY TECHNOLOGIES INCOME TAX CREDIT," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Bunda).

Conf. Com. Rep. No. 112-04 (S.B. No. 3153, S.D. 2, H.D. 2, C.D. 1):

On motion by Senator English, seconded by Senator Inouye and carried, Conf. Com. Rep. No. 112-04 was adopted and S.B. No. 3153, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR BIOREMEDIATION RESEARCH," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Bunda).

Conf. Com. Rep. No. 113-04 (S.B. No. 3148, S.D. 2, H.D. 3, C.D. 1):

On motion by Senator Sakamoto, seconded by Senator Hanabusa and carried, Conf. Com. Rep. No. 113-04 was adopted and S.B. No. 3148, S.D. 2, H.D. 3, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Bunda).

Conf. Com. Rep. No. 114-04 (S.B. No. 3020, H.D. 1, C.D. 1):

Senator Sakamoto moved that Conf. Com. Rep. No. 114-04 be adopted and S.B. No. 3020, H.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Kanno.

Senator Trimble rose to speak in opposition to the measure and stated:

"Madame President, I rise in opposition to this measure.

"Colleagues, perhaps we are part of the problem with our schools. We seem to say we want results and yet we seem to be constantly involved in piddling, micromanagement. This bill deals with only two schools and I think it is poor public policy to pass laws to deal with schools one at a time. I think we have better things to do.

"Thank you, Madame President."

The motion was put by the Chair and carried, Conf. Com. Rep. No. 114-04 was adopted and S.B. No. 3020, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO

EDUCATION," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, 2 (Slom, Trimble). Excused, 1 (Bunda).

Conf. Com. Rep. No. 115-04 (S.B. No. 2424, S.D. 2, H.D. 2, C.D. 1):

On motion by Senator Kanno, seconded by Senator Sakamoto and carried, Conf. Com. Rep. No. 115-04 was adopted and S.B. No. 2424, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO NEW CENTURY CONVERSION CHARTER SCHOOLS," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Bunda).

Conf. Com. Rep. No. 116-04 (S.B. No. 420, S.D. 1, H.D. 1, C.D. 1):

Senator Taniguchi moved that Conf. Com. Rep. No. 116-04 be adopted and S.B. No. 420, S.D. 1, H.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Kawamoto.

Senator Hemmings rose to speak against the measure and said:

"Madame President, I rise to speak against S.B. No. 420.

"It's rather ironic speaking against this bill because we introduced it two years ago, but it's morphed considerably since its introduction. This basically is going to take \$10 million out of DCCA. DCCA has been more than cooperative with this Legislature on helping balance the budgets and putting money back into the general fund. Last year, if you recall, they did put a considerable amount of money in the general fund. It must be remembered at all times, this money, for the most part, comes from the DCCA on the part of their customers, the businesses that paid the compliance resolution fund for licensing and other services provided by the DCCA.

"The DCCA has made available \$4.1 million, which is settlement money that the federal government gave to the DCCA for another issue which they're more than willing to put in the general fund. The other 6 million or so dollars that will be put in the general fund from DCCA is coming out of the pockets of those businesses that paid the fees. So, in a sense we're turning those fees into a tax, which was never intended.

"Number two, I think we should all remember that this bill is in fact necessary to help balance the budget. As difficult as it is for the DCCA to relinquish \$10 million, it sure beats dismantling the DCCA Compliance Resolution Fund entirely, which was originally proposed in which the Governor vetoed that Legislation.

"So, in many ways this bill is a compromise and we would have hoped it could have been a little easier on the DCCA. But in view of that, it is a compromise.

"Thank you, Madame President."

Senator Taniguchi rose to speak in favor of the measure and said:

"Madame President, I rise to speak in favor.

"I wasn't going to say anything, but I believe the department was willing to actually take a \$12 million raid on the department, but we only went with 10.

"I do see Mr. Recktenwald in the gallery and I just want to introduce him for those who don't know him. But, that was my recollection.

"Thank you."

The motion was put by the Chair and carried, Conf. Com. Rep. No. 116-04 was adopted and S.B. No. 420, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO STATE FINANCES," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 19. Noes, 5 (Hemmings, Hogue, Slom, Trimble, Whalen). Excused, 1 (Bunda).

Conf. Com. Rep. No. 117-04 (S.B. No. 214, S.D. 3, H.D. 2, C.D. 1):

On motion by Senator Kanno, seconded by Senator Sakamoto and carried, Conf. Com. Rep. No. 117-04 was adopted and S.B. No. 214, S.D. 3, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO WORKFORCE DEVELOPMENT," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Bunda).

Conf. Com. Rep. No. 118-04 (S.B. No. 2073, S.D. 2, H.D. 2, C.D. 1):

On motion by Senator Kanno, seconded by Senator Sakamoto and carried, Conf. Com. Rep. No. 118-04 was adopted and S.B. No. 2073, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Bunda).

Conf. Com. Rep. No. 119-04 (S.B. No. 2355, S.D. 2, H.D. 2, C.D. 1):

Senator Kanno moved that Conf. Com. Rep. No. 119-04 be adopted and S.B. No. 2355, S.D. 2, H.D. 2, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Taniguchi.

Senator Kawamoto rose to speak in favor of the measure with reservations and stated:

"Madame President, I rise to speak in favor of the bill with reservations.

"Madame President, this bill could be a lot better if we really look at the public employees overall, all of the public employees. This one here addresses one employee union. The other one that I'm thinking about is the HSTA. HSTA requested that we help the public employees with the trust. I think we in the Senate leadership and the Senate Body were in favor of HSTA's proposals but they all seemed unwilling to go along with the idea. If you had to see the public employees, currently we lose about 1,300 teachers a year. Our university provides us with 400 to 500 teachers a year. And we go off and recruit from the mainland with a \$100,000 package to hire special ed teachers.

“We need to look at the teachers as a frontline public employee. We have all the school reforms that we passed this year, but if you don’t take care of your troops up on the frontline for a very long time, things will not happen the way you want it to happen.

“So therefore, if I am back next year, I will make this my priority bill. Thank you.”

The motion was put by the Chair and carried, Conf. Com. Rep. No. 119-04 was adopted and S.B. No. 2355, S.D. 2, H.D. 2, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO PUBLIC EMPLOYEE HEALTH BENEFITS,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 120-04 (S.B. No. 2873, S.D. 1, H.D. 2, C.D. 1):

On motion by Senator Kanno, seconded by Senator Taniguchi and carried, Conf. Com. Rep. No. 120-04 was adopted and S.B. No. 2873, S.D. 1, H.D. 2, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO THE EMPLOYEES’ RETIREMENT SYSTEM,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 121-04 (S.B. No. 2878, S.D. 2, H.D. 2, C.D. 1):

Senator Kanno moved that Conf. Com. Rep. No. 121-04 be adopted and S.B. No. 2878, S.D. 2, H.D. 2, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Taniguchi.

Senator Trimble rose to speak with reservations and said:

“Madame President, I rise with reservations.

“Curious bill. It’s an appropriation of 400,000 people. When David Shimabukuro of the Employee Retirement System appeared in front of Ways and Means he said, ‘Oh, it’s probably about 20 people mostly from the University of Hawaii.’ I have problems with bills that are so limited in their application that they affect few people and only one department. And I also have a problem when the University of Hawaii submits a budget and then we’re asked to one at a time pick up the pieces as we go through later on.

“So, I’m casting a reservation. Thank you.”

The motion was put by the Chair and carried, Conf. Com. Rep. No. 121-04 was adopted and S.B. No. 2878, S.D. 2, H.D. 2, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO THE FEDERAL TAX LIMIT ON COMPENSATION APPLICABLE TO THE EMPLOYEES’ RETIREMENT SYSTEM,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 122-04 (S.B. No. 2879, S.D. 2, H.D. 2, C.D. 1):

On motion by Senator Kanno, seconded by Senator Kokubun and carried, Conf. Com. Rep. No. 122-04 was adopted and S.B. No. 2879, S.D. 2, H.D. 2, C.D. 1, entitled: “A BILL FOR AN

ACT RELATING TO FEDERAL TAX QUALIFICATION OF THE EMPLOYEES’ RETIREMENT SYSTEM,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 123-04 (S.B. No. 3106, S.D. 1, H.D. 2, C.D. 1):

On motion by Senator Kanno, seconded by Senator Kawamoto and carried, Conf. Com. Rep. No. 123-04 was adopted and S.B. No. 3106, S.D. 1, H.D. 2, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO COUNTIES,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 124-04 (S.B. No. 3018, S.D. 2, H.D. 1, C.D. 1):

On motion by Senator Kanno, seconded by Senator Taniguchi and carried, Conf. Com. Rep. No. 124-04 was adopted and S.B. No. 3018, S.D. 2, H.D. 1, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO PENSION AND RETIREMENT SYSTEMS,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 125-04 (S.B. No. 3175, S.D. 2, H.D. 2, C.D. 1):

On motion by Senator Kanno, seconded by Senator Kawamoto and carried, Conf. Com. Rep. No. 125-04 was adopted and S.B. No. 3175, S.D. 2, H.D. 2, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO FEDERAL SOCIAL SECURITY FOR PUBLIC EMPLOYEES,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 126-04 (S.B. No. 1318, S.D. 1, H.D. 2, C.D. 1):

Senator Menor moved that Conf. Com. Rep. No. 126-04 be adopted and S.B. No. 1318, S.D. 1, H.D. 2, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Taniguchi.

Senator Taniguchi rose and said:

“Madame President, note my reservations on this bill.”

The Chair so ordered.

Senator Trimble rose with reservations and stated:

“Madame President, I’m rising with reservations.

“I’m glad that we’re lowering the fees. My problem is that DCCA has a special fund. It should make its fees commensurate with the cost of running its operation. I think that the Legislature should give them statutory authority to set their own rates and hold them responsible for operating at a breakeven basis.

“Thank you, Madame President.”

The motion was put by the Chair and carried, Conf. Com. Rep. No. 126-04 was adopted and S.B. No. 1318, S.D. 1, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO BUSINESS REGISTRATION," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 127-04 (H.B. No. 2667, H.D. 2, S.D. 1, C.D. 1):

On motion by Senator Sakamoto, seconded by Senator Hanabusa and carried, Conf. Com. Rep. No. 127-04 was adopted and H.B. No. 2667, H.D. 2, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HAWAIIAN LANGUAGE MEDIUM EDUCATION," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 128-04 (H.B. No. 2703, H.D. 1, S.D. 2, C.D. 1):

On motion by Senator Kawamoto, seconded by Senator Inouye and carried, Conf. Com. Rep. No. 128-04 was adopted and H.B. No. 2703, H.D. 1, S.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO IMPACT FEES," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, 4 (Hemmings, Hogue, Slom, Trimble).

Conf. Com. Rep. No. 129-04 (H.B. No. 2005, H.D. 1, S.D. 1, C.D. 1):

Senator Menor moved that Conf. Com. Rep. No. 129-04 be adopted and H.B. No. 2005, H.D. 1, S.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Baker.

Senator Baker rose to speak in favor of the measure and said:

"Madame President, I'll insert my remarks in favor of this measure into the Journal."

The Chair having so ordered, Senator Baker's remarks read as follows:

"We all recognize that prescription drugs are one of the most costly components of healthcare. H.B. No. 2005, H.D. 1, S.D. 1, C.D. 1, relating to prescription drugs, is an innovative program that will reduce waste and save money. This bill is the result of a collaborative effort between the Departments of Health, Human Services, the Office of the Attorney General, the Board of Pharmacy, long term care and pharmacy industries, the Medicine Bank and consumer groups like the American Cancer Society.

"Currently, once dispensed, prescription drugs may not be used by anyone other than the individual for whom the medication was prescribed. This factor has contributed to the high cost of medical care. H.B. No. 2005 is an attempt to alleviate the economic burden, eliminate waste and maintain quality healthcare in Hawaii.

"This measure assists the needy and other individuals who lack the means to obtain prescription drugs by establishing a return-for-credit-and-reuse of prescription drugs program to

allow previously dispensed prescription drugs meeting certain requirements to be returned to the dispensing pharmacy for credit to the payer and reuse. In addition, this bill creates a mechanism for previously dispensed prescription drugs to be donated to drug repositories. Under the provisions of H.B. No. 2005, prescription drugs that cannot be returned to the institutional pharmacy to be re-dispensed, although completely safe for consumption, will be put to good use through the repository program."

The motion was put by the Chair and carried, Conf. Com. Rep. No. 129-04 was adopted and H.B. No. 2005, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PRESCRIPTION DRUGS," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 130-04 (H.B. No. 2547, H.D. 2, S.D. 2, C.D. 1):

On motion by Senator Sakamoto, seconded by Senator Taniguchi and carried, Conf. Com. Rep. No. 130-04 was adopted and H.B. No. 2547, H.D. 2, S.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 131-04 (H.B. No. 851, H.D. 1, S.D. 1, C.D. 1):

On motion by Senator Hanabusa, seconded by Senator Taniguchi and carried, Conf. Com. Rep. No. 131-04 was adopted and H.B. No. 851, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION APPEALS," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 132-04 (H.B. No. 2840, H.D. 1, S.D. 3, C.D. 1):

On motion by Senator Fukunaga, seconded by Senator Inouye and carried, Conf. Com. Rep. No. 132-04 was adopted and H.B. No. 2840, H.D. 1, S.D. 3, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ENHANCING ECONOMIC DIVERSITY," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 133-04 (H.B. No. 1848, H.D. 1, S.D. 1, C.D. 1):

On motion by Senator Inouye, seconded by Senator Taniguchi and carried, Conf. Com. Rep. No. 133-04 was adopted and H.B. No. 1848, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EXCEPTIONAL TREES," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, 3 (Hogue, Slom, Trimble).

Conf. Com. Rep. No. 134-04 (H.B. No. 2136, H.D. 1, S.D. 1, C.D. 1):

Senator Kawamoto moved that Conf. Com. Rep. No. 134-04 be adopted and H.B. No. 2136, H.D. 1, S.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Espero.

Senators Hogue and Espero requested their votes be cast "aye, with reservations," and the Chair so ordered.

The motion was put by the Chair and carried, Conf. Com. Rep. No. 134-04 was adopted and H.B. No. 2136, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PROCUREMENT," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 15. Noes, 10 (Aduja, Baker, Chun Oakland, English, Fukunaga, Hooser, Ige, Ihara, Taniguchi, Tsutsui).

Conf. Com. Rep. No. 135-04 (H.B. No. 1908, H.D. 2, S.D. 1, C.D. 1):

On motion by Senator Kawamoto, seconded by Senator Sakamoto and carried, Conf. Com. Rep. No. 135-04 was adopted and H.B. No. 1908, H.D. 2, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 136-04 (H.B. No. 2002, H.D. 2, S.D. 1, C.D. 1):

Senator Sakamoto moved that Conf. Com. Rep. No. 136-04 be adopted and H.B. No. 2002, H.D. 2, S.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Taniguchi.

At 2:44 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 2:45 o'clock p.m.

By unanimous consent, action on Conf. Com. Rep. No. 136-04 and H.B. No. 2002, H.D. 2, S.D. 1, C.D. 1, was deferred to the end of the calendar.

Conf. Com. Rep. No. 137-04 (H.B. No. 2411, H.D. 1, S.D. 1, C.D. 1):

On motion by Senator Espero, seconded by Senator Kawamoto and carried, Conf. Com. Rep. No. 137-04 was adopted and H.B. No. 2411, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INSURANCE," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 20. Noes, none. Excused, 5 (Ige, Ihara, Menor, Taniguchi, Whalen).

Conf. Com. Rep. No. 138-04 (H.B. No. 2523, H.D. 1, S.D. 1, C.D. 1):

On motion by Senator Kawamoto, seconded by Senator Taniguchi and carried, Conf. Com. Rep. No. 138-04 was adopted and H.B. No. 2523, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PASSENGER FACILITY CHARGES," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 17. Noes, 4 (Hemmings, Hogue, Slom, Trimble). Excused, 4 (Ige, Ihara, Menor, Whalen).

Conf. Com. Rep. No. 139-04 (H.B. No. 2009, H.D. 1, S.D. 1, C.D. 1):

On motion by Senator Kokubun, seconded by Senator Inouye and carried, Conf. Com. Rep. No. 139-04 was adopted and H.B. No. 2009, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR AGRICULTURAL RESEARCH AND MARKET DEVELOPMENT," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Menor, Whalen).

Conf. Com. Rep. No. 140-04 (H.B. No. 2883, H.D. 2, S.D. 2, C.D. 1):

Senator Kawamoto moved that Conf. Com. Rep. No. 140-04 be adopted and H.B. No. 2883, H.D. 2, S.D. 2, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Aduja.

Senator Slom rose to speak in opposition as follows:

"Madame President, I rise in opposition to the bill.

"While I certainly support the police and support better communications, the problem with this bill has been that it is a surcharge, an additional charge on everyone's cell phone. I think during debate we could never get a fix as to what the total cost was going to be and what the actual surcharge was going to be. Everybody always talks about, well, it's only going to be 40 cents, 60 cents, 80 cents and that's where it starts out and then it continues to rise.

"In addition to that, I have concerns and questions about the technology that would be used for the enhanced 911, knowing that the police department has had very serious problems for several years now with their Motorola regular equipment.

"So, for these reasons, I'm voting against the bill."

Senator Trimble rose to speak in opposition as follows:

"Madame President, I rise in opposition to this measure.

"In addition to the comments made by the Senator from Hawaii Kai, this is an example where we're taxing the messenger. There is no direct relationship between the tax that we're applying on the phone service, no direct relationship, and the service that is being provided.

"On a deeper level we should we should consider how our police protection should be funded and not go out and look for additional ways to tack on little bit here, a little bit here, and a little bit here. We know how much it is going to cost, but we have not gotten a good accurate description of what is going to be provided and how accurate it is going to be, so that at least when I go out and tell people yes they've been taxed, they can decide for themselves whether it's going to be benefiting them or not. If I can't explain to them, if I ask them just to trust me, it's not sufficient.

"I'll therefore be casting a 'no' vote. Thank you."

The motion was put by the Chair and carried, Conf. Com. Rep. No. 140-04 was adopted and H.B. No. 2883, H.D. 2, S.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO WIRELESS ENHANCED 911 SERVICE," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 19. Noes, 3 (Hemmings, Slom, Trimble). Excused, 3 (Fukunaga, Menor, Whalen).

Conf. Com. Rep. No. 141-04 (H.B. No. 2137, H.D. 1, S.D. 1, C.D. 1):

Senator Ige moved that Conf. Com. Rep. No. 141-04 be adopted and H.B. No. 2137, H.D. 1, S.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Taniguchi.

Senator Slom rose to speak in support of the measure with reservations and said:

“Madame President, I rise in support of this measure with reservations.

“I took part in the discussions in the Conference and I know this is an important issue and there was a great deal of lobbying and a great deal of communication back and forth. And basically what the bill seems to do is to have a one call center so that when construction takes place there is good communication between excavators, contractors, utilities and the government.

“Therein lies the rub. There’s been a lot of hours spent on this bill and I think it’s generally a pretty good bill. But it still raises questions of liability of state and counties as to whether or not they would be responsible if even after all of these things are done there still are problems or there are dislocations or inconveniences that are caused. And I think the state and counties made that decision clear from the beginning of the negotiations, but I don’t think it’s been completely resolved.

“So, we do have a problem. We do need a solution. I’m just suggesting that we have problems. You may remember I spoke earlier with caution about the annual bill where were always paying for lawsuits and threatened lawsuits and everything else and I want everybody to realize that this is a possibility of potential for this bill.

“Thank you.”

Senator Hogue requested his vote be cast “aye, with reservations,” and the Chair so ordered.

The motion was put by the Chair and carried, Conf. Com. Rep. No. 141-04 was adopted and H.B. No. 2137, H.D. 1, S.D. 1, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO A ONE CALL CENTER,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, 1 (Hemmings). Excused, 3 (Fukunaga, Menor, Whalen).

Conf. Com. Rep. No. 142-04 (H.B. No. 1374, H.D. 2, S.D. 2, C.D. 1):

Senator Kanno moved that Conf. Com. Rep. No. 142-04 be adopted and H.B. No. 1374, H.D. 2, S.D. 2, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Taniguchi.

Senator Slom rose to speak in opposition to the measure and stated:

“Madame President, I rise in strong opposition to this bill.

“One of the issues that we started out this Session back in January with was the constant problems of the cost of workers compensation to all businesses and thus ultimately to

consumers, and the problem of fraud. We had a good bill that was presented by the administration. It was gutted. The whole idea was to have the insurance commissioner and the insurance division to have a fraud unit, not unlike that for unemployment compensation and for medical. This is for worker’s compensation.

“The issue always was fraud is fraud and whoever, whoever, commits fraud, whether it’s an employee, an employer, an insurance company, a hospital, a doctor, or whoever it is, they should be prosecuted because all of us pay for increased worker’s comp.

“Well, this bill was turned on its head. The worker’s comp and fraud unit was taken out of the insurance commission and then at the end in Conference, it makes it even more interesting because the fraud that will be investigated, that will be discussed will be only that fraud that’s conducted or complicit by employers or insurance companies. Any other fraud continues to go unpunished.

“It’s a bad bill. It’s a bad message. It is out of sync with all of the other kinds of fraud units that we have and we should have done a better job.”

Senator Kanno rose to speak in support of the measure as follows:

“Madame President, I rise to speak in support of the measure.

“I just wanted to comment about the measure that the Conferees did make adjustments to both the Senate and the House drafts and what we decided to do was bifurcate the system so that what the insurance commissioner was pursuing was the ability to pursue fraud charges against all stakeholders in the worker’s compensation system.

“The Conferees decided to designate insurance companies, self-insured employers, fully insured employers and have that be investigated by the insurance commissioner and to have claimants and medical providers to continue to be investigated by the Department of Labor. They have in the past pursued individuals on fraud charges.

“The statement I believe we wanted to make was that fraud is not solely committed by claimants as some would like to believe, but rather fraud possibly is being committed by all stakeholders in the system including employers, insurance companies, medical providers, as well as claimants. We wanted to provide a balanced measure that would allow us to begin this structural shift, provide for a timeframe to evaluate whether the charges that they were pursuing against fraud claims was fair and balanced and that they were looking at all stakeholders for possible fraud charges.

“Thank you.”

The motion was put by the Chair and carried, Conf. Com. Rep. No. 142-04 was adopted and H.B. No. 1374, H.D. 2, S.D. 2, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO WORKERS’ COMPENSATION,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 18. Noes, 4 (Hemmings, Hogue, Slom, Trimble). Excused, 3 (Fukunaga, Menor, Whalen).

Conf. Com. Rep. No. 143-04 (H.B. No. 2511, S.D. 1, C.D. 1):

On motion by Senator Taniguchi, seconded by Senator Kokubun and carried, Conf. Com. Rep. No. 143-04 was adopted and H.B. No. 2511, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INCOME TAX WITHHOLDING," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 18. Noes, 4 (Hemmings, Hogue, Slom, Trimble). Excused, 3 (Fukunaga, Menor, Whalen).

Conf. Com. Rep. No. 144-04 (H.B. No. 2396, H.D. 2, S.D. 2, C.D. 1):

Senator Ige moved that Conf. Com. Rep. No. 144-04 be adopted and H.B. No. 2396, H.D. 2, S.D. 2, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Taniguchi.

Senator Slom rose to speak in opposition as follows:

"Madame President, I rise in opposition to this bill.

"There was an attempt to put together a good bill. This has got a lot of different things involved with it. Not only the Capital Investment Fund from the state is questionable whether or not the state should be involved in this, but also hammered out changes to Act 221, which was much troubled. It's going to extend Act 221. It doesn't answer some of our basic questions about really the costs and the number and kinds of jobs it will create. It doesn't follow what's happened already with Act 221 and we're going to be extending it for another five years. And it also introduces yet another new special fund.

"Thank you."

The motion was put by the Chair and carried, Conf. Com. Rep. No. 144-04 was adopted and H.B. No. 2396, H.D. 2, S.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CAPITAL INVESTMENTS," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 18. Noes, 4 (Hemmings, Hogue, Slom, Trimble). Excused, 3 (Fukunaga, Menor, Whalen).

At 2:56 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 2:58 o'clock p.m.

Conf. Com. Rep. No. 145-04 (S.B. No. 2549, S.D. 1, H.D. 1, C.D. 1):

By unanimous consent, Conf. Com. Rep. No. 145-04 and S.B. No. 2549, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR COLLECTIVE BARGAINING COST ITEMS," were recommitted to the Committee on Conference.

Conf. Com. Rep. No. 146-04 (S.B. No. 2550, H.D. 1, C.D. 1):

Senator Kanno moved that Conf. Com. Rep. No. 146-04 be adopted and S.B. No. 2550, H.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Taniguchi.

Senator Hogue rose to speak in support of the measure and stated:

"Madame President, I rise in support of this particular measure.

"I am very glad that the Governor has come together with the teachers union and has put together numbers which will allow for teacher recruitment and retention. Certainly a very, very important issue and the teachers are all going to get a raise, which is sorely needed by them. So I support that.

"I also want to make a point though, colleagues, that all raises are not created equally. Just because one particular bargaining unit received a raise does not mean that other bargaining units should get an equal raise or any raise at all. Each of these bargaining units should go before the Governor in the process and should negotiate to the best of their ability. And this is one that we can strongly endorse and we will do so.

"Thank you, Madame President."

The motion was put by the Chair and carried, Conf. Com. Rep. No. 146-04 was adopted and S.B. No. 2550, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR COLLECTIVE BARGAINING COST ITEMS," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Fukunaga, Menor).

Conf. Com. Rep. No. 147-04 (S.B. No. 2551, H.D. 1, C.D. 1):

By unanimous consent, action on Conf. Com. Rep. No. 147-04 and S.B. No. 2551, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR COLLECTIVE BARGAINING COST ITEMS," was deferred until Thursday, May 6, 2004.

Conf. Com. Rep. No. 148-04 (S.B. No. 2556, H.D. 1, C.D. 1):

Senator Taniguchi moved that Conf. Com. Rep. No. 148-04 be adopted and S.B. No. 2556, H.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Kanno.

Senator Taniguchi then offered the following amendment (Floor Amendment No. 15) to S.B. No. 2556, H.D. 1, C.D. 1:

SECTION 1. Senate Bill No. 2556, H.D. 1, C.D. 1, is amended by amending section 1 to read as follows:

"SECTION 1. There are appropriated out of the general revenues of the State of Hawaii to the legislative agencies indicated below the following sums or so much thereof as may be necessary for fiscal year 2004-2005 to fund the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for officers and employees of these agencies excluded from collective bargaining:

	<u>FY 2004-2005</u>
State ethics commission	\$12,000
Office of the auditor	\$82,825
Office of the legislative reference bureau	\$49,728
Office of the ombudsman	\$32,466

The sums appropriated shall be expended by the respective heads of the legislative agencies for the purposes of this Act."

Senator Taniguchi moved that Floor Amendment No. 15 be adopted, seconded by Senator Kanno.

Senator Taniguchi noted:

"Madame Chair, S.B. No. 2556 relates to salaries for employees of our service agencies. I guess in our deliberations we forgot to put in the one for the ethics commission staff and this amendment will cover that."

The motion to adopt Floor Amendment No. 15 was put by the Chair and carried.

Senator Taniguchi moved that Conf. Com. Rep. No. 148-04 be received and placed on file, seconded by Senator Kanno and carried.

By unanimous consent, S.B. No. 2556, H.D. 1, C.D. 2, entitled: "A BILL FOR AN ACT RELATING TO STATE OFFICERS AND EMPLOYEES EXCLUDED FROM COLLECTIVE BARGAINING AND MAKING APPROPRIATIONS AND OTHER ADJUSTMENTS," was placed on the calendar for Final Reading on Thursday, May 6, 2004.

Conf. Com. Rep. No. 149-04 (S.B. No. 2528, S.D. 1, H.D. 1, C.D. 1):

On motion by Senator Taniguchi, seconded by Senator Baker and carried, Conf. Com. Rep. No. 149-04 was adopted and S.B. No. 2528, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INSURANCE," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Fukunaga, Menor).

Conf. Com. Rep. No. 150-04 (S.B. No. 2595, S.D. 2, H.D. 2, C.D. 1):

Senator Taniguchi moved that Conf. Com. Rep. No. 150-04 be adopted and S.B. No. 2595, S.D. 2, H.D. 2, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Baker.

Senator Baker rose to speak in support of the measure as follows:

"Madame President, I rise in support of this measure.

"Madame President and colleagues, this is certainly a bill that's been a long time coming. We thought we had this measure taken care of last Session only to discover that our colleagues across the way recommitted their version for some technical concerns.

"This year the measure has brought support from not only the counselors, but the DCCA. And I'd like to take this time to say a particular mahalo to Noenoe Tom of the DCCA staff who worked diligently with some of the counselors that have persevered over the years, and also to thank Phyllis Dendle for coming forward to help move what was just going to be a title protection bill to a title protection and practice bill.

"You know, colleagues, Hawaii is one of only three states that doesn't license professional counselors. While national certification is available, it doesn't provide the same benefits or protections to the public as state licensure does. These masters level mental health clinicians bring valuable skills to the community, but without licensure these professionals are at a disadvantage because increasingly federal programs require that services be provided by licensed professionals.

"Whether it's Medicare, Medicaid or Quest rules, unlicensed persons cannot provide services to individuals in those particular categories. For example, under Medicaid and Quest regulations, existing seasoned unlicensed mental health professionals are not permitted to provide the same scope of practice as licensed mental health professionals. For Medicare, the only thing that keeps a counselor from providing the

valuable and needed services is that they don't have a state license.

"This is in part why 47 states, the District of Columbia, Guam and Puerto Rico have licensed professional counselors. I know that perhaps one of my colleagues or another might get up and say, 'well the auditor said they didn't need licensure.' That state audit report was a number of years ago and the times have changed, the rules have changed, the regulations have changed.

"This is the same reason that social workers, marriage and family therapists were so diligent in seeking their licensure. Being licensed has become the rule rather than the exception and we should not prevent qualified experienced mental health professional counselors from the ability to deliver the range of mental health services within their scope of education.

"It is now frequently considered by those in the field of mental health and behavioral health a minimum qualification to have this sort of licensure. The impact on access to mental health treatment statewide will be negatively affected if the approximately 300 professional counselors in Hawaii are not allowed to be licensed, thus dramatically eliminating their valuable services and expertise.

"I think this is a particular concern since we moved last year to expand the mental health coverage, and with the advent of HMSA determining that the full range of mental illnesses are now covered, we do have full parity in our state for mental health services. In doing so, we need to make sure that we have the full range of professionals able to make that treatment.

"So it's with a great deal of pleasure that I see this bill that we've been working on for what seems like an eternity finally poised to be enacted into law. I do want to thank once again, Noenoe Tom from DCCA for assisting in this endeavor. I urge all my colleagues to support this measure."

Senator Trimble rose to speak in opposition to the measure and stated:

"Madame President, I rise in opposition to this measure.

"I rise in opposition to this measure because we have a Legislative Auditor. We just gave her a raise and then when it's not convenient, we ignore what she says. I feel that the appropriate process, if conditions have changed, is to ask her to take another look. Until she does that, I don't see that services were not provided without state licensing last year.

"This is yet another group that comes before us trying to convince us that they need to be licensed by a state body. The only reason why I could think that we might need it is if next year we're going to come back and give them prescriptive authority.

"Anyway, I will be voting against this measure. Thank you."

The motion was put by the Chair and carried, Conf. Com. Rep. No. 150-04 was adopted and S.B. No. 2595, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PROFESSIONAL COUNSELORS," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, 2 (Slom, Trimble). Excused, 1 (Menor).

Conf. Com. Rep. No. 151-04 (S.B. No. 2906, S.D. 1, H.D. 2, C.D. 1):

Senator Taniguchi moved that Conf. Com. Rep. No. 151-04 be adopted and S.B. No. 2906, S.D. 1, H.D. 2, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Baker.

Senator Slom rose to speak in support of the measure with reservations and said:

“Madame President, I rise in support of this measure with reservations.

“You know it’s really interesting, the focal point of the Legislature became taking care of the public employee unions and trying to dismantle or disagree with the DCCA. The DCCA is obviously the best run agency in the state government. Polls have shown that, personal opinions have verified that, and yet what we’ve tried to do this Session is try to dismantle it, raid money from it and disregard the actions of the director when he actually wanted to reduce or eliminate fees.

“This is a good example. He came before the Ways and Means Committee, he wanted to eliminate the certificate of good standing fee because what he said was, and his argument was very clear, ‘Here we make businesses jump through hoops. They have to do various things. They have to pay the fees for doing the things. Then they complete all of that. Then we turn around and charge them another fee to show that they had done everything that they were supposed to have done and paid all of the things that they’ve done.’ And so he wanted to eliminate the fee. But this Legislative Body, not content with not lingering with the DCCA, simply reduced the fee down to \$5, but we still have to collect that fee.

“So I will support the measure because we’re reducing the fee, but I also remind this body that the DCCA director came in with several bills to reduce other fees that weren’t even given a hearing this year. So, I think there’ll be more eyes in the community, particularly the business community, as to what this Legislature does particularly when people pop up and say how they support business. It’s not what you say, it’s what you do and how you act. And the DCCA director, Mr. Recktenwald, who was introduced a little while ago, has shown a clear force for getting to the heart of the issue, reducing fees, making the department more efficient and more customer oriented, and he has shown he can do it independently.

“Thank you.”

The motion was put by the Chair and carried, Conf. Com. Rep. No. 151-04 was adopted and S.B. No. 2906, S.D. 1, H.D. 2, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO CERTIFICATES OF GOOD STANDING,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Menor).

At 3:09 o’clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 3:15 o’clock p.m.

Conf. Com. Rep. No. 152-04 (S.B. No. 459, S.D. 1, H.D. 1, C.D. 2):

By unanimous consent, action on Conf. Com. Rep. No. 152-04 and S.B. No. 459, S.D. 1, H.D. 1, C.D. 2, entitled: “A BILL FOR AN ACT RELATING TO CAMPAIGN SPENDING,” was deferred until Thursday, May 6, 2004.

Conf. Com. Rep. No. 153-04 (S.B. No. 2404, S.D. 2, H.D. 1, C.D. 1):

On motion by Senator Taniguchi, seconded by Senator Kawamoto and carried, Conf. Com. Rep. No. 153-04 was adopted and S.B. No. 2404, S.D. 2, H.D. 1, C.D. 1, entitled: “A BILL FOR AN ACT MAKING AN APPROPRIATION FOR EXPENSES OF THE 2005 NATIONAL ASSOCIATION OF COUNTIES MEETING IN HONOLULU,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 20. Noes, 3 (Slom, Trimble, Tsutsui). Excused, 2 (Menor, Sakamoto).

Conf. Com. Rep. No. 154-04 (S.B. No. 2210, S.D. 2, H.D. 1, C.D. 1):

On motion by Senator Taniguchi, seconded by Senator Espero and carried, Conf. Com. Rep. No. 154-04 was adopted and S.B. No. 2210, S.D. 2, H.D. 1, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO CONDOMINIUMS,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Menor, Sakamoto).

Conf. Com. Rep. No. 155-04 (H.B. No. 1904, H.D. 1, S.D. 2, C.D. 1):

On motion by Senator Kawamoto, seconded by Senator Taniguchi and carried, Conf. Com. Rep. No. 155-04 was adopted and H.B. No. 1904, H.D. 1, S.D. 2, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO TAXATION,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Menor, Sakamoto).

Conf. Com. Rep. No. 156-04 (H.B. No. 2662, H.D. 1, S.D. 1, C.D. 1):

On motion by Senator Kawamoto, seconded by Senator Fukunaga and carried, Conf. Com. Rep. No. 156-04 was adopted and H.B. No. 2662, H.D. 1, S.D. 1, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO ECONOMIC DEVELOPMENT,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Menor, Sakamoto).

Conf. Com. Rep. No. 157-04 (S.B. No. 1491, S.D. 1, H.D. 1, C.D. 1):

Senator Taniguchi moved that Conf. Com. Rep. No. 157-04 be adopted and S.B. No. 1491, S.D. 1, H.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Kawamoto.

Senator Taniguchi rose to speak in favor of the measure and said:

“Madame President, I rise to speak in favor of S.B. No. 1491, C.D. 1.

“I have comments that I would like to have inserted into the Journal, but I would like to make a brief comment.

“Madame President, in my typical mild-mannered style, I would like to thank the Governor – again, thank the Governor – for her soft approval of the Legislature’s version of the

supplemental budget last week. I believe she will be pleased that we have moved this bill.

“Thank you.”

The Chair having so ordered, Senator Taniguchi’s comments read as follows:

“Mr. President, I rise to speak in favor of S.B. No. 1491.

“Mr. President, this is really an unprecedented bill – but one that is appropriate given that we took unprecedented action this year.

“I am, of course, talking about our adoption of the supplemental budget a few weeks earlier than usual.

“On that note, I would like to quickly thank the Governor and her administration for approving the Legislature’s version of the supplemental budget last week. I think in return, she will be thankful for this bill – which modifies a few things in the supplemental budget that the Governor had objections to, or asked us to restore – specifically, the method of financing for the DCCA and vacant positions in the Departments of Labor and Human Services. In fact, we took it a step further and restored a few positions that the Governor did not ask for, but we felt was the responsible thing to do.

“If nothing else, I believe that this bill represents two very important things:

The first is that this Legislature has the best interest of the people in mind when we craft the budget. We are neither punitive nor vindictive in our actions. We are not here to play games or politics – especially with the state’s budget.

And second is that this Legislature is – and always has been – willing to work with this administration. Whether it is on the budget or any other piece of legislation, we have always embraced a cooperative spirit.

“I must acknowledge the Governor’s statement of hope that this Legislature learned a lesson this Session when crafting this budget. I believe we did. The lesson I believe we learned is that we have a rightful place in shaping our state’s future and we exercised it responsibly this year better than any other.

“Again, either through our fiscal policies or otherwise, I believe we as a Body positively affirmed our public mandate – and that is to represent our constituents for the reasons they elected us, but to do so in a way that is constructive.

“We as the Legislature have our role and the Governor has hers. As this bill indicates, neither she nor the Legislature governs this state single handedly – we must cooperate and remain flexible to do what is right for the people.

“I urge my colleagues to support this measure.

“Thank you.”

Senator Hemmings rose in support of the measure and said:

“Madame President, I’m speaking in favor of S.B. No. 1491.

“I do want to compliment the Majority Party, especially the good Chair of the Senate Ways and Means Committee. It shows that oftentimes when mistakes are made we can correct them. It’s magnanimous, in this particular incident, for the Senate Ways and Means Chair and the Majority Party to correct some of the problems that were enunciated when we did pass

the omnibus spending bill, H.B. No. 1800. This does put back into place some of the cuts that we made, especially vacant positions, and this will serve people of Hawaii well.

“It’s nice for me to stand up personally to be able to say that sometimes bipartisan cooperation through and executive branch and the Senate Majority and Minority result in good things. It’s a pleasure to have it happen this time.

“Thank you.”

The motion was put by the Chair and carried, Conf. Com. Rep. No. 157-04 was adopted and S.B. No. 1491, S.D. 1, H.D. 1, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO STATE GOVERNMENT;” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Menor).

Conf. Com. Rep. No. 158-04 (S.B. No. 3193, S.D. 2, H.D. 2, C.D. 1):

By unanimous consent, action on Conf. Com. Rep. No. 158-04 and S.B. No. 3193, S.D. 2, H.D. 2, C.D. 1, was deferred to the end of the calendar.

S.B. No. 2990, H.D. 1:

On motion by Senator Taniguchi, seconded by Senator Kokubun and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 2990, and S.B. No. 2990, H.D. 1, entitled: “A BILL FOR AN ACT RELATING TO THE INTEGRATED TAX INFORMATION MANAGEMENT SYSTEMS ACQUISITION BY THE DEPARTMENT OF TAXATION;” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, 1 (Whalen). Excused, 1 (Menor).

FINAL READING

MATTERS DEFERRED FROM EARLIER ON THE CALENDAR

Conf. Com. Rep. No. 59-04 (S.B. No. 2928, H.D. 2, C.D. 1):

Senator Taniguchi moved that Conf. Com. Rep. No. 59-04 be adopted and S.B. No. 2928, H.D. 2, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Baker.

Senator Chun Oakland rose to speak in opposition as follows:

“Madame President, I stand in opposition to this measure.

“I received a phone call from the Chairman of the House Human Services and Housing Committee, and he indicated that in our effort to eliminate the Rental Housing Trust Fund Advisory Commission, we had hoped to place on the Hawaii Housing Development Corporation of Hawaii Advisory Council a representative of the public housing residence. That did not occur, and as a result he asked that we recommit this measure. So that is why I will be voting ‘no’ on this measure.”

The Chair inquired:

“Is it your intention that we recommit this?”

Senator Chun Oakland answered:

“Correct. He has indicated that the House will be recommitting this measure.”

At 3:21 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 3:22 o'clock p.m.

Senator Tsutsui rose in opposition to the measure and said:

“Madame President, I will also be voting ‘no’ on this measure based on the comments from the previous speaker.

“Thank you.”

The motion was put by the Chair and carried, Conf. Com. Rep. No. 59-04 was adopted and S.B. No. 2928, H.D. 2, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO THE RENTAL HOUSING TRUST FUND ADVISORY COMMISSION,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, 2 (Chun Oakland, Tsutsui). Excused, 2 (Ihara, Menor).

Conf. Com. Rep. No. 68-04 (S.B. No. 2425, S.D. 1, H.D. 1, C.D. 1):

Senator Sakamoto moved that Conf. Com. Rep. No. 68-04 be adopted and S.B. No. 2425, S.D. 1, H.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Taniguchi.

Senator Hogue then offered the following amendment (Floor Amendment No. 14) to S.B. No. 2425, S.D. 1, H.D. 1, C.D. 1:

Section 1. Senate Bill No. 2425, S.D. 1, H.D. 1, C.D. 1, is amended by amending section 1 as follows:

“SECTION 1. Section 302A-1185, Hawaii Revised Statutes, is amended to read as follows:

“**§302A-1185 New century charter schools; funding.** (a) Beginning with the fiscal year 2004-2005 supplemental budget request, and each budget request thereafter, the charter school administrative office shall submit a request for general fund appropriations for each new century charter school based upon:

- (1) The actual and projected enrollment figures in the current school year for each charter school; and
- (2) A per pupil amount for each regular education and special education student, which shall be equivalent to the total per pupil cost based upon average enrollment in all cost categories, including comprehensive school support services but excluding special education services, and for all means of financing except federal funds, as reported in the most recently published department of education consolidated annual financial report[-], provided that the legislature may make an adjustment to the per pupil allocation for the purposes of this section.

The legislature shall make an appropriation based upon the budget request; provided that [H]the[+] legislature may make additional appropriations for collective bargaining increases for charter school employee members of collective bargaining units, fringe and other employee benefits, facility costs, and for other requested amounts. The governor, pursuant to chapter 37, may impose restrictions or reductions on charter school appropriations similar to those imposed on other public schools.

(b) All federal financial support for new century charter schools shall be no less than all other public schools; provided that if administrative services related to federal grants and

subsidies are provided to the charter school by the department, the charter school shall reimburse the department for the actual costs of the administrative services in an amount that does not exceed six and one-half per cent of the charter school’s federal grants and subsidies. Any new century charter school shall be eligible to receive any supplementary financial grant or award for which any other public school may submit a proposal, or any supplemental federal grants limited to new century charter schools; provided that if department administrative services, including funds management, budgetary, fiscal accounting, or other related services, are provided with respect to these supplementary grants, the charter school shall reimburse the department for the actual costs of the administrative services in an amount that does not exceed six and one-half per cent of the supplementary grant for which the services are used. All additional funds that are generated by the local school boards, not from a supplementary grant, shall be separate and apart from allotted funds and may be expended at the discretion of the local school boards.

(c) To enable new century charter schools to access state funding prior to the start of each school year, foster their fiscal planning, and enhance their accountability, the charter school administrative office shall:

- (1) Provide [~~forty~~] fifty per cent of a new century charter school’s per pupil allocation based on the new century charter school’s projected student enrollment no later than [~~August 1~~] July 20 of each fiscal year; provided that the new century charter school shall submit to the charter school administrative office a projected student enrollment no later than May 15 of each year;
- (2) Provide an additional forty per cent of a new century charter school’s per pupil allocation no later than [~~October~~] November 15 of each year; provided that the new century charter school shall submit to the charter school administrative [~~office a verified student enrollment no later than September 15 of each year; and~~] office:

(A) Student enrollment as verified on October 15 of each year, provided that the student enrollment shall be verified on the first day of business immediately prior to October 15 should that date fall on a weekend;

(B) An accounting of the percentage of student enrollment who transferred from public schools established and maintained by the department, provided that these accountings shall also be submitted by the charter school administrative office to the legislature no later than twenty days of each regular session; and

- (3) [~~Provide the~~] [~~The~~] remaining [~~twenty~~] ten per cent per pupil allocation of a new century charter school [~~based on the new century charter school’s verified student enrollment~~] no later than January 1 of each [year; provided that the new century charter school shall submit to the charter school administrative office a revised student enrollment no later than December 1 of each year.] year as a contingency balance to ensure fiscal accountability.

(d) The department shall provide appropriate transitional resources to a new century conversion charter school for its first year of operation as a charter school based upon the department’s allocation to the school for the year prior to the charter school’s conversion.

(e) No new century charter school [~~nor~~] or new century conversion charter school may assess tuition.

(f) The department shall transfer additional funds from EDN 100 to EDN 600 for new century charter schools whose student enrollment, verified on or immediately prior to October 15 as provided for by subsection (c), exceeds the new century charter schools’ projected student enrollment, in an amount corresponding to the number of additional students and the per

pupil allocation. The charter school administrative office shall transfer from EDN 600 to EDN 100 any excess per pupil allocations for new century charter schools whose verified student enrollment is lower than their projected student enrollment in an amount corresponding to the lower number of students and the per pupil allocation.”

Senator Hogue moved that Floor Amendment No. 14 be adopted, seconded by Senator Hemmings.

Senator Hogue rose and said:

“Madame President, I think first of all I just want to note that we are for equal funding of charter schools, equal on par with all other funding, and so this is a very, very important bill. There was a technical error that happened which will allow for this bill to be possibly messed up, so we certainly don’t want that to happen if it becomes a law.

“If you go to page three and go to section (c), it says, ‘enable new century charter schools to access state funding prior to the start of each school year, foster their fiscal planning, and enhance their accountability, the charter school administrative office shall: (1) provide fifty percent of the new century charter school’s per pupil allocations . . .’ So, that’s in section 1. In section 2 it says, ‘provide an additional forty percent of a new century charter school’s per pupil allocation no later than November 15 . . .’ Then if you go to page 5, there’s a dangling phrase, striking out provide, it just says, ‘the remaining ten percent per pupil allocation of a new century charter school no later than January 1 of each year as a contingency balance to ensure fiscal accountability.’

“So, because there is no verb there, provide that has been stricken out, how do we know what exactly the verb is suppose to be? Is it a case of provide, withhold, punt or whatever? Well, it was pointed out that in the committee report it says provide. And, that’s well and good.

“However, historically, we have seen the Department of Education do some things that we would not have approved of that have ended up hurting the charter schools. And I would certainly hate for this very important bill to go forward without fixing it so that there is absolutely no question at all what the intent of the Legislature is.

“So, I would hope that this amendment can go forward because the intent of the Legislature is to support the charter schools. I think it’s a good amendment and all you have to do is put the provide back in there and it makes it grammatically correct. My English teacher probably approves as well. So, thank you very much, Madame President.”

The motion to adopt Floor Amendment No. 14 was put by the Chair and failed to carry.

The motion to adopt Conf. Com. Rep. No. 68-04 and pass S.B. No. 2425, S.D. 1, H.D. 1, C.D. 1, on Final Reading was then put by the Chair and carried, Conf. Com. Rep. No. 68-04 was adopted and S.B. No. 2425, S.D. 1, H.D. 1, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO EDUCATION,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Ihara).

Conf. Com. Rep. No. 136-04 (H.B. No. 2002, H.D. 2, S.D. 1, C.D. 1):

Senator Sakamoto moved that Conf. Com. Rep. No. 136-04 be adopted and H.B. No. 2002, H.D. 2, S.D. 1, C.D. 1, having

been read throughout, pass Final Reading, seconded by Senator Taniguchi.

At 3:26 o’clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 3:53 o’clock p.m., with the President in the Chair.

By unanimous consent, action on Conf. Com. Rep. No. 136-04 and H.B. No. 2002, H.D. 2, S.D. 1, C.D. 1, was deferred to the end of the calendar.

Conf. Com. Rep. No. 158-04 (S.B. No. 3193, S.D. 2, H.D. 2, C.D. 1):

On motion by Senator Menor, seconded by Senator Espero and carried, Conf. Com. Rep. No. 158-04 was adopted and S.B. No. 3193, S.D. 2, H.D. 2, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO CONSUMERS,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 19. Noes, 5 (Hemmings, Hogue, Slom, Taniguchi, Trimble). Excused, 1 (Whalen).

THIRD READING

Stand. Com. Rep. No. 3528 (H.B. No. 2181, H.D. 2):

On motion by Senator Taniguchi, seconded by Senator Kokubun and carried, Stand. Com. Rep. No. 3528 was adopted and H.B. No. 2181, H.D. 2, entitled: “A BILL FOR AN ACT RELATING TO HOUSING FINANCING PROGRAMS,” having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Whalen).

FINAL ADOPTION

Conf. Com. Rep. No. 159-04 (S.C.R. No. 127, S.D. 1, H.D. 1, C.D. 1):

On motion by Senator Kanno, seconded by Senator Taniguchi and carried, Conf. Com. Rep. No. 159-04 was adopted and S.C.R. No. 127, S.D. 1, H.D. 1, C.D. 1, entitled: “SENATE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT TO DELAY THE IMPLEMENTATION OF THE ELIMINATION OF THE SOCIAL WORKER SERIES,” was Finally Adopted on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Whalen).

ADOPTION OF RESOLUTIONS

MATTERS DEFERRED FROM FRIDAY, APRIL 30, 2004

Stand. Com. Rep. No. 3520 (H.C.R. No. 149):

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the joint report of the Committees was adopted and H.C.R. No. 149, entitled: “HOUSE CONCURRENT RESOLUTION URGING HAWAII’S CONGRESSIONAL DELEGATION TO HELP PREVENT THE INHUMANE TREATMENT OF THE YELLOWSTONE BUFFALO AND SUPPORT PASSAGE OF THE

YELLOWSTONE BUFFALO PRESERVATION ACT, H.R. 3446," was adopted with Senator Trimble voting "No."

Stand. Com. Rep. No. 3521 (H.C.R. No. 179):

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the report of the Committee was adopted and H.C.R. No. 179, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF TRANSPORTATION TO STUDY THE FEASIBILITY OF, AND PROVIDE COST ESTIMATES FOR, THE INSTALLATION OF AN ACCESS ROAD ON THE SOUTHERN END OF KAWAIHAE HARBOR TO INCREASE ACCESS TO THE SMALL BOAT HARBOR AND BEACH AREA, AND FOR OTHER HARBOR IMPROVEMENTS," was adopted.

Stand. Com. Rep. No. 3522 (H.C.R. No. 77, H.D. 2):

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the report of the majority of the Committee was adopted and H.C.R. No. 77, H.D. 2, entitled: "HOUSE CONCURRENT RESOLUTION URGING THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS TO ENFORCE THE PROVISIONS OF ACT 44, SESSION LAWS OF HAWAII 2003, IN ACCORDANCE WITH THE LEGISLATURE'S INTENT," was adopted with Senators Hemmings, Hogue, Slom and Trimble voting "No."

Stand. Com. Rep. No. 3523 (H.C.R. No. 112, H.D. 1):

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the joint report of the Committees was adopted and H.C.R. No. 112, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM AND THE WORKFORCE DEVELOPMENT COUNCIL TO REPORT TO THE LEGISLATURE REGARDING THE IDENTIFICATION AND DEVELOPMENT OF LABOR SUPPLY AND DEMAND MATRICES, AND THE EXPANSION OF THE EDUCATIONAL PIPELINE SUBSEQUENT TO THE ENACTMENT OF ACT 148, SESSIONS LAWS OF HAWAII 2003," was adopted.

Stand. Com. Rep. No. 3524 (H.C.R. No. 195):

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the joint report of the majority of the Committees was adopted and H.C.R. No. 195, entitled: "HOUSE CONCURRENT RESOLUTION SUPPORTING THE EMPLOYEE FREE CHOICE ACT AND URGING CONGRESS TO PASS THIS MEASURE," was adopted with Senators Hemmings, Hogue, Slom and Trimble voting "No."

Stand. Com. Rep. No. 3525 (H.C.R. No. 251):

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the report of the Committee was adopted and H.C.R. No. 251, entitled: "HOUSE CONCURRENT RESOLUTION DECLARING MAY 7, 2004, AS CLEANERS' APPRECIATION DAY IN THE STATE OF HAWAII," was adopted.

RECONSIDERATION OF ACTIONS TAKEN

S.B. No. 2983, S.D. 2 (H.D. 1):

Senator Taniguchi moved that the Senate reconsider its action taken on March 30, 2004, in disagreeing to the

amendments proposed by the House to S.B. No. 2983, S.D. 2, seconded by Senator Kokubun and carried.

In accordance with the Conference Committee Procedures agreed upon by the Senate and the House of Representatives, the managers on the part of the Senate recommended that the Senate agree to the amendments proposed by the House to S.B. No. 2983, S.D. 2, on the following showing of Ayes and Noes:

Ayes, 2 (Taniguchi, Kokubun). Noes, none. Excused, 1 (Slom).

Senator Taniguchi moved that the Senate agree to the amendments proposed by the House to S.B. No. 2983, S.D. 2, seconded by Senator Kokubun.

Senator Taniguchi noted:

"Mr. President, I believe there were only technical amendments made to this bill."

The motion was put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 2983, S.D. 2, and S.B. No. 2983, S.D. 2, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CONFORMITY OF THE HAWAII INCOME TAX LAW TO THE INTERNAL REVENUE CODE," was placed on the calendar for Final Reading on Thursday, May 6, 2004.

S.B. No. 2474, S.D. 3 (H.D. 2):

Senator English moved that the Senate reconsider its action taken on April 15, 2004, in disagreeing to the amendments proposed by the House to S.B. No. 2474, S.D. 3, seconded by Senator Menor and carried.

Senator English moved that the Senate agree to the amendments proposed by the House to S.B. No. 2474, S.D. 3, seconded by Senator Menor.

Senator English noted:

"Mr. President, this is the RPS, the renewable portfolio standards bill, and it's been a difficult one for me to agree to the House amendments on. I'd just like to read a few points on it.

"Hawaii imports between \$2 billion to \$3 billion worth of oil annually and these figures represent a growing dependence on oil. The key to achieving sustainability lies in economic diversification, export expansion and import substitution. In the energy context, import substitution may be achieved by increasing the use and development of renewable energy resources found in Hawaii, such as wind, solar, ocean thermal wave, and biomass resources.

"Members, there are many good components to this bill. This bill shows leadership in legislation because it affirms the state's support for renewable energy production. It creates a renewable portfolio standard of 20 percent to be achieved by the year 2020. This is a firm commitment to reduce our oil imports and increase our self-reliance. It directs DLNR to facilitate the private sector's development of renewable energy projects and to support them in their efforts. It mandates that DBEDT shall direct an independent analysis of the renewable portfolio standards and to report back to the Legislature on RPS progress.

"Furthermore, the bill directs the PUC to study on the RPS standards and to report back to the Legislature how this can be achieved. The PUC must develop and implement a rate making structure that provide incentives to encourage Hawaii's electric

utility companies to use cost-effective renewable energy resources in Hawaii to meet the RPS standards.

"Now members, with that said, there are some very problematic parts with this bill. It redefines renewable energy to include non-renewable sources such as heat pumps, ice storage, and heat recovery portions of combined heat and power.

"In essence, it allows some non-renewables to be counted as renewable. It encourages conservation, but counts conservation measures as renewable resources, which we all know they are not. It allows utility to purchase renewable energy up to the avoided costs of providing this energy – up to.

"The Senate version requires the utility to purchase renewable energy at no less than the avoided cost of production producing this energy. This means that renewable energy producers potentially have a smaller profit margin in producing renewable energy. It doesn't direct the PUC to use penalties against the utility if they don't meet the RPS standards. It identifies the Hawaii Natural Energy Institute as the independent entity to conduct studies of the renewable portfolio standards, including an assessment of the viability of the existing standards and recommendation for future changes in the law. It doesn't allow any other capable and qualified institution to provide those recommendations.

"Finally, this RPS standard is only 20 percent by 2020, not 30 percent that the Senate sent out. You know, in weighing the issue very carefully and contemplating all sides of it, I've looked back on bills of this nature in the past and looked at the history of it and I've found a very interesting pattern – we always tend to pass out a bill with some good parts loaded down with some very ugly parts. And those ugly parts always centered around, well, trying to compound renewables as renewable. And it centered around adding in things that, well, didn't really meet the standard – you know, things like heat pumps and ice storage, heat recovery of combined heated power. These things were always included. And then part of that pattern that I saw was that a year or two later, these were removed from the bill and the good parts were usually left to stand.

"So this is a baby step forward with the potential for ten steps backwards. But, I'm willing to take the gamble because we have an administration that is strong in moving the renewable portfolio standards idea forward. We also have a PUC chairman that has shown independence in his judgment and in his work. And if the pattern holds true to what it has been in the past, then we can remove the objectionable parts of this bill next year.

"So, I'm asking the members here today to agree to this bill. It does not represent the best bill that we could have had. It does not represent the best that we could have done for renewable energy portfolio standards, but it is a small microstep forward.

"So, let's take the microstep. Let's move it ahead just a little bit. And next year let's clean this up and make it a real renewable portfolio standards bill. Thank you."

Senator Ihara rose and said:

"Mr. President, would you note my reservations in agreeing to the House amendments on this bill."

The Chair so ordered.

Senator Inouye rose and said:

"Mr. President, please register my reservations. I was really disappointed to hear of the amendments that were made. It seems like when we passed the RPS several years ago, it seems like that was the direction that we were heading for and it seems like now we took off what we all worked hard at and moved a little bit forward. Otherwise I would certainly vote 'no' on this measure, but I certainly would like to see what happens next year.

"So, that's my reservations, Mr. President."

The motion was put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 2474, S.D. 3, and S.B. No. 2474, S.D. 3, H.D. 2, entitled: "A BILL FOR AN ACT RELATING TO RENEWABLE ENERGY," was placed on the calendar for Final Reading on Thursday, May 6, 2004.

S.C.R. No. 199 (H.D. 1):

Senator Chun Oakland moved that the Senate reconsider its action taken on April 27, 2004, in disagreeing to the amendments proposed by the House to S.C.R. No. 199, seconded by Senator Kanno and carried.

Senator Chun Oakland moved that the Senate agree to the amendments proposed by the House to S.C.R. No. 199, seconded by Senator Kanno.

Senator Chun Oakland noted:

"Mr. President, the original resolution had requested that the Department of Human Services and the Department of Labor jointly examine issues relating to public assistance and disincentives to work. The Department of Human Services had indicated that much of the disincentives have been addressed over a number of years starting in 1996.

"However, there is still a group of individuals that find that there are disincentives to works, mainly, persons with disabilities.

"The amendments made by the House reflect work that was done between the Department of Human Services and VSA Arts with the University of Hawaii to convene a task force to examine strategies and systems change that would allow small business development and careers in creative industries for people with disabilities in Hawaii.

"Thank you."

The motion was put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.C.R. No. 199, and S.C.R. No. 199, H.D. 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE HAWAII WORK FORCE DEVELOPMENT COUNCIL, THE UNIVERSITY OF HAWAII, AND VSA ARTS OF HAWAII-PACIFIC TO JOINTLY CONVENE A TASK FORCE TO EXAMINE STRATEGIES FOR SYSTEMS CHANGE THAT WILL CREATE ACCESS TO SMALL BUSINESS DEVELOPMENT AND CAREERS IN CREATIVE INDUSTRIES FOR PEOPLE WITH DISABILITIES IN HAWAII," was placed on the calendar for Final Adoption on Thursday, May 6, 2004.

MOTION TO OVERRIDE VETO

S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1:

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Sakamoto moved that the Senate override the veto of S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, as contained in Gov. Msg. No. 519, seconded by Senator Taniguchi.

Senator Sakamoto rose in favor and said:

“Mr. President, I guess there can be a long discussion or a short discussion. (Laughter.)

“Let me say that we debated the issues on this measure for a long time. I could go through a list of things and perhaps I’ll submit some of those comments to the Journal. Perhaps that may be it, Mr. President. But, I would highly recommend that there are many good measures in this measure, as we all know, and I recommend that our members override this measure.”

Senator Hogue rose and said:

“Mr. President, I also will be brief in my comments because we have debated this quite a bit. We’ve talked about local school boards, decentralization and a big debate about whether or not citizens should get the right to vote or not, whether this is state reform, whether this is real reform. But the overriding comment that I heard a lot was that somehow it was the Governor’s way or the highway. Well, I think that the Governor has shown that the highway goes both ways. It’s a wide highway and there’s lots of onramps here, and there is a chance for us in the next few days to make corrections so that this education reform bill can indeed be education reform and not just something that may be way off in the future or something may or may not happen.

“The Governor has made some very, very good points, valid points, I think, in which she has said that she wants phased-in funding direct to the schools from 70 to 90 percent; implementation of the weighted student formula a year earlier – if it’s a good idea, let’s get right to it; full funding for the charter schools – we certainly hope that the grammatical mistake won’t cause a problem in that; full funding for charter schools; principals on performance contract so they can be accountable; and the school community councils on an advisory basis so they do not end up putting another layer of bureaucracy in the process and make it actually more muddled.

“So I think the Governor has handled herself in a very statesman-like fashion. And I encourage my colleagues across the aisle to grab the hand that has been extended by her down to the Legislature and see if we can come up with a compromise so that we can all go home and say ‘hey, everybody wins, especially those people in the classroom – the kids – because they’re the ones who need to achieve at the highest level possible. So I would encourage as a first step that you not override the Governor’s veto.

“Thank you very much, Mr. President.”

Senator Taniguchi rose and said:

“Mr. President, on behalf of the Senator from Moanalua, the Education Chair, I’d like to request a Roll Call vote.”

The Chair so ordered.

At 4:11 o’clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 4:13 o’clock p.m.

The motion was put by the Chair and, Roll Call vote having been requested, the veto of S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO EDUCATION,” was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 20. Noes, 4 (Hemmings, Hogue, Slom, Trimble). Excused, 1 (Whalen).

H.B. No. 2743, H.D. 2, S.D. 1, C.D. 1 (Section 1):

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Taniguchi moved that the Senate override the veto of H.B. No. 2743, H.D. 2, S.D. 1, C.D. 1, Section 1, as contained in Gov. Msg. No. 527, seconded by Senator Kokubun.

The President made the following announcement:

“Members, before we begin our discussion, please note that when we vote on this measure, we’ll be taking each line item appropriation separately. For the purpose of our discussion, members may speak on any of the items vetoed by the Governor at this time.”

Senator Taniguchi rose to speak in favor and said:

“Mr. President, I rise to speak in favor of the motion to override the Governor’s veto of items in H.B. No. 2743, C.D. 1.

“Fellow colleagues, H.B. No. 2743, C.D. 1, is a bill we passed a couple of weeks ago that authorizes the Governor to transfer certain excess amounts for special and revolving funds to the general fund.

“Specifically, this bill authorized the transfer of \$43.6 million from 18 different funds to the general fund. These amounts identified by the Legislature were deemed in excess of the requirements needed to operate their respective programs. The process in which your Committee on Ways and Means went through was thorough, thoughtful, and above all, subject to the public hearings process of the Legislature.

“Unlike the Legislature, the Governor, under HRS 37-53, can unilaterally transfer special fund monies to the general fund without any public input. This Body must exercise its fiscal oversight responsibilities in full public view.

“Last year in fiscal year 03, the Governor transferred over \$240 million from special and revolving funds to the general fund. In our findings, the Committee on Ways and Means concluded that all of the funds identified with this bill would be maintaining reserves at the end of this fiscal year which were higher than necessary. These reserves were not going to be utilized and therefore reprioritizing their use would not jeopardize the programs from which they came, nor would they hamper their program’s ability to leverage federal funds.

“Speaking specifically on the Governor’s veto of the transfer of the highway funds, I challenge the Governor’s assertion that this transfer is either critical to repair and maintenance or is to be utilized to match federal highway dollars. By the Department of Transportation’s own documentation, the \$12.5 million was deemed excess and was not programmed for any projects. It was not projected to be used at all, not for repair and maintenance and not to leverage any federal projects.

“Colleagues, all of the transfers that the Governor has vetoed are excess. Let’s put these funds to better use. Let’s hope that these excess funds will be transferred to the general fund so that

they may be applied to help the poor, the sick, and to put food in the mouths of needy children.

“Colleagues, I urge you to support the motion to override the veto, and I request a Roll Call vote. Thank you.”

Senator Hemmings rose to speak in opposition as follows:

“Mr. President, I rise to speak against the motion.

“Mr. President, I was going to sit here and listen to the debate and be amongst the four or five votes that vote against this, but after hearing the previous speaker, I cannot sit idly by.

“To say that the Majority Party is taking highway funds and putting it into the general fund to help the poor, the sick, and the elderly is a mockery and incredibly hypocritical. This is the same Majority Party that year-in and year-out holds those same needy hostage for funding by putting their expenditures in the purchase of service and grants-in-aid programs in raid bills rather than putting them in ongoing operational budgets as most conscientious people that sincerely care about the needy.

“This isn’t about the needy. I think the Human Services people are beginning to smell the problems down here. This is about putting money on the books for HGEA pay raises, just as raiding the DCCA was and most of the other gyrations going through this Legislature have been.

“And I personally am insulted that once again the needy are being held up as a justification for the Majority Party’s manipulation of the budget year-in and year-out, balancing operating budgets with raids, with taking money out of the retirement fund, with taking money out of the rainy day fund, and all the while claiming they’re doing it for the keiki and for the elderly and for the needy.

“This is the same Majority Party, I might add, that eliminated vacant position funding from the federal government for the needy. They eliminated funding entirely. So bad was it, in their haste to pass H.B. No. 1800, we just passed another bill to fix it. And here we go again . . . here we go again.

“This is hypocrisy at its worst. And the sick and the poor and the hungry should be incensed that they’re being used every year to justify the manipulation of the budget as it is.

“God Bless that we have a Governor that wants to put those programs in normal operating funds and is willing to take a long term look at budgeting and wants to fix the problems created by a one-party monopoly over state expenditures.

“I’m voting ‘no’ against this because the Governor is basically right. We’ve got to build budgets that are real, take care and set priorities based on need, not on political expediency.

“Thank you, Mr. President.”

The motion was put by the Chair and carried, Roll Call vote having been requested, the veto of H.B. No. 2743, H.D. 2, S.D. 1, C.D. 1, Section 1, entitled: “A BILL FOR AN ACT RELATING TO NON-GENERAL FUNDS,” was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 20. Noes, 4 (Hemmings, Hogue, Slom, Trimble).
Excused, 1 (Whalen).

H.B. No. 2743, H.D. 2, S.D. 1, C.D. 1 (Section 2):

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Taniguchi moved that the Senate override the veto of H.B. No. 2743, H.D. 2, S.D. 1, C.D. 1, Section 2, as contained in Gov. Msg. No. 527, seconded by Senator Kokubun.

The motion was put by the Chair and carried, Roll Call vote having been requested, the veto of H.B. No. 2743, H.D. 2, S.D. 1, C.D. 1, Section 2, entitled: “A BILL FOR AN ACT RELATING TO NON-GENERAL FUNDS,” was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 20. Noes, 4 (Hemmings, Hogue, Slom, Trimble).
Excused, 1 (Whalen).

H.B. No. 2743, H.D. 2, S.D. 1, C.D. 1 (Section 15):

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Taniguchi moved that the Senate override the veto of H.B. No. 2743, H.D. 2, S.D. 1, C.D. 1, Section 15, as contained in Gov. Msg. No. 527, seconded by Senator Kokubun.

The motion was put by the Chair and carried, Roll Call vote having been requested, the veto of H.B. No. 2743, H.D. 2, S.D. 1, C.D. 1, Section 15, entitled: “A BILL FOR AN ACT RELATING TO NON-GENERAL FUNDS,” was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 20. Noes, 4 (Hemmings, Hogue, Slom, Trimble).
Excused, 1 (Whalen).

H.B. No. 2743, H.D. 2, S.D. 1, C.D. 1 (Section 16):

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Taniguchi moved that the Senate override the veto of H.B. No. 2743, H.D. 2, S.D. 1, C.D. 1, Section 16, as contained in Gov. Msg. No. 527, seconded by Senator Kokubun.

The motion was put by the Chair and carried, Roll Call vote having been requested, the veto of H.B. No. 2743, H.D. 2, S.D. 1, C.D. 1, Section 16, entitled: “A BILL FOR AN ACT RELATING TO NON-GENERAL FUNDS,” was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 20. Noes, 4 (Hemmings, Hogue, Slom, Trimble).
Excused, 1 (Whalen).

H.B. No. 2743, H.D. 2, S.D. 1, C.D. 1 (Section 17):

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Taniguchi moved that the Senate override the veto of H.B. No. 2743, H.D. 2, S.D. 1, C.D. 1, Section 17, as contained in Gov. Msg. No. 527, seconded by Senator Kokubun.

Senator Ihara requested his vote be cast “aye, with reservations,” and the Chair so ordered.

The motion was put by the Chair and carried, Roll Call vote having been requested, the veto of H.B. No. 2743, H.D. 2, S.D. 1, C.D. 1, Section 17, entitled: “A BILL FOR AN ACT RELATING TO NON-GENERAL FUNDS,” was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 20. Noes, 4 (Hemmings, Hogue, Sлом, Trimble).
Excused, 1 (Whalen).

H.B. No. 2743, H.D. 2, S.D. 1, C.D. 1 (Section 18):

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Taniguchi moved that the Senate override the veto of H.B. No. 2743, H.D. 2, S.D. 1, C.D. 1, Section 18, as contained in Gov. Msg. No. 527, seconded by Senator Kokubun.

The motion was put by the Chair and carried, Roll Call vote having been requested, the veto of H.B. No. 2743, H.D. 2, S.D. 1, C.D. 1, Section 18, entitled: "A BILL FOR AN ACT RELATING TO NON-GENERAL FUNDS," was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 20. Noes, 4 (Hemmings, Hogue, Sлом, Trimble).
Excused, 1 (Whalen).

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 528 to 530) were read by the Clerk and were placed on file:

Gov. Msg. No. 528, informing the Senate that on May 3, 2004, she signed into law House Bill No. 2743 as Act 43, entitled: "RELATING TO NON-GENERAL FUNDS."

Gov. Msg. No. 529, informing the Senate that on May 3, 2004, she permitted the following measure to become law without her signature, pursuant to Section 16 of Article III of the State Constitution:

House Bill No. 2796 as Act 45, entitled: "RELATING TO STATE FUNDS"; and

transmitting her statement of concerns relating to the measure, which reads as follows:

"EXECUTIVE CHAMBERS
HONOLULU

April 30, 2004

STATEMENT OF CONCERNS REGARDING HOUSE BILL NO. 2796

Honorable Members
Twenty-Second Legislature
State of Hawaii

I will allow HB 2796, 'A Bill for an Act Relating to State Funds,' to become law on May 3, 2004 without my signature. This action is taken pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to appropriate \$9,585,765 from the Emergency and Budget Reserve Fund to finance various programs. Many of these programs are those that provide services to those people who are the most vulnerable in our population – the frail, the disabled, children, and those who are suffering serious illnesses.

The concern I have is the manner in which these programs would be funded. This bill further reduces the Emergency Budget Reserve Fund (EBRF), which was created to provide the State with a critical financial reserve during an emergency, such as a severe economic downturn a natural disaster, or even, God forbid, another terrorist attack.

The Emergency Fund was not intended to provide money for programs that are ongoing in nature and help the neediest within our community. What is particularly disturbing is that forty specific programs listed in this bill are forced to wait anxiously every year, not knowing until the eleventh hour whether they will be accommodated by dipping into the emergency reserves.

This is both unfair and unkind. It is unfair because it makes the managers of these programs come begging to the legislators each year trying to get funds for their projects before they have to close their doors. It is unkind because these programs serve those in our societies who have no way to fend for themselves.

Using the Emergency Budget Reserve Fund places the State in a precarious position. Bond rating agencies point out that although the emergency budget reserve is small relative to total State expenditures, the establishment and maintenance of the fund represent an important step toward institutionalizing prudent fiscal management policies for the State. We believe that to be an effective reserve, this fund should be allowed to grow to about five percent of general fund reserves, or approximately \$190 million. The estimated fund balance as of June 30, 2004 is \$54.3 million, considerably below this prudent goal. Also, we estimate receiving approximately \$8.1 million in FY 2005, well below the total appropriations of this bill at \$9.6 million. Therefore, the estimated fund balance on June 30, 2005 will go down to \$52.8 million. As a result, it will be incumbent upon me, as Governor, to manage this account, as well as the rest of the State's resources, in a prudent and conservative manner.

For the forgoing reasons, I will allow House Bill No. 2796 to become law effective May 3, 2004 without my signature.

Respectfully,

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 530, dated May 3, 2004, transmitting her statement of objections to House Bill No. 1043 which she has returned to the House of Representatives without her approval and which reads as follows:

"EXECUTIVE CHAMBERS
HONOLULU

May 3, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1043

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 1043, entitled 'A Bill for an Act Making Appropriations for Salary Increases for Public Employees.'

The purpose of this bill is to fund collective bargaining cost items as a result of binding arbitration with collective bargaining units (2), (3), (4), (6), (8), and (13), as well as salary increases and other cost adjustments for their excluded counterparts.

As outlined in my April 7, 2004 Message to the Legislature, the HGEA Arbitration Award will have serious, long-term

adverse impacts on the financial well-being of the State of Hawaii.

The HGEA Arbitration Award amounts to a 7.8 percent pay increase in fiscal year 2005, at a cost of \$32.2 million in fiscal year 2005 and \$53.8 million in fiscal year 2006. Over the next five years this arbitrated award would create a \$248.9 million I.O.U. that taxpayers would have to pay. This total is the best-case scenario, since it assumes no new pay raises for HGEA members over the next four years.

Salary increases of this magnitude will create sustained budget deficits starting in fiscal year 2006 and cause serious cuts in government services. These deficits will occur at a time when the State is facing a \$165 million jump in debt service payments and a \$57 million increase in retirement system contributions. As I have repeatedly emphasized, it is not a matter of whether the State can afford the HGEA pay raises this year. It is a matter of what the State can afford next year and in the years to come.

To compound the problem, the Arbitration Panel coupled this significant increase in wages with a reduction in productivity by granting employees hired after July 1, 2001 nine more days of vacation and six more days of sick leave beginning July 1, 2004. I have not included this as a cost item. However, the unrefuted evidence produced at the arbitration hearings was that this vacation and sick pay increase equates to an \$8.9 million loss in productivity for the second year of the contract and an increasing loss of productivity each year thereafter.

Succinctly put, the State of Hawaii cannot afford the HGEA Arbitration Award. Raiding special funds, emergency funds, deferring pay days or diverting monies from the Employees Retirement System to pay for wage settlements are reactions that have proven fundamentally detrimental to the State's future financial well-being. The overall public interest is not served if a disproportionate share of the State's limited discretionary resources is used to fund collective bargaining costs, leaving other critical public programs unfunded or underfunded.

In addition to the detrimental fiscal implications of enacting House Bill No. 1043, the passage of this bill was based on factual assumptions in the HGEA Arbitration Award that were flawed. First, the Arbitration Panel incorrectly assumed that the State had a balance of \$972 million in unrestricted funds at the end of fiscal year 2003. This figure represents the net of \$1.065 billion in assets from the Airports Fund, the Harbors Fund, and the Unemployment Compensation Fund, minus \$92.9 million from all other governmental activities. Balances in the airport, harbors, and unemployment funds must, by law, be used for the specific purposes named. It is neither fiscally or legally possible to use these monies for wage settlements.

Second, the Arbitration Panel incorrectly used the State of Hawaii Comprehensive Annual Financial Report (CAFR) to estimate available funds at the end of fiscal year 2003. The State's financial reports are published on an accrual basis. This means the end of year figures in 2003 included tax revenues generated in fiscal year 2003 but not collected until fiscal year 2004. The figures also included expenditure liabilities (such as Medicaid and payroll) incurred in fiscal year 2003 but not paid out until fiscal year 2004. To use the CAFR, which is a backward looking document, to project what funds may be available in a future year, is inaccurate and misleading.

Third, the Arbitration Panel referenced the State's good credit rating to conclude the State could pay for this award. The fact of the matter is credit rating agencies consider a wide variety of factors in their analysis of a jurisdiction's creditworthiness. The credit rating process examines the State's

economy, revenue collections, and the Administration's commitment to fiscal discipline. The willingness of the State to control expenditures during periods of slower economic growth, allowing the State to carryover sufficient financial reserves, also contributed to its positive credit rating. The rating is performed to assure bondholders that the State is able to pay its existing debts, not to indicate the State's ability to pay for future salary increases.

Finally, the HGEA Arbitration Award is legally flawed. As pointed out in my April 7, 2004 transmittal to the Legislature, the award failed to adequately explain how it took into account at least five factors set forth in section 89-11(f) of the Hawaii Revised Statutes. These factors include failure to stay within the lawful authority of the employer, failure to include the interest and welfare of the public, failure to consider the State's ability to pay, failure to use proper wage comparisons, and failure to give proper consideration to the overall compensation package when making the award.

In consideration of the exercise of my legal and fiduciary responsibility to the State, I am returning House Bill No. 1043 without my approval.

Respectfully,

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

MOTION TO OVERRIDE VETO

H.B. No. 1043, S.D. 1, C.D. 1:

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Kanno moved that the Senate override the veto of H.B. No. 1043, S.D. 1, C.D. 1, as contained in Gov. Msg. No. 530, seconded by Senator Taniguchi.

Hemmings rose to speak against the motion and said:

"Mr. President, I rise to speak against the motion.

"Well, Mr. President, the moment of truth. The moment when we find out what this Legislature was all about.

"Last year the Majority Party, 23 members reversed themselves on the right to strike and put back in the law, binding arbitration. I think we know the reason why. The best reason is found in this bill which the Governor had the courage to veto.

"At that time, conscientious Legislators, one of which was in the Majority Party, voted to keep the right to strike as a law, the law that previously the Majority Party and the Democrat Governor had promoted. In warning about the outcome of that change, we said that binding arbitration would result in pay raises beyond our control, and more importantly, beyond our ability to pay.

"We've also established through the negotiation process that cookie cutter pay raises are not adequate. Some unions, who are statistically underpaid compared to national compensation, deserve pay raises and oftentimes bigger pay raises than others. And that's why the units bargain separately, and it makes a lot of sense.

"With binding arbitration, we lost control of bargaining. A third party arbitrator, oftentimes from outside of the state, basically looks at the state books and sees how much money is in the state treasury. They don't see oftentimes that these

monies come from raided funds. These monies come, in years past, from the employees retirement system. These monies come from cutting positions in the executive branch of government to help the poor, the sick, and the hungry. All they see is there's some money on the books. They don't consider future obligations beyond the two-year biennium budgeting process. They don't consider other obligations the state may have to help the truly needy in our society. They certainly don't consider the business environment that is so onerous that it's a disincentive to create jobs here in Hawaii. So they do what we said they would do. They take what the state is offering and what the wise negotiators of labor unions are asking for and they basically meet them halfway. That's the problem with binding arbitration and now we're paying for it.

"The HGEA arbitration award amounts to 7.8 percent increase for fiscal year 2005 at a cost of \$32 million. After that it goes up to \$54 million a year, every year. But who cares? Why only care about today? Next year, the following year, we'll raid additional funds and hold hostage additional human service programs.

"Over the next five years this arbitrated award will increase spending by \$250 million. It's an IOU that the taxpayers would have to pay. Of course, this is the best-case scenario because we know as soon as this is approved, they'll be back at the table negotiating more pay increases.

"I want to make this very clear to my colleagues and to the interested people in the gallery that are watching very intently what you're doing here, and the people of Hawaii – there are many labor unions that deserve good pay and the HGEA workers, 23,000 of them, deserve it. They do good work for the most part. And they get it. They get good pay. They already have good pay. In fact, unlike the judicial branch of government, the executive branch of government, the legislative auditors, the legislators and other unions, they have received 25 percent pay increases in the last five years.

"We also did a study of fringe benefits. This labor union has amongst the most benevolent fringe benefits of any labor union of any public working group in the whole United States of America – second most days off, paid leave, holidays, all of the things that add up to quite a lot of money that the taxpayers foot for. I might add that these benefits far exceed what comparable workers in the private sector get. The days of calling public workers, public servants, are gone. It's obvious with the pay and compensation of benefits that the public is now a servant to the public workers, and it's just not fair.

"I'm really pleased that we have a Governor that builds a budget that looks to the future. I do notice that the Majority Party put off a group of pay raises. I've heard concern that it has future obligations. We're not obligated for anything more than a biennium budget, but approving these pay raises is going to obligate us. And it is going to be a problem that we're going to have to deal with.

"I'm hoping, I'm hoping that this Legislature will not force the executive branch of government by creating a scenario where we will not have enough money to pay for our bills where the executive branch will have to cut services, and eventually may even have to look at the prospects of laying people off because we simply do not have the money to pay our bills.

"But I'll guarantee you what the Governor will do – she'll do something that the Majority Party has failed to do. She will not cut funding for the needy. She will not cut funding for necessary human service programs. She will not cut funds that

are truly going to serve those who need in our society for the benefit of this pay raise.

"Naturally, we're going to vote 'no' against the veto override. And naturally, you're going to vote for it. But I might add that if you look over our position on this issue over the last several years, especially the binding arbitration legislation which the Majority Party did a flip flop on, you'll see that once again you'll be voting against what is right and fair and good, ultimately, for all the people of Hawaii, including the employees of the HGEA.

"Thank you, Mr. President."

Senator Slom rose to speak against the motion as follows:

"Mr. President, I rise against the override.

"I do want to congratulate the Majority Party. I think we did spend about 38 minutes in reviewing the vetoes and you gave it full and ample discussion and time to look at it. And that of course is the hallmark of this Legislative Session. From the very beginning the whole thing was to do what the HGEA wanted to be done, to support them as they have supported most members of the Majority in election – not what is right for the people, not what is proof, not what is affordable – but what the HGEA wants.

"I recall that a couple of years ago, the head of the HGEA said, and it was a direct quote, 'the people, the taxpayers don't pay their workers, the Governor and the Mayors pay the workers of the HGEA.' Of course right after that, the then Democratic Governor, Mr. Cayetano, turned around and supported the rational position of the right to strike, abandoning the binding arbitration. And they had to change their tune. They went to the Legislature, and as the Minority Leader has mentioned, last year we fought the battle about changing your position, changing what you know in your heart is right and going back to what the HGEA demanded, threatened, cajoled and promised for election. And so we had more binding arbitration.

"And if you would have taken a little bit of time to read the Governor's veto message, you would have found that one of the objections was in what the arbitration panel did not do. And let me just quote for a moment, quote, 'the panel failed to adequately explain how it took into account at least five factors set forth in section 89-11(f) of the Hawaii Revised Statutes. These factors include failure to stay within the lawful authority of the employer, failure to include the interest and welfare of the public, failure to consider the State's ability to pay, failure to use proper wage comparisons, and failure to give proper consideration to the overall compensation package when making the award.'

"To any prudent person, to anyone in private business or even private unions, if these red flags had been raised, somebody at least would have said, wait a minute maybe we better not rush to judgement, maybe we better look at these or at least answer them. If we think they're wrong or incorrect, let's answer them. Instead, we're not going to do that.

"You are hell-bent on overriding the Governor's veto to send a message to the Governor. But the message you're sending is going to be read loud and clear by the public. The public is going to understand if there is a \$248.9 billion IOU that's coming up over the next 5 years, that's without any additional pressure from the HGEA.

"Your Minority in this Senate supported collective bargaining increases. We supported those increases that we

could afford. We supported the state negotiator when he had a groundbreaking 6-year contract. And the question had come up, well, why wasn't that offered to the HGEA and the HSTA at the time? And the answer by Mr. Hong was that it was offered, not once but several times, and those unions rejected it. They don't want a 6-year stable contract. They want to get right back into negotiating in a couple of weeks from now to go through the next two-year period. And that's what led me to say a couple weeks ago on this Senate Floor, the only reason it seems the Legislature is down here is to provide money and benefits to the HGEA.

"If there are layoffs, if there are risks, it won't affect the bosses of the unions. They'll still get their salaries. They'll still get their benefits and they'll still call for more. It will be the lowest of the low public employees who will suffer. And they shouldn't have to do that. And they didn't have to do that. Because the Governor has indicated and your Minority has indicated we support reasonable and prudent and affordable pay increases.

"But that's not what you want to do. You want to send a message to the Governor. So without really looking at any of these issues, without discussing these issues on this Senate Floor, you want to go ahead and do it. And you've got the numbers to do it. And you'll do it.

"I also heard that the head of the HGEA union a week ago in negotiations was gloating about how they had beaten the negotiator and the Governor and their opposition, but that it is their belief that the taxpayers in fact do not pay enough – that the taxpayers should pay more to support them, of course. I wish they would come out publicly and say that, rather than behind closed doors.

"The fact of the matter is, the public is going to wise up to this, because after all, we've passed an innovative education bill, so people will become more educated now. And a day of fiscal reckoning is coming and for those of you who do not care for the future and yet stand up here and make wonderful speeches about the keiki and everybody else, you're all going to have a part to play in the financial cost of this bill. We could have done something that everybody could have afforded. We could have done something prudently. But instead you want to override the Governor's veto.

"Let's have a Roll Call vote, Mr. President."

The motion was put by the Chair and, Roll Call vote having been requested, the veto of H.B. No. 1043, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR SALARY INCREASES FOR PUBLIC EMPLOYEES," was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 20. Noes, 4 (Hemmings, Hogue, Slom, Trimble). Excused, 1 (Whalen).

At 4:45 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 5:58 o'clock p.m.

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 531 to 533) were read by the Clerk and were placed on file:

Gov. Msg. No. 531, informing the Senate that on May 3, 2004, she signed into law Senate Bill No. 3237 as Act 47,

entitled: "RELATING TO PRESCRIPTION DRUGS," and transmitting her statement of support which reads as follows:

"EXECUTIVE CHAMBERS
HONOLULU

May 3, 2004

STATEMENT OF SUPPORT FOR SENATE BILL NO. 3237

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, with my approval, Senate Bill No. 3237, entitled 'A Bill for an Act Relating to Prescription Drugs.'

The purpose of this bill is to implement the Hawaii Rx Plus prescription drugs assistance program. This bill represents the work of a bipartisan team that recognized problems in the original bill enacted in 2002 and who worked cooperatively to address these problems. This bill is designed to reduce the price of prescription drugs to qualified participants, to keep administrative costs at a minimum, to streamline the application process, to prevent the crowding out of prescription drug benefits already available through the Hawaii Pre-paid Care Act, and to protect the rights and benefits of the Medicaid population.

First, this bill creates a nonexclusive list of drugs to be covered under the program. In addition to the existing Medicaid preferred drug list, the bill allows the inclusion of various drugs used in the treatment of cancer and mental health illnesses. It also utilizes the Department of Human Services Pharmacy and Therapeutic Committee to review and recommend drugs for placement on the preferred drug list.

Second, the bill limits participation in the program to residents of the State of Hawaii who have a family income equal to or less than 350 percent of the federal poverty level, who lack prescription drug coverage, and who enroll in the Hawaii Rx program. The 350 percent threshold would cover a single person who earns up to \$36,000 in annual income and a family of four up to an annual income of \$74,500.

Third, the amendments in this bill ensure integrity in the program's administration by prohibiting the contractor administering the program from receiving compensation or other benefits from a participating drug provider.

Fourth, the bill establishes an initial list of discount priced drugs that currently encompasses those drugs purchased pursuant to the Department of Human Services administered Medicaid program. The effective date for this list is July 1, 2004. A second tier of discount drugs would be added on July 1, 2005.

The initial Hawaii Rx program was modeled after a program in the State of Maine. Maine's program was involved in protracted litigation, resulting in a United States Supreme Court decision issued last year. Hawaii's program has been tied to the State's QUEST healthcare program, thereby placing in jeopardy the State's Medicaid Title XIX funding. This linkage was decoupled through suitable language in this bill.

Finally, I would point out that the Hawaii Rx Plus program contained in this bill can be implemented via a streamlined application process. This will allow the enrollment of as many

qualified residents as possible. A larger participant population will enable the State to negotiate higher discounts.

I am proud to affix my signature to Senate Bill No. 3237 and believe it will improve the health and well-being of the residents of our State.

Respectfully,

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii

Gov. Msg. No. 532, dated May 3, 2004, transmitting a corrected copy of her statement of objections to House Bill No. 2003, which corrects the title to read, "A Bill for an Act Relating to the Illegal Use of Controlled Substances," and which reads as follows:

"EXECUTIVE CHAMBERS
HONOLULU

April 30, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2003

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 2003, entitled 'A Bill for an Act Relating to the Illegal Use of Controlled Substances.'

The purpose of this bill is to implement the recommendations of the Joint House-Senate Task Force on Ice and Drug Abatement that was created to address the epidemic proportion of crystal methamphetamine ('ice') use in Hawaii. This omnibus measure contains provisions that meet this purpose. However, it also contains provisions that would exacerbate the problem of 'ice' abuse in Hawaii.

Favorable provisions of this bill include increasing the prison sentence for those who manufacture drugs in the presence of a child, amendments to the drug paraphernalia law that would make it easier for law enforcement officials to prosecute these cases, and amendments that provide the Hawaii Paroling Authority with discretion in determining whether parole should be revoked for violations involving illegal drugs. In addition, the bill partially restores sentencing judges' discretion to impose a jail sentence with regard to certain drug convictions. The bill also addresses the need for substance abuse treatment by mandating parity in health insurance plans allowing substance abuse to be treated like other medical conditions.

Although these provisions are a step in the right direction, they are unfortunately outweighed by other egregious provisions. For example, there are provisions in this bill that would actually reduce the penalty for manufacturing 'ice' and make the penalty for manufacturing small quantities of 'ice' less than the penalty for manufacturing small quantities of other dangerous drugs. As 'ice' manufacturing is a more serious problem in Hawaii than the manufacture of other dangerous drugs, this change in the law would be particularly inappropriate. Currently, manufacturing less than one-eighth of an ounce of methamphetamine is a class A felony with a mandatory minimum term of not less than ten years during which time the convicted person is not eligible for parole. Under this bill, that crime is reduced to a class B felony with a mandatory minimum term of only three years. Moreover,

manufacturing that same quantity of any other dangerous drug remains a class A felony. Thus, if this bill were enacted into law, manufacturing small amounts of every dangerous drug except 'ice' would be a class A felony. This would not represent good public policy.

Furthermore, the bill even reduces the mandatory minimum sentence for manufacturing large quantities of 'ice' from ten years with no possibility of parole to a sentence of five years. This is unacceptable. This is also inconsistent with one of the avowed purposes of the bill: to 'deter the proliferation of drug trafficking' with regard to 'ice.' If we are to successfully intervene in the availability of 'ice,' these provisions should not be allowed to become law.

This bill is also objectionable because it overturns the Hawaii Supreme Court's decision (State of Hawaii v. Smith, 103 Haw. 228, 81 P.2d 408 (2003)) that requires drug users with multiple felony convictions to be sent to jail. To the contrary, this bill provides drug users with multiple felony convictions the possibility of not serving even one day in jail. This is a matter of poor public policy, because other criminals with multiple prior offenses would be given a mandatory prison sentence.

Other objections to this bill include its disregard of the counties' home rule. As currently drafted the bill infringes upon the zoning powers of the counties by exempting drug rehabilitation homes from land use ordinances that establish guidelines for these homes. The bill provides that, with regard to any drug rehabilitation home accommodating up to ten persons, 'no conditional use, permit, variance, or special exception shall be required for a residence used as a drug rehabilitation home.' The bill also provides that such a drug rehabilitation home 'shall be considered a residential use of property and shall be a permitted use in residentially designated zones including . . . zones for single-family dwelling' (emphases added). There is no provision that allows homeowners and residents any procedure to challenge a decision to place a drug rehabilitation home in their neighborhoods.

This bill also amends the zero tolerance in public schools law by mandating that students caught, for example, selling drugs be assessed for treatment and given treatment, if needed, rather than being suspended from school (except for a possible ten-day 'crisis suspension'). The provision ties the hands of the Department of Education in disciplining students who possess, sell, or use drugs. Furthermore, the Department may be unable to implement the proposed revision, because not all schools have certified substance abuse treatment counselors on staff and because there may well be an inadequate number of programs to which students can be referred.

Further, the provisions, as written, would result in two students who have engaged in exactly the same behavior to be punished differently. A student who sells drugs who DOES NOT need drug treatment is still subject to the 'zero tolerance policy.' However, a student who sells drugs who DOES need drug treatment is NOT subject to the 'zero tolerance policy.' In fact, the student with the drug problem is better off for disciplinary purposes than the student without the drug problem, because the bill states that 'the child shall not be excluded from school and all disciplinary action shall be deferred' (emphasis added). The bill further provides that upon completion of the treatment program, all records of disciplinary action relating to the original offense shall be expunged. We should not enact legislation that, in effect, tells our children that being addicted to drugs is an effective way to avoid discipline or maintain a clean disciplinary record.

Moreover, we should not say that a student who deals large quantities of drugs, for example, cannot be suspended just because the student needs treatment. And, the provision appears to bar the zero tolerance policy even for a student who is caught selling drugs a second or third time.

House Bill No. 2003, in short, is a collection of provisions that are internally inconsistent, result in conflicting outcomes, and are, in some instances, inconsistent with good public policy. There are certain laudable provisions in the bill. I would hope they could be reenacted without those provisions that are steps backward rather than forward.

For the foregoing reasons, I am returning House Bill No. 2003 without my approval.

Respectfully,

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii

Gov. Msg. No. 533, dated May 3, 2004, transmitting her statement of objections to House Bill No. 267 which she has returned to the House of Representatives without her approval and which reads as follows:

“EXECUTIVE CHAMBERS
HONOLULU

May 3, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 267

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 267, entitled ‘A Bill for an Act Relating to Government.’

The purpose of this bill is to repeal certain limitations on the powers of the Office of Elections and the Campaign Spending Commission that are imposed upon administratively attached agencies. The bill would also authorize the Office of Elections and the Campaign Spending Commission to retain their own legal counsel. Additionally the bill would establish an elections commission appointed by members of the Legislature that would appoint the Chief Election Officer and oversee the operations of the Office of Elections.

Attached agencies, boards and commissions, such as the Office of Elections and the Campaign Spending Commission, were created to retain a degree of autonomy in their mission and functions. Current law is ambiguous in defining the level and nature of autonomous actions these ‘attached agencies’ should enjoy. My Administration has honored the intended ability of such agencies, boards and commissions to communicate freely with the legislative branch, the executive branch, and the general public. We have requested, as a courtesy, that these boards keep the Departments to which they are attached apprised of their activities. In many instances boards, commissions, and attached agencies have developed a collaborative working relationship that has served the public well.

I must return this bill without my approval because it denigrates these collaborative relationships, would significantly skew representation of the voting public in the election process,

and would place two attached agencies, the Campaign Spending Commission, and the Office of Elections, outside the scope of the law.

First, the bill gives appointment power and the power to oversee the Chief Election Officer to elections commissioners who represent only twenty percent of the people of the State. At least six of the nine members of the new elections commission must be residents of the neighbor island counties. As a result, eighty percent of the State’s population, residing in the City and County of Honolulu, would be represented by as few as two and no more than three of the nine elections commissioners.

Second, this bill deprives the Governor of any voice in the appointment of the State’s Chief Election Officer. The Governor presently appoints one of the five members of the existing Elections Appointment and Review Panel. Under this measure, the Governor would not appoint any of the nine members of the elections commission, which would replace the Elections Appointment and Review Panel. Further, if the elections commission member positions are not filled by the legislators within the times specified, this bill provides that the Chief Justice of the Supreme Court of Hawaii, not the Governor, must appoint the members to fill the vacancies. Because the Supreme Court decides selections cases on a regular basis, it would be inappropriate for the Chief Justice to appoint members to the commission this bill would create, and could blur the separation of powers provisions established in the State Constitution.

Third, the bill permits the Office of Elections and the Campaign Spending Commission to make personnel decisions and purchase supplies, equipment, and furniture without the approval of the Comptroller. Further, the Office of Elections, Campaign Spending Commission, and Elections Commission could take these actions without complying with all applicable requirements of the Hawaii Public Procurement Code and applicable personnel laws. Attached agencies should not be allowed to be ‘above the law’ when carrying out their administrative functions.

Pursuant to section 26-38, Hawaii Revised Statutes, the Comptroller has the authority to delegate approval for personnel decisions and purchases to attached agencies, boards, and commissions. This bill’s provisions would set an unwarranted precedent.

Finally, this bill erodes consistency and objectivity in the State Government’s legal interpretations by authorizing the Office of Elections and the Campaign Spending Commission to employ their own attorneys. It is critical that the legal advice given to those agencies be consistent with that given to other State agencies and with the interests of the State of Hawaii. Retention of separate counsel would likely result in inconsistent advice. Also, because the subject matter of these agencies involves political issues that affect predominantly members of the Legislature, it is important to assure that legal advice is not unduly influenced by what the agencies want to hear, rather than by sound legal analysis. This bill increases the risks of undue influence, especially because the attorneys would serve at the agencies’ pleasure and would be paid by the agencies.

For the foregoing reasons, I am returning House Bill No. 267 without my approval.

Respectfully,

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii

MOTION TO OVERRIDE VETO

H.B. No. 267, H.D. 2, S.D. 2:

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Hanabusa moved that the Senate override the veto of H.B. No. 267, H.D. 2, S.D. 2, as contained in Gov. Msg. No. 533, seconded by Senator Kim.

Senator Hanabusa rose to speak in favor of the motion and said:

“Mr. President, I stand in favor of the motion.

“Mr. President, just to refresh people’s recollection of this matter, I have personal knowledge as to how this evolved because it really started with a conversation with one of the administration’s directors, technically the director from DAGS. And he came to see me and he told me in a very candid conversation that he was permitting Mr. Watada of the Campaign Spending Commission to come forth and speak in opposition to a bill. And it was from that conversation and the questions that followed immediately after that it became very evident to me that there was a problem.

“We had moved, at the ending of last Session, Mr. President, Campaign Spending and the Office of Elections into DAGS. The reason why is, as you might recall, both of those entities were temporarily attached to the Lieutenant Governor’s Office and they cannot be temporarily attached there. They have to become permanent and one factor is going to subset the Campaign Spending Commission. And as a result, because of some AG’s study that was done or we had done at the end of the last Legislative Session it moved to DAGS. What we were not aware of, Mr. President, is that there is a provision of HRS Section 26-35, that says that it’s the director of the attached agency that makes direct communications with the Governor and the Legislature, and there’s a whole battery of different kinds of functions. That is the provision that caused the problem.

“Mr. President, the Governor’s Message goes on to say that the ‘Administration has honored the intended ability of such agencies, boards and commissions to communicate freely with the legislative branch, the executive branch, . . .’ But in actuality we know that was not the case.

“In a hearing before the Judiciary Committee, much to Mr. Watada’s surprise, I just asked him straight out, ‘Mr. Watada, are you being permitted to testify here today?’ He stopped, paused and said ‘yes.’ And I said, ‘have you had to have permission before you could testify,’ and he said ‘yes.’ And he went on to say what a chilling effect that this has had upon him.

“This Legislative Session is very unusual to me because the Office of Elections is nowhere to be seen, which is very unusual, given the fact that this is an election year. The Office of Elections did submit testimony on H.B. No. 267, H.D. 2, when it came before the Judiciary Committee. And they said, ‘We do not know what the ramifications may be of attaching the Office of Elections to the Judiciary,’ because that was the Senate proposal, ‘However, it matters little to us what branch of government or agency to which the Office of Elections is attached, as long as the citizens are assured that their elections are free from political influence. The Office of Elections should be placed in an apolitical environment, shielded from even perceptions of political influence.’ Where that environment may be is for this Committee and the Legislature to decide.

“Mr. President that’s exactly what the Committee of Ways and Means actually did and the Legislature did when we enacted H.B. No. 267, H.D. 2, S.D. 2. It was determined then that the best place for the Office of Elections and Campaign Spending was to remain in DAGS because we had looked and explored whether it should go to the Judiciary or it should go to the AG’s Office. We said, well, maybe they are properly in DAGS.

“However, in order to keep them in DAGS, they needed the protections. And as a result, when we did H.B. No. 267, H.D. 2, S.D. 2, we made them exempt from the prohibition that the direct communications with the Governor and the Legislature shall be by the administrative body. We allowed the administrative head, meaning the Director that they could make all decisions regarding appointments and that they could purchase all of their supplies.

“What the Governor apparently was very concerned about in her veto message was the fact that these personnel decisions were something that they could not agree with. Mr. President, in actuality under the provisions of the campaign spending law, it is the Campaign Spending Commission, for example, as part of their obligations that they select the executive director and they make personnel decisions. So this specific provision of the law is contrary to what we have already said that the Campaign Spending Commission shall have.

“The Governor said that she was concerned about the appointive powers of the Chief Elections Officer because what was created in this bill was a commission to oversee it, and not just simply like the way they have it in the present law in the election appointment and review panel, which simply selects who will be the directions officer, really has no oversight.

“They created in this bill basically a nine person commission – two of them to be selected by the Senate President, two to be selected by the Speaker of the House, two to be selected by the Minority Leader, two to be selected by the Minority Leader of the House. Sounds very familiar? It is, because it follows exactly the way we do reapportionment and that committee, that commission is given full powers, which is something that’s been lacking with the Office of Elections.

“And I know, I’ve been a critic of the Office of Elections over this period of time because that review panel simply makes decisions of hiring and firing. And the Office of Elections is not accountable to anyone in particular. So this addressed a serious concern.

“The Governor goes on to say in her message that there is a problem because only 20 percent of the neighbor islanders will be represented under this scenario. Mr. President, as it stands now there is no guaranteed representation at all because it’s a five member panel. There’s no representation set forth in the law for neighbor islands. We in fact addressed it in this version, so I don’t know what that complaint is all about.

“Third, is the one we talked about earlier, Mr. President, which is about the personnel decisions. Mr. President, the personnel decisions must be made by Campaign Spending, and this bill also exempts them from Chapter 76 as well as from, basically, collective bargaining . . . from collective bargaining. I should stand corrected. And the reason why is because the Campaign Spending Commission, Mr. President, also looks at all the unions including the public sector unions, and they did not believe that it was proper for their employees to be part of the union, the same unions that they would be possibly investigating or at least monitoring. So that was one of the changes that was made.

“Also, for the Office of Elections, Mr. President, we’ve got to make that entity as independent to the people as possible. She also said that the bill erodes consistency and objectivity in the State Government’s legal interpretations by authorizing the Office of Elections and the Campaign Spending Commission to employ their own attorneys. Mr. President, the Campaign Spending Commission employs its own attorneys now. We all know that, we confirmed him about two or three years ago when we moved the Campaign Spending Commission to the HLRB. His name is Brian Nakamura. We already have that. They already have that right and it makes sense as to why. Mr. President, they need their own attorneys. The Office of Elections needs their independent counsel as well, because if there is anything you don’t want, you don’t want people saying ‘hey the Attorney General’s Office is making the calls on who gets prosecuted under campaign spending and/or how elections laws are being interpreted.’ They need the opportunity and the right to be independent. So as a result of that, the law includes the right to their independent attorneys.

“Those are the four points that the Governor raised in her veto message. Mr. President, I ask that you, along with my colleagues, support the override because this is a very important and critical point. They are both in Chapter 11 of the Hawaii Revised Statutes under the title Elections. And the reason they are together makes total logical sense because that is probably one of the most important functions of our democratic society – that is the right to vote, elections, fair elections, and to have independence irrespective of who may be on the fifth floor, who may be the Majority on this Floor or the Floor across the way – they must be an independent body.

“So with the changes in this law, the Commission for the Office of Elections will become apolitical just like the Campaign Spending Commission. They are not to engage in politics, and that is what we need. That’s what the people of this state need because there is nothing, nothing as appalling as to sit there and to know – to know, Mr. President – that before the campaign spending director can come to testify, he has to clear it, or to wonder why Dwayne Yoshina is not in the halls of this Legislature during the year of an election cycle.

“Mr. President, they cannot have that taint. We cannot have that taint. The administration cannot have that taint. This will take any question away from all of us. They are going to be independent. They are in full support of this bill, and we have adopted structures that have worked, whether it’s the reapportionment structure. We’ve maintained the campaign spending structure. We’ve maintained the role of the judicial council in providing the names for the Campaign Spending Commission, and also to fill names if we fail to do it under the commission that runs the Office of Elections.

“This is the best thing that we can do for the people of this state because we will give them faith in the structure and they’ll know then that this most cherished right is one that is protected by all of us in making it independent and as apolitical as possible.

“Thank you, Mr. President.”

Senator Hogue rose to speak in opposition to the override and stated:

“Mr. President, I rise in opposition to the veto override.

“I think the Governor is also very concerned about the independence of these agencies. She makes some really good points here. She says, ‘Attached agencies should not be allowed to be “above the law” when carrying out their administrative functions.’ She further says in her veto message,

‘it is important to assure that legal advice is not unduly influenced by what the agencies want to hear, rather than by sound legal analysis.’ She makes some good points.

“The Judiciary Chair enumerated her arguments against some points but I think they need to be read into the record, and so I will do that. The Governor said she must return this bill without her approval because it denigrates these collaborative relationships that have been built up between her administration and these two attached agencies. She said it ‘would significantly skew representation of the voting public in the election process, and it would place two attached agencies, the Campaign Spending Commission, and the Office of Elections, outside the scope of the law.’

“She says, ‘First, the bill gives appointment power and the power to oversee the Chief Election Officer to elections commissioners who represent only twenty percent of the people of the State. At least six of the nine members of the new elections commission must be residents of the neighbor island counties. As a result, eighty percent of the State’s population’ would be represented by as few as only two members on this election commission.

“‘Second, this bill deprives the Governor of any voice in the appointment of the State’s Chief Election Officer,’ any voice at all. ‘Under this measure, the Governor would not appoint any of the nine members of the elections commission.’ I don’t think that is checks and balances.

“‘Third, the bill permits the Office of Elections and the Campaign Spending Commission to make personnel decisions and purchase supplies, equipment, and furniture without the approval of the Comptroller . . . without complying with all applicable requirements of the Hawaii Public Procurement Code . . .’ The Governor’s argument to that, and you heard the Judiciary Chair’s argument against it, ‘this bill’s provisions would set an unwarranted precedent.’

“And finally, the Minority is constantly, constantly advised against hiring outside attorneys, and the Governor accedes to that position. She says, ‘this bill erodes consistency and objectivity in the State Government’s legal interpretations by authorizing the Office of Elections and the Campaign Spending Commission to employ their own attorneys. It is critical that the legal advice given to those agencies be consistent with that given to other State agencies and with the interests of the State of Hawaii.’

“We’re concerned about the interest in the State of Hawaii, Mr. President. We support the Governor’s position and we oppose the override. Thank you.”

Senator Kawamoto requested his vote be cast “aye, with reservations,” and the Chair so ordered.

The motion was put by the Chair and, Roll Call vote having been requested, the veto of H.B. No. 267, H.D. 2, S.D. 2, entitled: “A BILL FOR AN ACT RELATING TO GOVERNMENT,” was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 20. Noes, 5 (Hemmings, Hogue, Slom, Trimble, Whalen).

MESSAGE FROM THE GOVERNOR

Gov. Msg. No. 534, dated May 3, 2004, transmitting her statement of objections to House Bill No. 2608 which she has

returned to the House of Representatives without her approval and which reads as follows:

“EXECUTIVE CHAMBERS
HONOLULU

May 3, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2608

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 2608, entitled ‘A Bill for an Act Relating to the Hawaii Tourism Authority.’

The purpose of this bill is to authorize the Hawaii Tourism Authority (HTA) to hire attorneys independent of the Attorney General; to exempt the HTA from the Comptroller’s supervision; to authorize the appointment of a sports coordinator; to clarify the compensation package for the executive director of the HTA (\$274,500 per year); to increase the allowance for HTA’s administrative expenses from 3.5 percent to 5 percent of the Tourism Special Fund; and to appropriate funds from the Tourism Special Fund to cover a fiscal problem when HTA paid 18 months of a Hawaii Visitors and Convention Bureau (HVCB) contract with 12 months of funds.

This bill is objectionable because it allows the Hawaii Tourism Authority to operate outside the safeguards of State law, micromanages the personnel decisions of the Authority, diverts funds away from direct tourism activities, and potentially creates legal difficulties for the State.

First, House Bill No. 2608 would exempt the HTA from Chapter 40, Hawaii Revised Statutes, the accounting and audit statutes for the State of Hawaii. This exemption would allow the HTA to spend moneys without regard to the safeguards and control administered by the State Comptroller. It would allow disbursements from the Tourism Special Fund and Convention Center Enterprise Fund to be signed by the HTA Executive Director, in effect allowing this person to sign his own paychecks. The State comptroller ensures the propriety of expenditures and imposes no extraordinary processing delays.

Second, this bill is another example of legislative micromanagement. It would place in statute the hiring of a ‘Sports Coordinator’ by the HTA. This provision of the bill appears to contradict section 26-39 of the Hawaii Revised Statutes that provides for the establishment of positions as deemed necessary to carry out the functions of any department or agency.

Third, the bill would divert an additional \$915,000 away from direct tourism expenditures to cover the administrative expenses of HTA. Under current law HTA is allowed to expend 3.5 percent of the Tourism Special Fund for overhead. Based on a \$61 million appropriation, a total of \$2,315,000 is already permitted to finance HTA operations. This bill would raise that total to \$3,050,000. The Tourism Special Fund was created to provide a dedicated source of funding to develop and market tourism in the State of Hawaii. To use these funds for administrative expenses constitutes a type of ‘internal raid’ on special funds that this Administration has consistently opposed.

Fourth, this bill would erode the consistency and objectivity in the State’s legal interpretations by authorizing the Hawaii

Tourism Authority to hire its own attorneys. It is important that legal advice given to an agency be consistent with the advice given other agencies and with the interests of the State as a whole. Retention of separate counsel by the HTA would likely result in inconsistent advice. Hiring outside counsel also would be another diversion of tourism funds into administrative expenditures when adequate counsel already exists in the Attorney General’s office. Additionally, the Attorney General can hire special outside counsel when thorny or difficult legal issues arise and thus could accommodate any special legal needs the HTA might have.

For the foregoing reasons, I am returning House Bill No. 2608 without my approval.

Sincerely,

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii,”

was placed on file.

MOTION TO OVERRIDE VETO

H.B. No. 2608, H.D. 1, S.D. 1:

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Kim moved that the Senate override the veto of H.B. No. 2608, H.D. 1, S.D. 1, as contained in Gov. Msg. No. 534, seconded by Senator Hanabusa.

Senator Kim rose in support of the override and said:

“Mr. President, the purpose of this bill is to authorize Hawaii Tourism Authority to hire attorneys independent of the attorney general, to exempt the HTA from the Comptroller’s supervision, to authorize the appointment of a sports coordinator, and to increase the allowance for the HTA’s administrative expenses from 3.5 percent to 5 percent of the Tourism Special Fund.

“Mr. President, the Governor’s veto message, and I will try to go over some of the points that she made in her veto message, first of all, the first item would exempt the HTA from the accounting and audit statutes for the State of Hawaii. The Governor says that this exemption would allow the HTA to spend moneys without regard to the safeguards and control as administered by the State Comptroller.

“Mr. President, let me read from the testimony given by the Hawaii Tourism Authority. H.B. No. 2608, S.D. 1, provides the HTA with an exemption from the supervision of accounts similar to the exemptions provided to the University of Hawaii and the Department of Education. So already, Mr. President, we have that procedure. The problem that the Hawaii Tourism Authority have experienced is that the many contracts that they send out for tourism promotion – contracts for private development, contracts for festivals, contracts for events for marketing – do not get paid on a timely basis. Many of these contracts are small amounts to individuals and to groups, and charitable groups that do not have moneys or do not have cash flow that they can wait to be paid, and that has traditionally been made and that has been traditionally a problem, Mr. President.

“Also in the bill we have a three-year drop dead clause. Now, we thought that would be a good pilot project to see if in fact they can work like the University of Hawaii, and if in case there are problems, then there is a drop dead clause and we can always take that up again.

“The second item, Mr. President, in the governor’s message is that she states that this bill is another example of legislative micromanagement. It would place in statute the hiring of a sports coordinator by HTA. Mr. President, this is not micromanagement. The HTA asked us to do this. The HTA has asked for a sports coordinator and they were denied.

“So it’s interesting to note that the Governor goes on to say, ‘this provision of the bill appears to contradict section 26-39 of the Hawaii Revised Statutes that provides for the establishment of positions as deemed necessary to carry out the functions of any department or agency.’ Mr. President, 26-39 states this: ‘Except as otherwise provided by this chapter and with the approval of the governor, the head of a department may establish or abolish any subordinate office or position.’ Mr. President, the head of the department is executive director Rex Johnson. He was there and has asked that they be able to have a sports coordinator. They were denied this position by the Governor. It’s interesting to note that he’s gone online and asked for an appointment with the Governor and he’s not been given an appointment with the Governor.

“And so, if we going to do sports, if we’re going to promote our state and market our state as a place that’s good for sports, then we need a sports coordinator, and that position has been denied. And that is why it is in this bill.

“Thirdly, Mr. President, the Governor states that the bill would divert an additional \$915,000 away from direct tourism expenditures to cover the administrative expenses of HTA. Let me again read from the testimony given by Rex Johnson, the executive director: ‘H.B. No. 2608 authorizes the HTA to use up to 5 percent of the moneys in the tourism special fund for administrative expenses. These resources are necessary for the HTA to effectively plan out its various programs – business and leisure marketing, sports events, planning, product development, communication and advocacy – that address the vitality of Hawaii’s tourism industry. The HTA has also been directed by the Legislature to implement accountability measures for these programs to ensure that the funds spent on programs to market and sustain Hawaii tourism industry bring in significant return on the investment to the State of Hawaii and its people.’

“Mr. President, it is this Body, the Legislature, that deemed that we should establish the Hawaii Tourism Authority. Two years ago the Senate put in a sunset clause. That measure was not adopted by the House. So, the Legislature had deemed that we wanted to have the Hawaii Tourism Authority and we have been exercising our oversight over them but it requires them to be able to adhere to some of these things that appeared with the auditor, the state auditor’s report. We have asked them to do a number of things. We have also taken the opportunity to have five major marketing contractors, something that’s never been done for tourism, and it seems to be working. But we need to oversee these contracts as stated in the auditor’s report.

“Finally, Mr. President, the fourth item that the Governor made in her veto message was about the hiring of the attorneys. She goes on to say that ‘it is important that legal advice given to an agency be consistent with the advice given other agencies and with the interests of the State as a whole. Retention of separate counsel by the HTA would likely result in inconsistent advice. Hiring outside counsel also would be another diversion of tourism funds into the administrative expenditures when adequate counsel already exists in the Attorney General’s Office.’ Mr. President, I think that this is very contradictory.

“First of all, let me just state that the bill is very, very narrow in the sense that it says that the legal services for the board may

be done solely in the cases of contract negotiations in which the attorney general lacks sufficient expertise, provided that the independent attorney shall consult and work in conjunction with the designated deputy attorney general assigned to the Hawaii Tourism Authority.

“Mr. President, she goes on to say, ‘additionally, the Attorney General can hire special outside counsel when thorny or difficult legal issues arise and thus could accommodate any special legal needs the HTA might have.’ And that’s exactly what the bill states – it is in those thorny situations.

“But the reason this is so inconsistent is because they already allow the HTA to hire attorneys, which is also stated in her message, and the fact that the attorney general has stated that they never denied a request. So the fact of the matter is they have always allowed them to hire the attorneys so money is already spent on these attorneys and that there is only that question of whether or not it’s consistent or not.

“So the issue here is whether or not the HTA should have to wait five months after a request is put in – five months – before the attorney general finally gives them an approval, which never deny. But in the meantime, these contracts need to be negotiated. Most recently, Mr. President, the HTA sent a letter to the attorney general dated in July asking for permission to hire attorneys to deal with their five major contracts. They were not given the approval until December – December, Mr. President. These contracts needed to be approved and signed by December 31. Of course that’s been another criticism by our state auditor that these contracts are not being entered into on a timely manner. In fact, it’s been after the fact, and how can they when they have difficulty getting their attorneys.

“Mr. President, I think that in the Governor’s message here she contradicts herself as far as the attorneys are concerned, and I urge all of the members here to override the veto. Thank you.”

Senator Slom rose in opposition to the motion and said:

“Mr. President, I rise in opposition to the override.

“It’s such a pleasure to take the same data and explain it differently, and let’s try to do that. Let’s take the same four items that the good Vice President has just brought up.

“First of all, in terms of exempting the HTA from the oversight of the comptroller and from HRS, the good Senator, the head of the Tourism Committee, said we already do this with the University of Hawaii and the Department of Education, true. But this is not the University of Hawaii and it’s not the Department of Education. We carved out special treatment for them because of our concern for education and because we wanted to show everybody we care for our keiki.

“This is not the same situation and oversight is absolutely necessary because when we look at and review not only the legislative auditor’s report but also the very hearings that we’ve had in the Tourism Committee over the last couple of years, we’ve had great problems with the previous administrators and executive directors – the lack of board input, the special nature of in-house contracts that were outside of the law and outside of the HRS. So there is certainly a means for looking at and making sure, even though we all seem to agree that the new HTA seems to be going in the right direction, but there certainly is a need to make sure that there is oversight. And by removing this oversight, we have nothing left other than the word of the HTA executive director.

"Now, that would be fine, except that the Tourism Committee Chair cites his testimony in support of the bill. Well, I would be very surprised if he didn't support the bill that was offered by the Tourism Chair. But will that rise to the level where we should let go of this oversight and disregard the issues that were brought up in the legislative auditor's report. I think not.

"Secondly, the issue of micromanagement in turning to the sports coordinator position. I happen to agree that we should have a sports coordinator position. I disagree, however, that it should be in statute. And I also remember that we had someone serving in that position, although we're not sure exactly what it was called, and instead of promoting sports, he was promoting his own business and promoting himself. So, in terms of looking at some of these things, it's not just good enough to say we need to have a position. We also need to have the ability for the Governor to weigh in on this.

"By the way, the bill also mentions, as does the Governor, that the salary of the executive of the HTA now rises to \$274,500 a year. As we've seen in the last couple of years, it has gone up considerably and consistently.

"The third item that was brought up is the administrative expenses of the HTA. Increasing that amount from 3.5 percent to 5 percent from the tourism special fund. Here again, the money that is put into the tourism special fund was supposed to be earmarked and specifically delegated for marketing of the visitor industry. But now what we're seeing is there's more money to pay more executive salaries and other administrative expenses, and that was not the purpose of the HTA special fund. And we're talking right now a total under this bill of \$3,050,000, which is quite a bit for administrative expenses.

"Fourth and finally, the question of hiring one's own attorneys for this department. It seems I've testified on this particular aspect of the bill for two years now about 80 times, because this really is the impetus. This is what the bill sponsors and what the HTA want to do. And the head of the Tourism Committee is absolutely right. The attorney general testified that no request for outside attorneys has been denied, and the executive director of HTA also confirmed that.

"The attorney general also confirmed that in those rare areas where among their nearly 200 deputy attorneys they don't have one of them that has the expertise in this particular area of contract law, they themselves will advocate that they go outside. So that's not been a problem and that's not been an issue. However, when we're talking about the more broad way of going outside for attorneys, we're talking about additional expenses over and above those that have been budgeted and we're talking about the idea of bypassing the attorney general.

"This issue of the five-month delay, I know that the Chair of the Tourism Committee loves to cite this because she cited it about two dozen times so far. And to his credit, the attorney general took responsibility and apologized for the delay in this particular incident. There, however, have not been, as one would assume from her support of this bill, this override, that it happens all the time and it happens because no one cares at the attorney general's office. That's farther from the truth and the executive director of HTA said that.

"So if we look at all of these four reasons, there are reasons to have oversight; there are reasons to go through the state attorney general's office; there are reasons not to micromanage; and there are reasons to use the tourism special fund for the purposes that were outlined. And by overriding this veto, you're overriding all four of those areas.

"Thank you."

Senator Kim rose in rebuttal and said:

"Mr. President, I rise in rebuttal.

"First of all, Mr. President, the issue of the attorneys is not an isolated one. It happened under the last administration as well and it prompted the measure last year. And during that time, this administration and this attorney general testified and said that we had a new attorney general and that it wasn't going to happen, and then it did. And so apparently it's somehow within the system itself and not with whoever is the attorney general.

"Speaking on the issue on the sports coordinator, Mr. President, the HTA had problems, we had problems – this Legislature, the Senate – with the sports contractor. The sports contractor was hired separately. It didn't come out of administrative funds, but it was paid for out of HTA funds to the tune of \$750,000 for the sports coordinator. We had no control. There were conflicts of interest. And what we said is we would like to see a sports coordinator that is part of the staff that had no conflicts of interest that we wouldn't have to pay \$750,000 for. And so, in essence we're going to save money, so if I'm hearing what the previous Senator from Hawaii Kai said, that why are we going to have this sports coordinator, this is something that we wanted to save money and not spend additional moneys for.

"Finally, Mr. President, we have received testimony from the industry, the visitor industry in support of this measure. Thank you."

The motion was put by the Chair and, Roll Call vote having been requested, the veto of H.B. No. 2608, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII TOURISM AUTHORITY," was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 20. Noes, 5 (Hemmings, Hogue, Slom, Trimble, Whalen).

At 6:31 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 10:07 o'clock p.m.

FINAL READING

MATTER DEFERRED FROM EARLIER ON THE CALENDAR

Conf. Com. Rep. No. 136-04 (H.B. No. 2002, H.D. 2, S.D. 1, C.D. 1):

Senator Sakamoto moved that Conf. Com. Rep. No. 136-04 be adopted and H.B. No. 2002, H.D. 2, S.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Taniguchi.

Senator Sakamoto then offered the following amendment (Floor Amendment No. 16) to H.B. No. 2002, H.D. 2, S.D. 1, C.D. 1:

SECTION 1. H.B. No. 2002, H.D. 2, S.D. 1, C.D. 1, is amended to read as follows:

"PART I

SECTION 1. The legislature finds that the after-school plus program, popularly known as 'A-plus', was established to provide affordable after-school care for latchkey children.

Initiated in 1990, the after-school plus program was billed as the nation's first subsidized, statewide after-school care program for public school students in kindergarten through grade six.

The legislature further finds that currently, fees and other moneys for the after-school plus program are deposited into the general fund. However, the deposit of program fees and moneys into the general fund does not guarantee that the fees and moneys will be dedicated to the after-school plus program.

The establishment of a revolving fund for the after-school plus program would provide a clear nexus between the fees assessed and collected for after-school program services and the provision of those services.

The purpose of this part is to create a revolving fund for the collection and disbursement of moneys to pay for the administration and operations of the after-school plus program.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§302A- After-school plus program revolving fund. (a) There is established the after-school plus program revolving fund to be administered by the department.

(b) The after-school plus program revolving fund shall consist of:

- (1) Fees collected by the department for administering and operating the after-school plus program, and the provision of program services;
- (2) Legislative appropriations;
- (3) All interest earned on the deposit or investment of moneys in the after-school plus program revolving fund; and
- (4) Any other moneys made available to the after-school plus program revolving fund from other sources.

(c) The department may establish appropriate fees and other charges to be assessed to each participant for the cost of administering and operating the after-school plus program. The revenues from those fees and charges shall be deposited into the revolving fund to be used to pay the costs of administering and operating the program."

SECTION 3. There is appropriated out of the after-school plus program revolving fund the sum of \$6,000,000 or so much thereof as may be necessary for fiscal year 2004-2005 to be used to pay the costs of administering and operating the after-school plus program.

The sum appropriated shall be expended by the department of education for the purposes of this Act.

PART II

SECTION 4. The legislature finds that S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1 (Regular Session 2004), is a comprehensive measure that ambitiously aims to reinvent the public education system in numerous important ways. Some of the most critical goals of S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, are to:

- (1) Address the individual needs of students by requiring the establishment of a weighted student formula for allocating moneys to public schools;
- (2) Require no less than seventy per cent of operating funds for the department of education, excluding debt service and capital improvement programs to be expended by school principals;
- (3) Empower principals as educational leaders of their schools;
- (4) Support principals and involve school communities by establishing school community councils at public schools;
- (5) Require the development of plans, to be implemented in the 2006-2007 school year, for performance contracts for principals;
- (6) Remove bureaucratic constraints that hamper the effectiveness of the department of education;
- (7) Enhance the accountability system of the department of education; and

(8) Provide more books and learning materials for students.

These are only some of the ways in which S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, seeks to improve Hawaii's public schools. In recognition of the importance of this essential and revolutionary bill, the legislature took early action to ensure that the governor and other concerned stakeholders had ample time to reflect upon the bill and express their concerns or suggest improvements which could be addressed before the end of the legislative session.

One suggestion for amending this bill was to accelerate the implementation of the weighted student formula. S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, sets an extremely ambitious agenda for Hawaii's public schools. They will be faced with a new funding allocation system, a new school community council system, and new responsibilities in expending an increased percentage of their operating budget at the school level.

S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, provides funding for the department of education to pilot school community councils and the development of academic and financial plans. This Act specifies that this pilot program shall be implemented no later than January 1, 2005, ensuring the department of education begins these critical aspects of the education reinvention effort in a timely manner.

Other suggestions for amending the bill were to ensure that principals are sufficiently empowered to manage effectively, and clarify the relationship between principals and school community councils to ensure that decision-making can be executed efficiently. Although S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, expressly places principals in control of their schools, the legislature finds that more can be done to ensure their ability to effectively lead. This Act specifies that principals, rather than school community councils, shall be responsible for the initial development of their schools' academic and financial plans. This will ensure that principals are intimately involved in the formulation and execution of their schools' educational and fiscal goals.

A final suggestion to improve S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, was to allow charter schools to choose whether they want to be funded under the weighted student formula. Accordingly, this Act allows charter schools to select, as a group, whether to receive allocations through the weighted student formula for each fiscal biennium.

In approving S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, the legislature has fashioned an innovative, comprehensive, and ambitious yet implementable law, the purpose of which is to improve student achievement. In doing this, the legislature has committed itself, the board of education, the department of education, the governor, and the entire state government to efforts that require actions and commitment over many years. The complete effort to reinvent public schools begins with the enactment of both S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, and this Act.

Upon enactment, the creation and work of the committee on weights begins. Work begins immediately to prepare for the implementation of the school community councils, which must be in place by July 1, 2005. Beginning January 1, 2005, one school in each complex area, or fifteen in total, will pilot the process that the principal and the school community councils will use in developing their individual school's academic and financial plan. All schools will have school community councils by July 1, 2005, and they will receive training for their duties, including reviewing and recommending for approval by the complex area superintendent the academic and financial plans for their school.

The principals academy will be developed during the latter half of 2004 to provide training for principals in developing and implementing budgets, writing academic plans, and working effectively with school community councils.

The board of education will initially adopt the weighted student formula recommended by the committee on weights by

December 1, 2005. Principals will prepare and submit to the school community councils their academic and financial plans, which will be approved by the complex area superintendent no later than April 1, 2006. School allocations based on the weighted student formula will be made by July 15, 2006.

As experience is gained, the funds that each principal will budget and expend may be increased by the department of education. Local control of schools will also increase, allowing the principal and the school community council to shape their particular school to meet the needs of their students.

Other actions are required to reinvent education, which include the development of performance-based contracts for principals, the adoption of a unified school calendar, and a reduction of the bureaucracy that hinders the department of education in providing support services for the schools. All of these actions will take place over the next three years.

The legislature finds that the actions required to improve student achievement and the implementation of those requirements as set forth in S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, and this Act, are prudent and reasonable. The legislature invites the people of this State to lend their support, time, and participation in this endeavor to improve student achievement.

SECTION 5. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§302A- New century charter schools and new century conversion charter schools; weighted student formula. Notwithstanding section 302A-1185 and beginning on September 1, 2006, new century charter schools and new century conversion charter schools shall elect whether to receive allocations according to the weighted student formula adopted pursuant to section 302A- by the board of education; provided that:

- (1) All new century charter schools and new century conversion charter schools, as a group, shall elect whether to receive allocations through the weighted student formula;
- (2) Any election by new century charter schools and new century conversion charter schools to receive allocations, or not to receive allocations, through the weighted student formula shall be made by September 1 of each even-numbered year, and such election shall apply to the fiscal biennium beginning July 1 of the following year; and
- (3) The election to receive allocations, or not to receive allocations, through the weighted student formula shall be communicated to the department through the charter school administrative office.”

SECTION 6. The Act that resulted from the enactment of S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, Regular Session of 2004, is amended by amending section 1 to read as follows:

“SECTION 1. Although many responsibilities are laid upon education, ultimately education must do no less than advance the endowment of human culture itself, so that each succeeding generation finds itself further along the road towards peace, social justice, and environmental sustainability in a society guided by creativity, compassion, and curiosity. This Act is a road map for a critical phase in that ongoing journey.

The legislature finds that significant changes need to be made to enhance Hawaii’s public education system to ensure the success of that journey. Although the State’s students, parents, teachers, school administrators, departmental staff, and other educational stakeholders strive to achieve excellence, their efforts will never be completely successful until various aspects of the system around them are improved.

The legislature has supported and will continue to support efforts by the department of education to improve Hawaii’s schools as a means of enhancing the academic achievement, safety and well being, and civic commitment of students, to meet the evolving needs of today’s communities.

The coordinated package of initiatives in this Act aims to implement comprehensive education reform in Hawaii’s public schools and shall be known as the ‘Reinventing Education Act of 2004.’ Its main elements include:

- (1) Establishing a weighted student formula;
- (2) Providing additional information technology;
- (3) Empowering principals through a Hawaii principals academy and other means;
- (4) Strengthening community involvement through school community councils and parent-community networking centers;
- (5) Providing more mathematics textbooks;
- (6) Lowering class size in kindergarten, grade one, and grade two;
- (7) Providing full-time, year-round, high school student activity coordinators;
- (8) Providing support for students who need additional help to succeed in school;
- (9) Establishing a national board certification incentive program for teachers;
- (10) Enhancing teacher education;
- (11) Reducing the bureaucracy that hampers the effectiveness of the department of education;
- (12) Improving the educational accountability system; and
- (13) Requiring [the] board of education members to hold community meetings in their districts.

Research shows that student performance is significantly higher in smaller schools. While establishing smaller schools throughout the State is not financially feasible, some schools have taken it upon themselves to create smaller and more manageable learning communities within their schools. Research also strongly supports the need for early childhood education and the establishment of a coherent system that spans all levels of education. The department of education, teamed with the University of Hawaii and Good Beginnings Alliance to create a vision for such a system, which was presented in 2002, [and] is now being implemented.

Despite these efforts, more needs to be done. Currently, public school principals are faced with a nearly impossible task, as they are asked to attend to every detail of operating their schools without enough institutional support or discretion to expend funds. While some support and additional school leadership is provided by the school/community-based management (SCBM) system at many schools throughout the State, SCBM plays a far more limited role at some locations, and has not been implemented at all at others.

Recently, departmental leadership was decentralized through the creation of the complex area system, including the hiring of complex area superintendents. While replacing the old district system with this new structure was an important first step, further changes need to be made to allow meaningful authority to exist as close to the schools as possible. The complex area structure will serve as an excellent base upon which to build these continued reforms. It is the legislature’s intent to place a far greater number of decisions, and a much higher percentage of moneys, directly in the hands of individual schools and their leaders.

Another area of improvement necessary to promote excellence in learning is the method by which moneys are allocated to individual schools. Hawaii currently receives high marks nationally for funding equity, as being organized as a single unified system enables the State to fairly disburse moneys to schools. In other states, local revenue sources such as property taxes account for a significant portion of school and district funding, resulting in massive financial disparities between schools in more and less affluent areas.

Although the State avoids this particular pitfall, further improvements can be made to ensure that moneys go to the schools that truly have the greatest need, and to place more moneys at the discretion of individual schools. While the current funding system takes into account certain criteria when

allocating moneys to schools, it does not comprehensively address the fact that some students are more costly to educate than others. For example, students with special needs, such as those with limited proficiency in English, or who have physical, psychological, or other impediments to learning, are more expensive to teach than students who are not faced with these barriers.

One method that can be used to address these funding issues is a weighted student formula. Under such a system, moneys are allocated to schools based on a system of weighted characteristics that apply to every student in the public schools.

Under a weighted student formula there are several advantages. Among other things:

- (1) The relative cost of educating students can be much more accurately assessed, based upon the unique learning needs of each student;
- (2) Funds follow students to whichever school they attend; and
- (3) The budget process becomes more transparent as it is based on dollars, not staff positions.

However, establishing a weighted student formula cannot be effective in a vacuum. Other reform measures must be implemented as well. Principals will be empowered to act as the educational leaders of their schools, with more authority relating to budgeting, and more flexibility to expend funds. With these expanded powers, principals will be held accountable for their performance through a system that includes rewards, assistance, and sanctions. Principals will also need more training and support if they are required to take on additional duties, and are expected to advance student success. Furthermore, community involvement and support of schools will need to be enhanced if schools are to work effectively.

The department of education is also faced with significant impediments that will likely reduce its ability to effectively implement the weighted student formula. With educational responsibilities spread throughout numerous state agencies, there are various roadblocks to progress that could prevent the department of education and individual schools from successfully performing their duties and effectively using a new funding system.

The legislature finds that a comprehensive effort addressing all of these issues is required for Hawaii's public schools to maximize student achievement. Accordingly, the purpose of this Act is to enhance educational outcomes in Hawaii's public schools by:

- (1) Implementing the weighted student formula by:
 - (A) Requiring the department of education to provide supplementary allocations to those schools whose budgets are adversely affected by the weighted student formula for no more than three years beginning with the 2006-2007 school year;
 - (B) Establishing a committee on weights within the department of education to determine the unit value of student weights and recommend a weighted student formula to the board of education at least annually, and appropriating \$10,000 to support the operation of the committee;
 - (C) Requiring the department of education to adopt a weighted student formula in allocating funds to ~~[all]~~ public schools ~~[-excluding new century charter schools and new century conversion charter schools];~~
- (2) Appropriating \$2,000,000 to the department of education to facilitate field support, security, and privacy for the telecommunications network, and training regarding information technology infrastructure used to enhance accountability, compliance with the federal No Child Left Behind Act of 2001, and implementation of school reform including the weighted student formula;

- (3) Supporting and empowering principals by:
 - (A) Requiring the department of education, with the invited participation of the exclusive bargaining agent of educational officers of the department of education, to propose salary schedules and other terms and conditions of employment of principals and vice principals based upon a twelve-month term of service, and report findings back to the ~~[Legislature]~~ legislature no later than twenty days prior to the regular session of 2005;
 - (B) Requiring the board of education to classify all educational officer positions of the department of education to adopt two separate classification/compensation plans for educational officers ~~[-one]~~:
 - (i) ~~One~~ for principals and vice principals (based on the general pattern of a school administrator's career development and associated school administrator's qualification requirements); and ~~[one]~~
 - (ii) ~~One~~ for all other educational officers (reflective of the career development pattern and qualification requirements for the respective professional field of expertise), and including classification appeals procedures for both; ~~[and]~~
 - (C) Convening a working group to create a plan for the implementation of performance contracts for principals;
 - (D) Establishing a Hawaii principals academy to support and train complex area superintendents, principals, and prospective principals, and appropriating \$500,000 to operate the academy;
 - (E) Clarifying the authority and responsibility of principals;
 - (F) Appropriating \$183,780 to operate the department of education's administrator certification for excellence (ACE) program; and
 - (G) Appropriating \$400,000 to compensate principals recalled to work by the department, outside of their regular term of service, for professional development and any other activities that may enhance their effectiveness as leaders of their schools;
- (4) Enhancing community involvement in schools by:
 - (A) Appropriating \$350,000 for training and other activities needed to facilitate the transition from the current SCBM system into a mandatory school community council system to be implemented at each public school, excluding new century charter schools and new century conversion charter schools;
 - (B) Clearly articulating the balance and reciprocity of powers and responsibilities between the principal and school community council; ~~and~~
 - (C) Appropriating \$1,743,900 to support and enhance ~~[a proven means of improving parental and community involvement in schools,]~~ parent-community networking centers;
- (5) Directly, concretely supporting the academic achievement and holistic development of students by:
 - (A) Appropriating \$2,500,000 for mathematics textbooks and other mathematics learning materials in schools ~~[-]~~; provided that mathematics curriculum is aligned within the school complex;
 - (B) Appropriating \$2,143,350 to reduce class size in kindergarten, grade one, and grade two by hiring seventy-five elementary school teachers;
 - (C) Appropriating \$460,000 for full-time, year-round, high school student activity coordinators; and

- (D) Appropriating \$100,000 for programs that support parents in working with students who need additional help to succeed in school; provided the programs have measurable outcomes;
- (6) Directly, concretely supporting teachers by:
- (A) Establishing a national board certification incentive program to be administered by the Hawaii teacher standards board to continue comparable efforts initiated under a memorandum of understanding between the department of education and Hawaii teacher standards board which expires on June 30, 2005, and appropriating \$480,000 [~~funding~~] to execute the memorandum of understanding during fiscal year 2004-2005;
- (B) Appropriating \$92,000 for the administration of the Hawaii teacher standards board; and
- (C) Increasing the pool of qualified teachers and administrators by appropriating \$500,000 to fund seven teacher education positions and one education administration faculty position at the college of education of the University of Hawaii;
- (7) Reducing bureaucracy that hampers the effectiveness of the department of education by:
- (A) Requiring the department of education to convene an interagency working group to address systemic impediments to the efficient management and operation of schools;
- (B) Transferring certain key functions from various state agencies to the department of education; and
- (C) Requiring the board of education to adopt a single school calendar for all public schools to apply beginning with the 2006-2007 school year;
- (8) Enhancing educational accountability by:
- (A) Requiring academic achievement, safety and well being, and civic responsibility of individual students to be assessed and tracked;
- (B) Expanding the accountability provision to include fiscal accountability;
- (C) Including complex area superintendents and principals in the accountability system;
- (D) Requiring clear, easily understandable report cards on key performance indicators for schools, school complexes, and the public school system; and
- (E) Requiring the board of education to hold community meetings in each school district;
- (9) Appropriating \$400,000 for the piloting of school community councils and development of academic and financial plans at selected schools prior to the statewide implementation of the weighted student formula; and
- (10) Requiring the department of education to submit findings and recommendations to the legislature prior to the 2005 regular session relating to the implementation of this Act."

SECTION 7. The Act that resulted from the enactment of S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, Regular Session of 2004, is amended by amending section 4 to read as follows:

"SECTION 4. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§302A- Weighted student formula.** Based upon recommendations from the committee on weights, the board of education, not less than annually, shall adopt a weighted student formula for the allocation of moneys to public schools[~~excluding new century charter schools and new century conversion charter schools;~~] which takes into account the educational needs of each student. The department, upon the receipt of appropriated moneys, shall use the weighted student formula to allocate funds to public schools[~~excluding new century charter schools and new century conversion charter~~

~~schools]. Principals shall expend moneys provided to the principals' schools. This section shall only apply to new century charter schools and new century conversion charter schools for fiscal years in which the new century charter schools and new century conversion charter schools elect pursuant to section 302A- to receive allocations according to the weighted student formula."~~

SECTION 8. The Act that resulted from the enactment of S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, Regular Session of 2004, is amended by amending section 6 to read as follows:

"SECTION 6. [~~Section~~] Chapter 302A, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"~~Weighted student formula~~" means a formula for allocating operating moneys to individual public schools that includes a system of weighted characteristics affecting the relative cost of educating each student attending a public school[~~excluding new century charter schools and new century conversion charter schools~~]."

SECTION 9. The Act that resulted from the enactment of S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, Regular Session of 2004, is amended by amending section 14 to read as follows:

"SECTION 14. The superintendent of education shall select and convene a working group to create a plan for performance contracts for principals to be implemented beginning with the 2006-2007 school year. The working group shall include:

- (1) The superintendent of education;
- (2) Representatives of complex area superintendents;
- (3) Representatives of school principals; and
- (4) Representatives of any other agency, organization, or group as deemed appropriate by the superintendent of education.

The superintendent shall request the exclusive representative for collective bargaining unit 6 to participate in the working group.

The working group shall:

- (1) Establish appropriate performance criteria [~~for~~] which shall be used in individual performance contracts for principals [~~are to be evaluated under performance contracts~~], including:
 - (A) Core criteria to be incorporated into performance contracts statewide; and
 - (B) Criteria that may be used at the discretion of individual schools;
- (2) Determine appropriate performance benchmarks, or methods of devising performance benchmarks, that may be used to assess principal performance relative to expected standards[~~;~~]; provided that such performance benchmarks, at a minimum, shall include those elements related to principals in the educational accountability system;
- (3) Determine appropriate rewards, assistance, and sanctions to be included or considered for inclusion in performance contracts; and
- (4) Address any other issues necessary for the implementation of performance contracts.

The department of education shall submit findings, including proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2005."

SECTION 10. The Act that resulted from the enactment of S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, Regular Session of 2004, is amended by amending section 16 to read as follows:

"SECTION 16. Section 302A-1103, Hawaii Revised Statutes, is amended to read as follows:

"**§302A-1103 Principal; authority and responsibility.** The role of the principal shall include but not be limited to overseeing the day-to-day management of the school, the primary function of which is to develop and deliver instructional services to students in accordance with statewide educational policy and to enable students to meet or exceed statewide academic standards. The principal shall:

- (1) Ensure that the curriculum facilitates the achievement of the statewide student performance standards adopted for the public school system;
- (2) Develop and present to the school community council for its review and approval, academic and financial plans relating to the school;
- ~~[(2) Maintain and exercise]~~ (3) Exercise authority over the implementation of the budget, policies, and operations of the school; and
- ~~[(3)]~~ (4) Collaborate with other principals in the principal's school complex to ensure that:
 - (A) Logical, sequential curricula are adopted within the school complex;
 - (B) Best practices are shared among and implemented by schools within the school complex;
 - (C) The goals and objectives of the school complex are being met;
 - (D) The use of school complex-based personnel and contractors who divide their time between more than one school in a school complex is coordinated to maximize efficiency; and
 - (E) The passage of students through the continuum of grades is coordinated in a manner consistent with section 302A-1004."

SECTION 11. The Act that resulted from the enactment of S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, Regular Session of 2004, is amended by amending section 25 to read as follows:

"SECTION 25. Section 302A-1124, Hawaii Revised Statutes, is amended to read as follows:

"§302A-1124 Mandate to initiate school community councils. (a) The department, through the board and its superintendent, shall establish a school community council system under which each public school, excluding new century charter schools and new century conversion charter schools, shall create and maintain a school community council. Each school community council shall:

- (1) ~~[Participate in the development of, and recommend for approval by the complex area superintendent, the school's annual:~~
 - ~~(A) Academic plan; and~~
 - ~~(B) Financial plan;]~~

Review and evaluate the school's academic plan and financial plan, and either recommend revisions of the plans to the principal, or recommend the plans for approval by the complex area superintendent;
 - (2) Ensure that the school's academic and financial plans are aligned with the educational accountability system under section 302A-1004;
 - (3) Participate in principal selection and evaluation, and transmit any such evaluations to the complex area superintendent; and
 - (4) Provide collaborative opportunities for input and consultation.
- (b) School community councils shall be exempt from the requirements of chapters 91 and 92. The school community councils shall:
- (1) Make available the notices and agendas of public meetings:
 - (A) At a publicly accessible area in the school's administrative office so as to be available for review during regular business hours; and
 - (B) On the school's Internet web site, not less than six calendar days prior to the public meeting, unless a waiver is granted by the superintendent in the case of an emergency; and
 - (2) Make available the minutes from public meetings on a timely basis in:
 - (A) The school's administrative office so as to be available for review during regular business hours; and
 - (B) On the school's Internet web site.

~~community council to revise its school]~~ revisions to a school's academic and financial plans if the plans are in violation of law or conflict with statewide educational policies and standards[-], or are otherwise in the best interests of the school.

(d) The superintendent of education may recommend to the board of education dissolution of a school community council and establish an interim school community council if the school community council engages in any act or omission that would constitute gross negligence, wilful and wanton misconduct, or intentional misconduct. The superintendent may recommend to the board the removal of any member of a school community council. The superintendent shall appoint or facilitate the creation of an interim school community council at any school that has not established a council or has had its council dissolved. In appointing or facilitating the creation of an interim school community council at any school that has had its council dissolved, the superintendent may appoint individuals who were previously members of the council.

(e) Unless otherwise specified, each school community council shall establish policies governing the council's composition, election, staggered terms of office for members, operation, and vacancies; provided that:

- (1) The number of school personnel in any school community council shall be equal to the number of primary stakeholders on the school community council;
- (2) At the elementary and middle school levels, each school community council shall be composed of the principal and at least one member representing each of the following groups:
 - (A) Parents elected by ballots distributed among and collected from the parents of the school's students;
 - (B) Teachers elected by ballots distributed among and collected from teachers of the school;
 - (C) Noncertificated school personnel elected by ballots distributed among and collected from noncertificated personnel of the school;
 - (D) Community representatives elected by ballots distributed among and collected from parents of the school's students; and
 - (E) Student representatives selected by the student council of the school;

and
- (3) At the high school level, each school community council shall be composed of the principal and at least one member representing each of the following groups:
 - (A) Parents elected by ballots distributed among and collected from parents of the school's students;
 - (B) Teachers elected by ballots distributed among and collected from teachers of the school;
 - (C) Noncertificated school personnel elected by ballots distributed among and collected from noncertificated personnel of the school;
 - (D) Community representatives elected by ballots distributed among and collected from the parents of the school's students; and
 - (E) Student representatives selected by the student council of the school.

For the purposes of this subsection, "primary stakeholders" means students, parents, and community members.

(f) School community councils shall elect officers, including:

- (1) A chairperson;
- (2) A vice-chairperson;
- (3) A secretary; and
- (4) Other officers as needed to perform stated duties in support of the work of the council.

(g) The principal shall have the authority to set aside any decision made by the school community council if the principal determines it to be in the best ~~[interest]~~ interests of the

school[;] provided that the principal notifies the school community council. If the school community council opposes a decision of the principal, an appeal shall first be brought to the complex area superintendent for resolution and, if necessary, to the superintendent and, finally, to the board of education. [~~The principal shall not set aside decisions made by the school community council to recommend annual academic and financial plans for approval by the complex area superintendent.~~]

(h) Complex area superintendents shall assist the school community councils and principals within their respective complex areas in:

- (1) Obtaining the support and services of the department; and
- (2) Ensuring the progress and success of the school's academic and financial plan.”

SECTION 12. The Act that resulted from the enactment of S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, Regular Session of 2004, is amended by amending section 59 to read as follows:

“SECTION 59. There is appropriated out of the general revenues of the State of Hawaii the sum of \$400,000[;] or so much thereof as may be necessary for fiscal year 2004-2005[;] for the piloting of school community councils and development of academic and financial plans at [~~selected public schools prior to the statewide implementation of the weighted student formula.~~] least at one school in each complex area. The pilot program shall begin no later than January 1, 2005.”

SECTION 13. The department of education shall submit to the legislature no later than twenty days prior to the convening of the regular session of 2005 a report detailing the programs and functions that would need to be placed under the control of individual schools to achieve certain benchmark figures in enabling principals to expend an increased percentage of the appropriations for total department of education budget, excluding debt service and capital improvement programs. The report shall include:

- (1) A list of functions and programs for which moneys would be expended by school principals at each of:
 - (B) Eighty per cent; and
 - (C) Ninety per cent
 of the appropriations for the total department of education budget, excluding debt service and capital improvement programs;
- (2) A description of required department infrastructure and system support, including any buyback programs for services, to achieve the benchmark figures in paragraph (1); and
- (3) A description of any other requirements foreseen by the department to be necessary to achieve the benchmark figures in paragraph (1).

PART III

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 15. This Act shall take effect upon its approval; provided that sections 2 and 3 shall take effect on July 1, 2004

Senator Sakamoto moved that Floor Amendment No. 16 be adopted, seconded by Senator Hooser.

Senator Sakamoto rose to speak on the amendment as follows:

“Mr. President, I really appreciate the member's time in bearing with the process to come to some of these amendments when trying to work with the House as well as the Governor's office and other people. The bill we overrode earlier today, our omnibus education bill, with this bill contains some amendments relating to amendments to that measure.

“First, in charter schools, the charter schools, new century charters as well as new century conversion charters, as a group

may elect to become under the weighted student formula. But that would only be every biennium. So September 1st of the even numbered years, as a group they can choose to come in or go out by September 1st making that decision.

“Another amendment clarified that principals, as their performance contract criteria gets looked at, that it include individual performance of contract criteria for principals. Also, in clarifying how their academic and financial plans are developed, clarifying that it's the principal that would develop and present the plan to the school community council for its review and approval of the academic and financial plan. The council's role would be to review and evaluate the school's academic and financial plan and either recommend revisions to the principal or recommend those plans for approval to the complex area superintendent.

“Another clarification the bill dealt with is the timing of the weighted student formula to actually happen. This bill says that there should be one school in each complex area that would be 15 that would embark on this, and the pilot program would begin no later than January 1st, 05. The following year the broader schools would participate.

“On the issue of the percentage, this bill doesn't change 70 percent and doesn't give date specific 80 or 90 percent, but we're requesting a study for the department to come back and look at issues and concerns such as creating buyback programs or a way for, if there are other barriers, getting to 80 percent or 90 percent.

“So basically, Mr. President, there were some improvements to the bill and we hope that members will support these changes.”

Senator Kawamoto rose and said:

“Mr. President, will the Chair yield to a question?”

The President posed the question, and Senator Sakamoto having answered in the affirmative, Senator Kawamoto inquired:

“Senator, I'd just like to find out if all these amendments truly had proper public hearings and the process was indeed the consequence of these amendments.”

Senator Sakamoto responded:

“I remember in a previous version of the bill on charter schools, the House had previously had the charter schools in the discussions, so that did get a hearing. On the principal's contracts, that always was in the bill. The wording of what exactly principals would do or the school community councils would do, those had discussions throughout actually the interim and Session.

“The piloting was in a previous bill. This bill just clarifies that it would be a minimum of 15. The study to go to 80 or 90 percent has always been part of the discussion with the Governor feeling it needed to be 90 percent and we weren't able to get there.

“So, the answer is yes.”

Senator Hogue rose to speak in favor and said:

“Mr. President, first of all, I'd like to speak in favor of this.

“I commend the Governor for charging the Legislature with trying to come up with amendments to the earlier reform bill. I

also thank the Chairs of the Education Committee and the members of the Majority as well for considering these amendments. I know that it had to be very, very tough. But in some cases, maybe you didn't get what you wanted, and in some cases we didn't get what we wanted, and that's the art of compromise.

"The Governor did say that she wanted movement on four of the five issues. It appears at least from first perusal that there is movement on four of the five measures, so you can't argue with that. I would hope that we can move towards 90 percent if it is possible. I notice that is the one area that is not in here. Hopefully, beyond that I would hope that eventually we also get a chance to vote on a constitutional amendment. But that was not one of the areas that the Governor brought forward so we can't quibble with that.

"So, congratulations to everyone who was involved and congratulations to the Governor for making education her top priority."

"Thank you very much, Mr. President."

Senator Trimble rose to speak in support and said:

"Mr. President, I rise to speak in favor of this measure.

"Actually, all I wanted to do was to add your name to those that the previous speaker was thanking.

"Thank you."

The motion to adopt Floor Amendment No. 16 was put by the Chair and carried.

Senator Sakamoto moved that Conf. Com. Rep. No. 136-04 be received and placed on file, seconded by Senator Hooser and carried.

By unanimous consent, H.B. No. 2002, H.D. 2, S.D. 1, C.D. 2, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," was placed on the calendar for Final Reading on Thursday, May 6, 2004.

ADJOURNMENT

At 10:15 o'clock p.m., on motion by Senator Kawamoto, seconded by Senator Hogue and carried, the Senate adjourned until 11:30 o'clock a.m., Thursday, May 6, 2004.

Respectfully submitted,

Clerk of the Senate

Approved:

President of the Senate