

## SIXTIETH DAY

Thursday, May 6, 2004

The Senate of the Twenty-Second Legislature of the State of Hawaii, Regular Session of 2004, convened at 11:44 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by the Honorable Gary L. Hooser, Hawaii State Senate, after which the Roll was called showing all Senators present.

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

## MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 535 to 548) were read by the Clerk and were placed on file:

Gov. Msg. No. 535, dated April 5, 2004, transmitting the 2003 Annual Report of the State of Hawaii Overseas Offices, prepared by the Department of Business, Economic Development, and Tourism.

Gov. Msg. No. 536, letter dated April 21, 2004, notifying the Senate that she has approved the expenditure of non-appropriated federal funds for the Department of Transportation in the increased amount of \$25,000, pursuant to Act 200, Section 129, SLH 2003.

Gov. Msg. No. 537, letter dated April 21, 2004, notifying the Senate that she has approved the expenditure of non-appropriated federal funds for the Department of Transportation in the increased amount of \$25,000, pursuant to Act 200, Section 129, SLH 2003.

Gov. Msg. No. 538, letter dated April 22, 2004, notifying the Senate that she has approved the expenditure of federal funds in excess of levels authorized by the Legislature for the Department of Agriculture in the increased amount of \$40,000 for funding to support Hawaii participants of Rapid Response Team, pursuant to Act 200, Section 129, SLH 2003.

Gov. Msg. No. 539, letter dated April 22, 2004, notifying the Senate that she has approved the expenditure of non-appropriated federal funds for the Department of Transportation in the increased amount of \$100,000, pursuant to Act 200, Section 129, SLH 2003.

Gov. Msg. No. 540, dated April 22, 2004, transmitting the Hawaii Strategic Development Corporation's Annual Report, prepared by the Department of Business, Economic Development and Tourism.

Gov. Msg. No. 541, letter dated May 3, 2004, transmitting a proposed floor amendment to replace S.B. No. 2549, S.D. 1, H.D. 1, C.D. 1, to fund amounts owed to United Public Workers Unit 1 for FY 04.

Gov. Msg. No. 542, informing the Senate that on May 4, 2004, she signed into law Senate Bill No. 2443 as Act 48, entitled: "RELATING TO ATTORNEYS' LIENS."

Gov. Msg. No. 543, informing the Senate that on May 4, 2004, she signed into law Senate Bill No. 2844 as Act 49, entitled: "RELATING TO CRIME."

Gov. Msg. No. 544, informing the Senate that on May 4, 2004, she signed into law Senate Bill No. 2294 as Act 50, entitled: "RELATING TO CRIMINAL TRESPASS."

Gov. Msg. No. 545, informing the Senate that on May 5, 2004, she signed into law Senate Bill No. 2577 as Act 54, entitled: "RELATING TO PEER REVIEW."

Gov. Msg. No. 546, informing the Senate that on May 5, 2004, she signed into law House Bill No. 1294 as Act 55, entitled: "RELATING TO ENVIRONMENTAL IMPACT STATEMENTS."

Gov. Msg. No. 547, informing the Senate that on May 5, 2004, she signed into law Senate Bill No. 3222 as Act 56, entitled: "RELATING TO MOTOR VEHICLE INSURANCE."

Gov. Msg. No. 548, dated May 6, 2004, transmitting a Supplement to the 2004 Annual Report on Positions Exempted from the Civil Service, prepared by the Department of Human Resources Development pursuant to Act 253, SLH 2000.

## DEPARTMENTAL COMMUNICATION

Dept. Com. No. 34, from the State Auditor dated May 4, 2004, transmitting a report, "Audit of the University of Hawaii Contract with the University of Hawaii Foundation," (Report No. 04-08), was read by the Clerk and was placed on file.

## HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 729 to 738) were read by the Clerk and were placed on file:

Hse. Com. No. 729, informing the Senate that the House has reconsidered H.B. No. 1043, S.D. 1, C.D. 1, heretofore vetoed as set forth in a Governor's Message dated May 3, 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. 730, informing the Senate that the House has reconsidered H.B. No. 2743, H.D. 2, S.D. 1, C.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. 731, informing the Senate that the House has reconsidered S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, heretofore vetoed as set forth in a Governor's Message dated April 29, 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. 732, 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 May 3, 2004:

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

Hse. Com. No. 733, informing the Senate that the following bills passed Final Reading in the House of Representatives on May 3, 2004:

H.B. No. 680, H.D. 2, S.D. 1, C.D. 1;  
 H.B. No. 851, H.D. 1, S.D. 1, C.D. 1;  
 H.B. No. 1374, H.D. 2, S.D. 2, C.D. 1;  
 H.B. No. 1710, H.D. 2, S.D. 2, C.D. 1;  
 H.B. No. 1756, H.D. 2, S.D. 1, C.D. 1;  
 H.B. No. 1786, H.D. 1, S.D. 2, C.D. 1;  
 H.B. No. 1820, H.D. 1, S.D. 1, C.D. 1;  
 H.B. No. 1904, H.D. 1, S.D. 2, C.D. 1;  
 H.B. No. 1908, H.D. 2, S.D. 1, C.D. 1;  
 H.B. No. 1929, H.D. 1, S.D. 2, C.D. 1;  
 H.B. No. 2005, H.D. 1, S.D. 1, C.D. 1;  
 H.B. No. 2009, H.D. 1, S.D. 1, C.D. 1;  
 H.B. No. 2049, H.D. 1, S.D. 2, C.D. 1;  
 H.B. No. 2074, H.D. 1, S.D. 1, C.D. 1;  
 H.B. No. 2136, H.D. 1, S.D. 1, C.D. 1;  
 H.B. No. 2137, H.D. 1, S.D. 1, C.D. 1;  
 H.B. No. 2143, H.D. 2, S.D. 1, C.D. 1;  
 H.B. No. 2396, H.D. 2, S.D. 2, C.D. 1;  
 H.B. No. 2411, H.D. 1, S.D. 1, C.D. 1;  
 H.B. No. 2511, S.D. 1, C.D. 1;  
 H.B. No. 2523, H.D. 1, S.D. 1, C.D. 1;  
 H.B. No. 2547, H.D. 2, S.D. 2, C.D. 1;  
 H.B. No. 2662, H.D. 1, S.D. 1, C.D. 1;  
 H.B. No. 2667, H.D. 2, S.D. 1, C.D. 1;  
 H.B. No. 2703, H.D. 1, S.D. 2, C.D. 1;  
 H.B. No. 2773, H.D. 1, S.D. 1, C.D. 1;  
 H.B. No. 2774, H.D. 1, S.D. 1, C.D. 1;  
 H.B. No. 2786, H.D. 1, S.D. 2, C.D. 1;  
 H.B. No. 2840, H.D. 1, S.D. 3, C.D. 1;  
 H.B. No. 2883, H.D. 2, S.D. 2, C.D. 1;  
 H.B. No. 2911, H.D. 2, S.D. 1, C.D. 1;  
 S.B. No. 17, S.D. 1, H.D. 1, C.D. 2;  
 S.B. No. 214, S.D. 3, H.D. 2, C.D. 1;  
 S.B. No. 420, S.D. 1, H.D. 1, C.D. 1;  
 S.B. No. 459, S.D. 1, H.D. 1, C.D. 2;  
 S.B. No. 473, S.D. 1, H.D. 3, C.D. 1;  
 S.B. No. 779, S.D. 2, H.D. 2, C.D. 1;  
 S.B. No. 1238, S.D. 2, H.D. 2, C.D. 1;  
 S.B. No. 1239, S.D. 1, H.D. 2, C.D. 1;  
 S.B. No. 1318, S.D. 1, H.D. 2, C.D. 1;  
 S.B. No. 1491, S.D. 1, H.D. 1, C.D. 1;  
 S.B. No. 1611, H.D. 2, C.D. 1;  
 S.B. No. 2045, S.D. 2, H.D. 1, C.D. 1;  
 S.B. No. 2056, S.D. 1, H.D. 2, C.D. 1;  
 S.B. No. 2063, S.D. 2, H.D. 2, C.D. 1;  
 S.B. No. 2073, S.D. 2, H.D. 2, C.D. 1;  
 S.B. No. 2077, S.D. 2, H.D. 1, C.D. 1;  
 S.B. No. 2134, H.D. 1, C.D. 1;  
 S.B. No. 2165, S.D. 1, H.D. 1, C.D. 1;  
 S.B. No. 2200, H.D. 1, C.D. 1;  
 S.B. No. 2210, S.D. 2, H.D. 1, C.D. 1;  
 S.B. No. 2281, S.D. 1, H.D. 1, C.D. 1;  
 S.B. No. 2355, S.D. 2, H.D. 2, C.D. 1;  
 S.B. No. 2358, S.D. 2, H.D. 1, C.D. 1;  
 S.B. No. 2396, S.D. 1, H.D. 1, C.D. 1;  
 S.B. No. 2404, S.D. 2, H.D. 1, C.D. 1;  
 S.B. No. 2424, S.D. 2, H.D. 2, C.D. 1;  
 S.B. No. 2425, S.D. 1, H.D. 1, C.D. 1;  
 S.B. No. 2440, S.D. 1, H.D. 1, C.D. 1;  
 S.B. No. 2528, S.D. 1, H.D. 1, C.D. 1;  
 S.B. No. 2529, H.D. 1, C.D. 1;  
 S.B. No. 2538, S.D. 1, H.D. 1, C.D. 1;  
 S.B. No. 2550, H.D. 1, C.D. 1;  
 S.B. No. 2551, H.D. 1, C.D. 1;  
 S.B. No. 2595, S.D. 2, H.D. 2, C.D. 1;  
 S.B. No. 2606, S.D. 1, H.D. 2, C.D. 1;  
 S.B. No. 2671, S.D. 1, H.D. 1, C.D. 1;

S.B. No. 2690, S.D. 2, H.D. 2, C.D. 1;  
 S.B. No. 2704, H.D. 1, C.D. 1;  
 S.B. No. 2716, S.D. 1, H.D. 2, C.D. 1;  
 S.B. No. 2790, S.D. 1, H.D. 1, C.D. 1;  
 S.B. No. 2791, S.D. 1, H.D. 1, C.D. 1;  
 S.B. No. 2834, S.D. 2, H.D. 2, C.D. 1;  
 S.B. No. 2839, S.D. 2, H.D. 2, C.D. 1;  
 S.B. No. 2873, S.D. 1, H.D. 2, C.D. 1;  
 S.B. No. 2878, S.D. 2, H.D. 2, C.D. 1;  
 S.B. No. 2879, S.D. 2, H.D. 2, C.D. 1;  
 S.B. No. 2887, S.D. 2, H.D. 2, C.D. 1;  
 S.B. No. 2906, S.D. 1, H.D. 2, C.D. 1;  
 S.B. No. 2909, S.D. 1, H.D. 1, C.D. 1;  
 S.B. No. 2926, S.D. 1, H.D. 2, C.D. 1;  
 S.B. No. 2930, S.D. 2, H.D. 1, C.D. 1;  
 S.B. No. 2936, S.D. 2, H.D. 1, C.D. 1;  
 S.B. No. 2951, S.D. 1, H.D. 1, C.D. 1;  
 S.B. No. 2968, S.D. 1, H.D. 1, C.D. 1;  
 S.B. No. 2976, S.D. 1, H.D. 1, C.D. 1;  
 S.B. No. 2995, S.D. 2, H.D. 1, C.D. 1;  
 S.B. No. 3018, S.D. 2, H.D. 1, C.D. 1;  
 S.B. No. 3020, H.D. 1, C.D. 1;  
 S.B. No. 3049, S.D. 2, H.D. 2, C.D. 1;  
 S.B. No. 3080, S.D. 2, H.D. 2, C.D. 1;  
 S.B. No. 3086, H.D. 1, C.D. 1;  
 S.B. No. 3092, S.D. 1, H.D. 1, C.D. 1;  
 S.B. No. 3106, S.D. 1, H.D. 2, C.D. 1;  
 S.B. No. 3148, S.D. 2, H.D. 3, C.D. 1;  
 S.B. No. 3153, S.D. 2, H.D. 2, C.D. 1;  
 S.B. No. 3162, S.D. 1, H.D. 1, C.D. 1;  
 S.B. No. 3170, S.D. 2, H.D. 2, C.D. 1;  
 S.B. No. 3175, S.D. 2, H.D. 2, C.D. 1;  
 S.B. No. 3182, H.D. 1, C.D. 1;  
 S.B. No. 3193, S.D. 2, H.D. 2, C.D. 1; and  
 S.B. No. 3230, S.D. 2, H.D. 1, C.D. 1.

Hse. Com. No. 734, informing the Senate that the House reconsidered its action taken on April 8, 2004, in disagreeing to the amendments proposed by the Senate to H.B. No. 2408, H.D. 2 (S.D. 1).

Hse. Com. No. 735, informing the Senate that the House reconsidered its action taken on April 13, 2004, in disagreeing to the amendments proposed by the Senate to H.B. No. 1987, H.D. 1 (S.D. 1).

Hse. Com. No. 736, 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. 1780, H.D. 1, (S.D. 1);  
 H.B. No. 2025, H.D. 3, (S.D. 2); and  
 H.B. No. 2459, H.D. 1, (S.D. 2).

Hse. Com. No. 737, returning S.B. No. 1302, S.D. 1, which passed Third Reading in the House of Representatives on May 3, 2004.

Hse. Com. No. 738, returning S.C.R. No. 13, which was adopted by the House of Representatives on May 3, 2004.

#### ORDER OF THE DAY

#### ADVISE AND CONSENT

Stand. Com. Rep. No. 3531 (Gov. Msg. No. 295):

Senator Taniguchi moved that Stand. Com. Rep. No. 3531 be received and placed on file, seconded by Senator Kokubun and carried.

Senator Taniguchi then moved that the Senate advise and consent to the nomination of CAROL ANN BURDICK to the Board of Taxation Review, 2<sup>nd</sup> Taxation District (Maui), term to expire June 30, 2006, 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. 3532 (Gov. Msg. No. 294):

Senator Taniguchi moved that Stand. Com. Rep. No. 3532 be received and placed on file, seconded by Senator Kokubun and carried.

Senator Taniguchi then moved that the Senate advise and consent to the nomination of DICK ISOO OSHIMA to the Board of Taxation Review, 1<sup>st</sup> Taxation District (Oahu), term to expire June 30, 2007, 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. 3533 (Gov. Msg. No. 296):

Senator Taniguchi moved that Stand. Com. Rep. No. 3533 be received and placed on file, seconded by Senator Kokubun and carried.

Senator Taniguchi then moved that the Senate advise and consent to the nomination of WILLIAM FRANCIS DAILEY to the Board of Taxation Review, 2<sup>nd</sup> Taxation District (Maui), term to expire June 30, 2007, 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. 3534 (Gov. Msg. No. 309):

Senator Sakamoto moved that Stand. Com. Rep. No. 3534 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 ROBERTA M. RICHARDS to the Western Interstate Commission for Higher Education (WICHE), term to expire June 30, 2005, 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. 3536 (Gov. Msg. Nos. 487 and 488):

Senator Kim moved that Stand. Com. Rep. No. 3536 be received and placed on file, seconded by Senator Tsutsui and carried.

Senator Kim then moved 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, term to expire June 30, 2008 (Gov. Msg. No. 487); and

KAWAIKAPUOKALANI K. HEWETT, term to expire June 30, 2006 (Gov. Msg. No. 488),

seconded by Senator Tsutsui.

Senator Kim rose to speak in support of the nominee and said:

"Mr. President, I rise to speak in favor of Gov. Msg. Nos. 487 and 488.

"Mr. President, both appointments are to the Board of the Hawaii Tourism Authority and their vision statements, members, are all on your desks.

"First, I urge the confirmation of Gail Y. Haraguchi. She is the Senate nominee. Ms. Haraguchi is the product of the public schools – Castle High School, Kapiolani Community College and the University of Hawaii. She is a businesswoman and community leader involved in the junior golf program. She offers a fresh viewpoint, Mr. President, and a balance to the Hawaii Tourism Authority. Her vision for Hawaii is to focus on the quality of the visitor experience and to maximize the salability of Hawaii's natural beauty and our natural resources.

"Mr. President, the second nominee is Kawaikapuokalani K. Hewett. He, too, is the product of our public schools – Castle High School, Windward Community College and the University of Hawaii. He is the House nominee. Mr. Hewett fulfills the requirement of at least one member of the HTA shall have knowledge, experience and expertise on the area of Hawaiian cultural practices. Mr. President, it has been two years since this requirement was added to the law and finally today we will have representation from the host culture on this very important tourism board. Mr. Hewett is an icon in Hawaii. He is a talented entrepreneur, an educator, a practitioner who is nationally recognized for his expertise in music, hula, lei-making, and Hawaiian language to name a few. His vision is to protect, preserve and perpetuate the Hawaiian culture while promoting it with respect and reverence.

"Mr. President, I urge all of my colleagues to vote 'aye' for both nominations.

"Thank you."

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

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

#### FINAL READING

#### MATTERS DEFERRED FROM MONDAY, MAY 3, 2004

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

On motion by Senator Kanno, seconded by Senator Taniguchi and carried, Conf. Com. Rep. No. 147-04 was adopted 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," 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. 152-04 (S.B. No. 459, S.D. 1, H.D. 1, C.D. 2):

Senator Hanabusa moved that Conf. Com. Rep. No. 152-04 be adopted and S.B. No. 459, S.D. 1, H.D. 1, C.D. 2, having been read throughout, pass Final Reading, seconded by Senator English.

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

“Mr. President, I rise in favor of this bill.

“Mr. President, I would like to thank the Judiciary Chair for keeping her promise and looking at this bill. This conference that we had a couple of years ago, although we only took some of the definitions I think it’s a good start for campaign spending, and I would like to thank her for allowing all of us to again really define what bundling is.

“Therefore, I urge all my colleagues to vote ‘aye.’”

Senator Ihara rose in support with reservations and said:

“Mr. President, I rise in support of S.B. No. 459 with reservations.

“Mr. President, while this bill contains mostly minor improvements to the state campaign finance law, there is clearly one good change in it – that of making some campaign law violations a felony. This bill also closes a part of the pay-to-play system by banning some government contractors from making campaign donations. But contractors in their request for proposal process are not banned. The ban does not affect contractors in the dozens of agencies exempted from the state procurement code. The campaign spending commission director estimates that if this – and I’ll call it ban on some government contractors – if this ban was in effect a few years ago, it would have prevented about 20 percent of the illegal contributions that have occurred in recent years.

“Contractors who still want to pay to play can do so under this bill because they can donate before they begin procurement activity. The ban only starts once they start what’s called procurement activity and, I suppose, indicate interest in a contract, or they can simply be a subcontractor because this bill does not stop subcontractors from donating to candidates. As you know, many, many of these donations and many of the illegal donations that have been reported in the past have been given by subcontractors.

“Also, small-purchase contractors providing less than \$25,000 in goods and services can still donate to candidates under this bill. That includes the type of contractors involved in the recent Department of Transportation’s kickback corruption scandal at the airport. At least five contractors have pleaded guilty for padding their invoices and giving over \$150,000 in kickbacks to airport officials who said part of the kickback money was for political contributions. This is all from supposed small \$25,000 or less contracts.

“There is also a mysterious provision that received no hearing and was added only in Conference – and that is to prohibit out of state corporations and unions from making donations to Hawaii candidates. I wonder what the public policy and rationale for this prohibition is and whether there may be a constitutional equal protection problem with this provision.

“Along with these four items are a number of minor technical and inert provisions. I agree with Dr. Watada that the

reform value of S.B. No. 459 is about 20 percent. That means on a football field, we’re on the 20-yardline and there’s the rest of the field to go – a long way, 80 yards to go.

“Mr. President, I agree with the campaign spending commission that to really fix the private financing system of election campaigns there needs to be a ban on all corporate and union donations and a large reduction in amounts that individuals can contribute. I part company with the commission believing the real reform, a reform that makes all other reforms possible, is comprehensive public financing of election campaigns. The point though is that we have come a long way and we have . . . actually we’ve come a short way and we have a long way to go before real campaign reform can happen.

“Mr. President, I was thinking about reading the roll call inspired by the Senator from Waimanalo of recent campaign violators to indicate how large a campaign finance corruption problem we have in Hawaii, but to spare my colleagues, I’ll simply show you the list. The Senator from Hawaii Kai will be providing us with bipartisan support to make this demonstration.

“Mr. President, in the past few years we have we have on this list all different individuals, their names and their companies, and the dollar amount of illegal contributions. There are over a thousand separate violations of campaign spending laws in the last few years, and this scroll lists those individuals. There are no repeats. They are all individual separate names. The company names are repeated because many of them are from the same company. The company that’s listed is either the employer of the individual or the company that provided the funding for the individual to give to candidates that were illegal. The investigations are not yet over, but so far there are about 450 different individuals involved and these people gave close to \$1.9 million in illegal donations. The Campaign Spending Commission reports that over half of the donations given to the winner of the last mayoral election in Honolulu were illegal.

“Mr. President, if this wasn’t enough, 32 persons have been criminally charged for the worst of these offenses, some involving literally hundreds of thousands of dollars of illegal campaign donations. Of these 16 cases prosecuted so far, all have pleaded guilty or no contest. Actually most of them no contest. Fourteen defendants have asked their judges to allow their records to be wiped clean in a few years, and all of these requests have been granted. So in a few years, the worst of the illegal behavior, these crimes, will be expunged from the court records. So it will be as if they didn’t do it. You can probably look it up on the web and find out what happened from the news reports, but if you go to the court and find out, their records will be wiped clean.

“Mr. President, I believe these crimes against the public trust and their misdemeanors should remain in the public record. S.B. No. 459 does make many of the recent offenses class C felonies and that’s probably the one item in this bill that saves it from my voting ‘no.’ But I hope we will take a look at making some of these campaign spending violations, even the ones that are felonies, even after and if we pass this bill, some of the felonies can still be wiped clean. I’m told the money laundering offenses and some others still, even with a felony, you can have your record wiped clean and so far our judges have decided that it is in the best interest to wipe these records clean. I obviously disagree, because otherwise it will just be a slap on the wrist for breaking the public trust.

“Mr. President, just today in the newspaper there is an article and it says city prosecutors have filed criminal charges against two donors linked to, and I apologize as they are Kaimuki

engineers, that gave more than \$24,000 in questionable contributions to a candidate. These charges are misdemeanors punishable by up to a year in jail, although we know that not only is there no jail time but their records will probably be wiped clean. It says also, last May the campaign spending commission fined these individuals \$32,000 for making excessive and false named political contributions to various campaigns.

"Mr. President, something major and drastic must be done to deal with what I believe and is clearly a public corruption problem in our privately funded campaign system. We will be back another day to figure out what those solutions will be. I don't think this bill makes much of a dent. I do believe it is a good start. I do not think this bill qualifies as reform because it raises more concerns about problems than it provides solutions.

"Thank you, Mr. President."

Senator Hemmings rose to speak against the measure and said:

"Mr. President, I rise to speak against S.B. No. 459.

"Mr. President, first I'd like to make a disclaimer that my list was nowhere near as long as this one. I'd also like to say for the record that the white knight of ethics in government, the good Senator from Kaimuki who spoke before me, gave a good speech as to why not to vote for this bill, and I'd like to have it entered into the record as my own. To briefly summarize, I in good consciousness cannot vote for legislation that is a façade of reform, which this one definitely is. I cannot go to the voters and the people of this state that are sick and tired of corruption in government and tell them we did something about it when indeed we did not.

"This bill does not constitute honest reform, and therefore it does not merit our support. I urge my colleagues not to condone what we've seen illustrated here on the Floor today by voting in favor of this bill. Please join us in voting against it.

"Thank you."

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

"Mr. President, I rise in opposition to S.B. No. 459.

"We read the newspaper only a few weeks ago that our approval rating was only 40 percent. At that time, we could have done something about it. We could have addressed the issues of why the public does not have faith in this institution. We have not.

"With the help of the good Senator from Hawaii Kai, I also need him to be my aide as a poster boy. Fortunately today, his phone is working. I surveyed my constituents and I told them if they answered my survey I would use their responses in my discussions from the Floor of the Senate. So please allow me to do that today.

"The first question that I have displayed here was . . . it's not a question; it's a statement – Legislators listen most to those that give them money. And if you see that little column on the far right-hand side, if they strongly disagreed, that's where they filled it in. For the ones that agreed with the statement and strongly disagreed, it's on the left-hand side. Seems like the people out there believe that the Legislators listen most to those that give money.

"Second slide, please. The statement is that we should ban corporate contributions to Legislators. Again, if you look on the far right-hand side, very few people disagreed with the statement. On the left, strong agreement.

"Third visual aid, please. And so the same question, to be fair about this, I asked if union contributions should be banned to Legislators, to candidates running for the Legislature. Again there was strong agreement with that statement.

"Until we address the types of contributions that perhaps affect us as decision-makers, people are not going to trust what we do. They are not going to trust our motivation when it comes to tax credits. There is still a great deal of concern about the extension to Act 221. And why is it that nobody rose on the Floor of this Body to speak in favor of Act 221, its extension, and the fact that we're still maintaining the confidentiality of those getting the tax credits.

"I would like to conclude with an observation – the voters of this state are not pack animals from which we are extracting tax revenue. I would like you to think of them as tigers. I would also like you to visualize yourself as riding on the backs of these tigers. And what I would like you to remember going forward is that the tigers are getting hungry.

"Thank you, Mr. President."

Senator Hogue rose to speak in opposition and said:

"Mr. President, I rise in opposition to this measure and I'll make it very, very brief.

"I'm not going to use the analogy of the tigers, but reuse the analogy of the football game in which Bob Watada and the Senator from Kaimuki mentioned that the ball was on the 20-yard line. It is obvious after taking a look at this particular bill, Mr. President, that the Legislature has decided to punt.

"Thank you."

Senator Kim rose on a point of personal privilege as follows:

"Mr. President, point of personal privilege.

"Mr. President, would the Senator from Waikiki answer a question?"

Senator Trimble having answered in the affirmative, Senator Kim continued as follows:

"Thank you very much for your charts. They're very informative, but can you tell us how many people actually responded and the number people on your survey?"

Senator Trimble answered:

"I will say about a 2 percent response rate. That's about 230 people."

Senator Kim said:

"Thank you."

Senator Sakamoto rose to speak in support of the measure and said:

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

"Some points of clarification – the list that was strewn on the Floor, that's existing law. And yes, we should capture people

who are doing things wrong with existing law. Some people seem to imply that until we change the law we cannot get people who have done illegal acts. That long list proves that perhaps in more recent times action has been taken and certainly people who have done wrong should be punished appropriately.

“A point in reference to who these contributions went to and the point about Legislators, basically that long list dealt with people not in this Body, not in the Body across there, but in the rooms above us, in the rooms in other places. Currently this Governor is in a position to say, if this bill passes perhaps she cannot get contributions from some of these people. I believe the biggest problem with the big money is the big races and not necessarily people sitting on this Floor.

“Certainly I’m not saying we should be exempt from people who do wrong. Nobody should be exempt from people who do wrong, but we should target what really make sense and basically I don’t like the use of contractor because I’m a building contractor. Basically, that list doesn’t imply that it’s building contractors or building subcontractors that are contracting with the state and other entities and many of those are not non-bid contracts. I believe this bill says that if it’s people who let out these contracts, that’s where the problem is, therefore it should be tightened in that regard in terms of the fifth floor and like bodies.

“So, I believe this measure is a good step and I think people shouldn’t wrongly point the gun at the Legislature when indeed most of the misdeeds are in offices in the higher levels.”

Senator Slom rose in opposition and said:

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

“A couple points here – the good Senator from Kaimuki I think did lay out a very good scenario of why we should have done more. And I would be, I guess, inclined to vote only with reservations if this were the first year that we were tackling this, or the second year, or the third year, or the fourth year, or the fifth year, but we have been dealing with what we call campaign spending reform for more than a decade and we haven’t come up with a useable product. And it’s not that we can’t, it’s not because it’s too complex, it’s not because we don’t understand it, it’s because certain people don’t want us to do it, period.

“And I, like the good Minority Leader of this Party, agree that all this Session everything we passed is a reform – education reform, ice reform, campaign spending reform. But as I’ve said on the Floor on this Senate before, the people are going to be very disappointed because they’re going to find that the reform is hallow. It does not do what we say it will do. It does not do what they want it do. It does not do what they expect of us.

“I thought the statements last made by the good Senator from Moanalua were very interesting about the fifth floor. I couldn’t get exactly the connection there but the fact that it didn’t have anything to do with us. I recall speaking against an ethics bill the other day when the good Minority Leader again tried to read off a list of names. He should have learned from the Kaimuki Senator that you don’t read names, you roll them out. The point there was that we didn’t feel that we need it, that we can identify the people that have been wrongdoers, that have been broken or breached the public trust, that have misused our funds. But we didn’t want to do that.

“And the argument that came from the Majority, including the good Senator from Moanalua, was we all need ethics

training; we all need to know what to do that’s right and wrong. The Governor, the Legislative Branches, the employees, everyone here needs to be re-indoctrinated. But the problem is we do know the difference between right and wrong, but that’s never stopped people from doing wrong.

“And the point of the fact is the people whose names were on that long list – some of whom were fined, one was imprisoned, I think one – the good Senator talked about appropriate punishment. It wasn’t appropriate. It wasn’t appropriate at all. As a matter of fact, from a business standpoint it was viewed as a business expense – just the cost of doing business. And that’s the message that we have to stamp out and that’s the message that we are both responsible for and should be accountable for. And the fact that other people in other offices, all of one particular party by the way, did certain things, that’s not what campaign spending reform is about. Campaign spending reform is just that – anyone that’s involved in the campaign process, anyone that accepts money has certain things that they have to do.

“And if we’re on the 20-yard line, the good Senator from Kaneohe who knows much more about this says we punted, I don’t know how much time is left in the game. But I do know, as the Senator from Waikiki said, that the public is watching us and they give us low marks. They know that we can do better but somehow we don’t. And year after year we talk about baby steps and we’re going this way and that way – listen, if it was something that this Body is really interested in, we could pass it in one afternoon and move it along and get it though Conference and not even keep the Conference Committee secret or wave the rules or anything else. Let the public know about it, and maybe even the media would come down here on a regular basis and cover this Legislature. But we don’t do that, instead we’re trying to fool the people.

“And this is not about contractors.”

The Chair interjected:

“Senator Slom, could you keep germane to the topic at hand, please.”

Senator Slom responded:

“Yes, Sir. I thought it was about campaign spending reform. Yes.

“It’s not about contractors.”

The Chair interjected again:

“To the bill, please.”

Senator Slom continued:

“Yes, Sir.

“I’m saying that this bill does not go far enough. And the key part of the bill that’s missing is a ban on corporate and union contributions. That’s what will solve the problem. I’m still a strong believer in private campaign funding as long as people know where the funds come from and as long as we say we’re now going to allow people to make these errors of judgement or errors of the law because we are going to make sure there is a ban in this bill. And that’s what would get all of us to support this bill. Without it, we cannot.

“Thank you, Mr. President.”

Senator Hemmings rose in rebuttal and said:

“Mr. President, I rise on a point of rebuttal.

“Once again a member of the Majority Party, in this case the Senator from Moanalua, stands up and tries to impugn the integrity of the Governor. I’m here to defend her honor.

“That list that was rolled out was not full of names of people who have been indicted and convicted or who have made illegal contributions to the Governor of the State of Hawaii. Rather, we all know the truth is that the vast majority of indictments and convictions have been companies that made contributions to the executive of the city and county of Honolulu, a member of the Majority Party. And to imply the Governor has been a recipient of these illegal contributions on a mass level as is evidenced by the documented truth in court is indeed sad.

“Thank you, Mr. President.”

Senator Sakamoto rose in rebuttal and said:

“Mr. President, point of rebuttal.

“I didn’t say, or maybe you’re reading more into what I said, but the point was that the list dealt with people in the mayorship and the governorship, and I didn’t point to any particular one person. So, if that’s what you are implying, I’m sorry that’s not what I intended. It’s not a particular person but people who have the authority to do non-bid contracts who were perhaps influenced with campaign dollars that can make a great impact.”

The motion was put by the Chair and carried, Conf. Com. Rep. No. 152-04 was adopted and S.B. No. 459, S.D. 1, H.D. 1, C.D. 2, entitled: “A BILL FOR AN ACT RELATING TO CAMPAIGN SPENDING,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

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

#### FINAL READING

S.B. No. 2556, H.D. 1, C.D. 2:

On motion by Senator Taniguchi, seconded by Senator Kanno and carried, 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,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

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

H.B. No. 2002, H.D. 2, S.D. 1, C.D. 2:

Senator Sakamoto moved that H.B. No. 2002, H.D. 2, S.D. 1, C.D. 2, having been read throughout, pass Final Reading, seconded by Senator Hooser.

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

“Mr. President, I speak in favor of this amendment, for the purpose of a little background note.

“There have been years of many different reports and some people claim nothing has been done with those reports. But many things have been done – embarking on SCBM, embarking on complex area divisions, embarking on many different

journeys. There’ve been efforts to have this Legislature do things like change the school board by appointments and the voters have decided that’s not what they would have preferred. Many, many different things . . . weighted student formula as in this bill and as in S.B. No. 3238 was nothing new to this State. In fact, there was a report in 1994 regarding that. But also in 1994 there was the Felix consent decree. The last few years of No Child Left Behind saw our schools struggling with many, many things.

“This Body has passed measures to perhaps transform the system by doing things over the years, and later on I’ll get to this chart, but every year for the last few years we’ve been passing out some of the things we’ve been doing. We’ve been far from standing still, far from going in reverse. We’ve going forward. But in the process, in this year, the Department has asked for \$51 million or more dollars and their budget has been slashed. We passed funds for facilities and projects and many of those are either withheld or not even discussed.

“There’s been very few favorable comments to the public school system coming from some people. It’s easy to pontificate; it takes work to legislate. It’s easy to destroy; it’s difficult to rebuild.

“Zeroing in on the local school board debate, unfortunately that took a lot of energy and effort in this Body and in the different speech circles around town. But there’ve been different proposals – no state board, elected state board, reconfigure the state board, appointed, commissioned, 15, 7, 4, 42, hike – any number of different combinations of what the field of play would look like. Last year we tried to change the field of play with the complex area 15 and that was vetoed. This year we weren’t able to come to resolution, and even the Governor’s own polls show that the voters aren’t feeling that would be the change. But where I thought we were on the same page last year was when Dr. Ouchi came to town touting the weighted student formula. Representative Takumi immediately felt that made sense, so he embarked on doing research and speaking toward that seems to be something that made sense, talking to people across the nation. And as he started to embark on the journey it was Mr. President, Mr. Speaker, Rep. Takumi and myself who wrote a letter to the Governor saying can we embark on this journey together and investigate weighted student formula. To this date there was no response to that letter.

“So the Legislature embarked on working with the Board of Education, Department of Education, the teachers, the HSTA, the principals, the HGEA, parents, Hawaii’s parent-teacher association, principals, various business groups, others on weighted student formula, on what different parts of changing our education system made sense.

“The Governor embarked on her CARE project. The Governor kept calling our efforts fake reform. I don’t know if CARE project means Campaign Attack Regarding Education or the Campaign Against Reinventing Education, but I’m happy at this point in time the Governor has chosen to say perhaps we can amend the bill that we sent forth. We have done that in this measure in attempting to address or we are addressing the five points that the Governor put forward. The five points, one being charter schools, in our process as we talked to charter schools, they chose to be of the process because the weighted student formula would be really how the Department of Education schools would operate. But trying to address the point the Governor made, we worked with Linda Smith over the weekend and came up with language that was agreeable to her, at least at that time, that charter schools come in as a group and go out as a group. But for effectiveness and how do we budget, it would be on the biennium, so that’s one point.

"We clarified, regarding the principals, that the principal would be the person working with the school team to formulate and present the academic plan and financial plan to the school committee, the community council, and the community council would review that and if they had revisions they would recommend those back to the principal, or they would recommend the plan to the complex area superintendent. Therefore they're not purely advisory, as the Governor had hoped, but certainly it's clear that the principal, his or her plan would be moving forward. We clarified in the performance contract that indeed one of the criteria could address the individual principal as opposed to all in mass, all in a group.

"Another point raised was regarding the timing of when the weighted student formula system would roll out. We indicated in this measure that a minimum of 15 schools, one in each complex area, therefore would be across the whole state and that effort would embark January 1, 05 – the piloting – because they need to set up working with their school community council, working on what their budget perhaps would change to with the flexibility, also that all the other schools a year later would embark. Relating to the speed of the embarkation, the Governor also wanted us to put a 90 percent time specific in the bill. She suggested 70 percent on the start, 80 percent of the second year, 90 percent on the third year, and as Ms. Smith and others looked at it, they themselves determined that perhaps that was very ambitious. But in our bill we were trying to be prudent in deciding that we put the 70 percent in and the department could do more but the department needed to come back to us with a report dealing with provisions such as buy back of services should a school not want to handle things that perhaps the department could do themselves.

"So, the bottom line is, Mr. President, we have worked with many people over many drafts, over many days, over many weeks, over many months, to do the original bill which even absent this amendment would be an excellent bill. And these are not props that I asked my staff to put post-its on, far from it. These are drafts that our good SMA staff, House Majority staff worked on, other people worked on, and as we tried to address concerns raised, we continued to say what could we improve, and we feel this measure before us continues to improve things. Certainly, but it isn't about this measure, it's about will we, all of us, say, as some have said, that the schools and the students are the worst, the last, the bottom of the pile, or will we say we can work together.

"So I would hope that as we tried to address or we did address each of these things the Governor suggested that we can embark together. T the Tour de France, Mr. President, is a long grueling race. Mr. Armstrong has done well over the years. You go up the hill, down hill, sweat. You have flat tires, crashes, dehydration. So I feel and our team that's been working on this feel like we've been through a long grueling race, at times feeling like many people were throwing tacks in the rode, maybe people weren't being so supportive. But just like Mr. Armstrong, I think at the end of race we all want, whether we participate in the race or not, we all want to share in the yellow jersey at the end of the race. We all want, at the end of the race, to say let's enter Paris victorious.

"So my hope would be you can all enter the race, including this Governor and her team. We hope we can say let's enter this race no matter where we got on, whether we got on at the last time trial in Paris or we got on years before. Let's all work hard for the public schools. Let's do the best we can to make these efforts successful. Let's help the schools be it via a rotary club, via business, via church, via this Body. So let's work together to help our schools succeed because everyone wants the best for our students, and I want our students and their

children and their children's children to so say in the future that our public schools are great schools, and we can do that.

"Thank you."

Senator Slom rose in opposition and said:

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

"First of all, let me say that no one doubts the effort, the time, and all of the good will that the good Senator from Moanalua and others have put into reforming education, both in this house and also across the way. I must say I'm a little disappointed. They sure looked like props to me, Senator. I'm disappointed you didn't ask me to hold up anything for you. That's my job today. I do appreciate your timely analysis of the education bills and the things that you've done. You've tried to make everything a lot easier and more understandable.

"Having said that, however, I still am compelled to vote against this measure for the same reason I voted against the campaign spending measure, and that is we call it reform and in this case we call it reinventing education. If we were truly reinventing education we would have adopted the provisions that the Governor had suggested instead of deriding the CARE group. We would have allowed people to vote on an issue that they've been asking to vote on for several years in which polls indicate that 70 to 80 percent of the population wants real change, wants real reinvention. But we didn't do that.

"But I do give the Education Chair and the Majority Party credit of at least taking a look at the five proposals that were made by the Governor in her 'soft' veto last week. You may recall she vetoed the bill but said there's still time for us to come up with a workable, bipartisan, true education reform. And she did provide five specific areas that she thought needed attention. And as the good Senator said, the Governor was met part way in most but not all of these five areas. And I think that's what it's all about. It's like the 20 percent campaign or it's like 30 percent here. Whatever it is, it's not half, it's not three-quarters, it's not the whole thing. So you have a real difficult time in that saying something is reinvented when it's exactly the same.

"And the basis of this bill, this legislation is that the State Department of Education, the DOE, the State Board of Education, the BOE, will continue with the power that they have now, and that's what the public wants changed. Now certainly we are going to try to give the principals more power, and I think the amendment that the good Senator and the Conference Committee took under it's control will do that, will give the principal more power, but it will not give the principal the ultimate authority, the responsibility, and accountability that the Governor and those of us who want real reform have sought. It has not made a clear statement that the newly created councils will be advisory. They will work together but that creates problems. You have to have one individual that is responsible, and I thought we were in agreement that that person should be the principal.

"In the area of charter schools, the charter schools have some decision-making under this proposal. But what was it that the charter schools and their supporters have complained of all along for various years? That they were not getting equal funding for the other public schools and the charter schools are in fact public schools. This bill does not provide equal funding. It allows them to participate in more discussions; it allows them to make certain other decisions, but it does not provide or guarantee equal funding. And that was one of the issues that was raised.



“To try to keep my remarks brief, Mr. President, let me just say that every time someone stands up wherever they are, in this Body or in the community, and talks about slashing the education budget, they really should look at the figures and look at what the facts are. Far from slashing the education budget, if you look at it year after year, take a five year period, take a ten year period, take whatever period you look at, you will find that the expenditures overall have increased. And you will find further that if we’re talking about budget for education, we are now approaching \$2 billion per year for public education in this state – even though we are not seeing any of the products or the fruits of past reform, so called, in terms of improvement to the students and their performance, but nearly \$2 billion a year the taxpayers pay to support public education.

“So yes, it’s taken a lot of work. Yes, a lot of people apparently are very tired. And yes, we’ll be back here next year because we have not reinvented education. We could have done it. We could have allowed the people to once and for all say we want significant decentralized changes, but we didn’t do that. We didn’t trust the people enough to do that. And so instead, we produce these documents and we tell the people that it’s brand new, that it’s reinvention. And like some of the other bills, they’re going to be disappointed when they find out they’re not.

“Thank you, Mr. President.”

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

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

“Mr. President, I suppose that reform, reinvention is really in the eye of the beholder. If you talk to the principals, you talk to the teachers, you talk to many of the parents and students about the kinds of things that are going to help them and help student achievement, we have many of those things in this bill, the bill we passed earlier, and in several other bills, including the one on charter schools and on the age that one can go into kindergarten.

“Education is a process, Mr. President, and something that happens today or last year or the year before is going to take some time for it to affect student achievement, and for my money that’s really what we ought to be looking at. It’s not about government; it’s not about things that are peripheral to student achievement, but what is going to affect a child in the classroom – a teacher helping that child to learn, a principal managing a school. I think we have a lot of those elements in this bill.

“Is it perfect? Will our system be perfect tomorrow? I don’t think so. But it wasn’t going to be perfect tomorrow when all of a sudden we have local boards. Just look at what’s happening on the mainland to all the schools there having challenges with recruiting teachers, with violence in the schools, with raising funds so that their doors can stay open, with new facilities, finding facilities. Yes, we may be spending what seems like a lot to the good Senator from Hawaii Kai on education, but I submit that we’re not spending near enough. The cost of education, the cost of everything related to education has gone up. We have more students; we have more challenges; we have more demands placed on our schools, and all of those things cost money.

“If we have local boards, it’s not going to change the dynamic in terms of the funding that is needed for the schools in order to make changes. Hawaii’s public schools are in many respects excellent. We do have some challenges. The Department has acknowledged it, local educators have

acknowledged it, the Legislature has acknowledged it, and we’re putting building blocks in place that will help that.

“One of the elements that perhaps the Governor won’t be completely 100 percent pleased with is we didn’t go immediately to the 90 percent of funds going to the local schools. There was a very interesting survey we all received by e-mail this morning that was done of the school principals and they talked about what the kinds of reform they felt would be useful and some of their reactions to if we had gone to giving them virtually full autonomy with 90 percent control. I’d like to read just a couple of responses from a principal in my area because I think it’s very instructive. These principals really feel that they want to deal with student achievement, but they don’t necessarily want to deal with all of the other things like having to procure items, having to do school lunch, having to do the kinds of things that are done centrally and managed well.

“The principal at Lahaina Intermediate School asked, “When will I have time to dedicate my time to student achievement if I have to do all the procuring, the maintenance of facilities, CIP, processing of personnel and the like? We are educators first, not business managers. Our products are students with quality education. Does that mean we will have to hire more personnel to assist us? Will we then be accused of being top heavy at the school level next?” She also said, “My plate is overflowing right now. Flexibility and personnel matters would help me, however, I don’t want full autonomy because I have to pick up responsibilities which are currently being done by centralized experts. I am willing to improve for student achievement at my school no matter what. It’s all about the students.” And that to me, Mr. President, is what needs to be and must continue to be central in all of the debate about reinventing education, reforming education. Are the things that we’re doing going to really help students learn at the local level, or are we just passing areas of concern down to the schools and hoping, because we’re really not giving them any more resources – we haven’t changed procurement laws, we haven’t done some of these other things – that all of a sudden, overnight everything is going to change.

“I think we need to listen to the folks that are involved in education, work with them, and take the steps that this Legislature has already taken this year and continue that process towards excellence for every student – giving them the ability to learn at the rate that they can learn and the way that they can learn, supporting our teachers, supporting our principals, supporting our communities.

“Mr. President, because I think the survey of public school principals that was done by our colleagues in the other body has such valuable information for all of us, I’d like to have it inserted into the Journal at the close of our remarks.

“Thank you, Mr. President. I urge all my colleagues to vote for this measure.”

The Chair having so ordered, Senator Baker’s insert of the survey of public school principals is identified as ATTACHMENT “A” to the Journal of this day.

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

“Mr. President, I rise in support of H.B. No. 2002.

“I think if we all take a moment to look at this list that the Chair of the Education Committee put together I think we would all be impressed. I certainly was. I sat on the Committee and worked on all these issues, but I haven’t seen them all together like this. If anyone out in the community says that this

is fake reform and that we're not doing anything about education, I would just encourage people to show them this list. I think that to not support the good work that we have done in this Committee and in this Chamber because you didn't get your way in 100 percent of all the things that you wanted is small minded.

"Seven school boards – I think we should all just confront the issue. The seven school boards issue was a bad idea. It was a bad, bad idea. It wasn't supported by sound research. It wasn't supported by principals. It wasn't support by teachers. It wasn't support by the business community, the Hawaii Business Roundtable. It wasn't support by the PTSA. It wasn't supported by the Hawaii State Student Council. It wasn't supported by many neighborhood boards, even the realtors didn't support. It was a bad idea and there was no substantive research showing that seven school boards, four school boards, fifteen school boards, or whatever, had any relationship whatsoever to student performance in the classroom. It had an appointed commission at the top. The voters in our state have already rejected appointed school boards twice before. It set up seven separate Departments of Education, seven separate bureaucracies. It was a bad idea, Mr. President, and I, for one, am not willing to put a bad idea on the ballot and ask people to choose.

"What you're looking at today is good legislation. It's sound legislation. It represents the culmination of much hard work and incorporates many ideas of the executive branch and many ideas that were put forth from various stakeholders in the community and incorporates the hallmark, the centerpiece of Dr. Ouchi's formula for success – the weighted student formula. It incorporates more community involvement. The parents I talked to said they don't want to be involved if they're not going to be taken seriously. They want to have meaningful participation in our schools and this bill gives them meaningful participation.

"It honors teachers and provides them with a \$5,000 bonus for those that achieve national certification. It supports principals. It de-links much of the bureaucratic mess that's kind of evolved over the past years and allows for quicker decisions when fully implemented. There are many, many good things in this bill.

"It's a result of collaboration and I think that H.B. No. 2002 is a good example of that. Through the entire process there has been collaboration and working together with the various stakeholders. I personally sat in the meetings and I have to give just tremendous credit to the Chair of the Senate Education Committee as well of the House Education Committee for the work they've done on this together with other members of the community and the Committee. I personally sat through hours, not just the testimony, but hours after the testimony had been given and worked with the Chair of the Committee going over page by page, testimony after testimony looking for suggestions, looking for concerns, and trying to figure out how we can address those concerns, how we can incorporate those suggestions into the legislation that we've ultimately passed. It was a good process.

"This recent amendment, the one that we're voting on today, is again a result of that collaboration. My hats off to the Committee, the Chair, this Body for saying let's take another look, let's look at this, let's incorporate what we can to improve this bill with suggestions from the Governor's Office.

"I have to add that this is continuing process. It doesn't stop here, Mr. President. It goes on, The collaboration goes on. It's imperative that we work together, that we set aside our differences. There is still much work to do. We need to work

together – the Executive Branch, the Legislature, teachers, parents, students – all of us to achieve the level of education our State deserves and that we're capable of providing.

"Thank you and I urge my colleagues to vote 'yes.'"

Senator Hogue rose in support with reservations and said:

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

"I want to say first of all that I appreciate the debate that we're having today. I think it's a very, very good debate and I think it should continue.

"My personal opinion, and I've expressed it many times here on the Floor, is that I'm for competition and competition to me in this particular situation means breaking up the entrenched power of the current system and making us have local school boards. I think it's a good idea. And because I differ in my view than the good Senator from Kauai, I would like to see this measure ultimately played out as a measure on the ballot that will allow our voters to vote on this very important issue up or down, finally.

"I've seen something good happen in the last few days, colleagues, something that I think frankly is historic – and that is that the Governor has tossed the ball in the other court and asked the players to play. I guess that's a sports analogy and the players decided to play. And because it's a competition, there were some hard hits and there were some soft hits, and there was some tugging and some pulling, and through the art of compromise, we came up with what we did today. And because in the art of compromise, ultimately you don't get every single thing that you want, you know not everybody is going to go home happy, but it was historic. And that really is a good, good step, because ultimately, if we allowed everyone to come into the arena and play and everyone does listen, I think ultimately the students are better off for it.

"So, I say that I am for real reform, and to me real reform means change. Change is a very, very difficult thing to go through, and I think that's frankly why we got the responses that were brought up by the principals that the good Senator from Maui brought up. They're in the system. When you're in the system you're looking for the best way to do your job within that system. Real change means apprehension, anxiety, sometimes there's fear from real change. But real change, like competition, makes us all better, and that's what I'd like to see.

"This is a step in the right direction and I hope that what we've seen, Mr. President, in the last few days with the two sides getting together and talking about it, that's a good step.

"Thank you."

Senator Trimble rose to speak with reservations and said:

"Mr. President, I also rise with reservations, except at the moment, I'm leaning more toward the 'no' than the 'yes' side.

"It's probably because of the arguments . . ."

The Chair interjected:

"So are you up or down?" (Laughter.)

Senator Trimble responded:

"I'm speaking with reservations. But I might listen to myself talk and come to a different conclusion. (Laughter.)

“The first thing that I wanted to address was the comment that we’re spending more because the number of students are going up. I recall that when I worked on the issue of education down here 30 years ago we were having the same types of discussions we’re having today and that the enrollment has not changed significantly since that date.

“Number two, I’d like to remind you of the statement made by Bertolt Brecht who said that in this world we have to run as fast as we can to keep our pants from strolling out from under us. And the comment he was trying to make is that if we’re not moving forward rapidly, we’re actually slipping backward. And my concern is that regardless of what you call this, it’s not going to wind up with the guarantee that the children are going to have the materials and the school books that they need for the next two or three years.

“I would also like to have you look at governments one more time. We talked about the importance of the principal being the decision-maker. Have we formulated a process that will make the principal the decision-maker or have we formulated the process where in many cases decisions will be held in advance while it’s being run up the ladder to the area-wide superintendent? If that occurs in this system, then we will not have moved forward.

“Part of the intellectual problem between the two sides is that we both believe in collaboration but how do we measure that collaboration really occurred. I think we measure that collaboration really occurred if we allow the principal to put into effect her vision and judge the satisfaction of the community, the teachers and the parents. We get this process by allowing the principal to implement as rapidly as possible.

“The proposal that we have before us does not do that. It requires, quote, ‘meetings with the student council for formulation review of the process.’ And then it allows for, in cases of disagreement, it to go to the area superintendent. My sense is that this is a way of promoting stagnation and waiting, waiting, waiting. And when this happens, you don’t get change, you don’t get improvement.

“So, at the end I’m still going to vote with reservations, but I really wish that next year when you look again at governments try and work out a system where the principal is the decision-maker.

“Thank you, Mr. President.”

Senator Sakamoto rose again and said:

“I rise again in support, Mr. President.

“First, to clarify the points about the charter schools that the Senator from Hawaii Kai was talking about, as I read the Governor’s prototype bill related to charter schools, there were provisions to add them into the weighted student formula. But as I searched through the bill, I didn’t see any provisions to have them have more money to change their current funding formula. So I think maybe people aren’t sure about the equal funding charter schools receive.

“One of the measures we passed relating to charter schools, S.B. No. 2425, did start to clarify for those who are still not sure. Perhaps a better clarification is that as of the October 15<sup>th</sup> school date this coming year, the charters will get a per pupil amount that’s equal on average to all of the other students except that calculation is less federal dollars, less SPED dollars. Most of the federal dollars are directed based on how the federal government says and the SPED dollars are directed

based on individual student’s needs, so those couldn’t be averaged. But all the rest – 5,746 – is an average of what all of the other students get. So that is equal funding. This measure added \$2.5 million. Ways and Means put \$2.5 million because the previous Governor’s budget didn’t bring it up to the current correct dollar amount. That’s their funding.

“As far as facilities, we don’t take our CIP budget and our annual budget and divide it by 283 schools or 182,000 people. If we did that, how would we ever build a new school that cost \$50 million? How would we ever do anything if we said all of those dollars are dispersed into every little pocket and every little cubbyhole, every desk, and every teacher’s cabinet? We have to make decisions strategically on the facility’s dollars, and hopefully in the future we can address charter facilities, but they are getting equal funding.

“I said earlier I would address this. On the second page, charter schools, civil service status was a concern that’s been clarified with the efforts the Labor Committees. The charter school funding, again with the Finance and Ways and Means. H.B. No. 2911 clarifies that the charter school office will report on their charter schools and clarify some of the complaints that have been coming up regarding land use, etc. S.B. No. 3148 deals with the Hawaiian schools wanting to group up. In this initiative, in discussions with OHA as they decide to participate more in education, they hopefully will help to fund the effort to deal with issues – such as, how do you form a group of charters within another group? How will that relate to all of the schools in general? How will it relate if they are a separate agency in regard to the federal government? The SPRBs are in the middle. The University of Hawaii, the Chair from Water, Land, and Agriculture reviewed that and reminded us that H.B. No. 2009 included CTAHR 500,000. So if anyone feels that something is left out with any of these or is incorrect, please advise.

“Back to the front. Before I used the analogy of the Rubik’s cube, so it’s still six-sided – parents and community, teachers, principals, students, facilities, administration. Many times we’ve change one side of the Rubik’s cube and the other side gets affected. We’ve tried, with the good cooperation from all of us in here. Thanks to my Vice Chair and especially thanks to Ways and Means that early on gave us the green light to let us do many things. So we really appreciate everybody’s help. And my colleague here is suggesting perhaps that we could insert this in the Journal. I’m not sure if that’s possible, but to the extent possible because I believe we’ve tried to capture what all of us have been able to put forward.

“Thank you, Mr. President.”

The Chair having so ordered, Senator Sakamoto’s insert is identified as ATTACHMENT “B” to the Journal of this day.

The motion was put by the Chair and carried, H.B. No. 2002, H.D. 2, S.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, 24. Noes, 1 (Slom).

S.B. No. 2983, S.D. 2, H.D. 1:

Senator Taniguchi moved that S.B. No. 2983, S.D. 2, H.D. 1, having been read throughout, pass Final Reading, seconded by Senator Kokubun.

Senator Slom rose in support of the measure with reservations and stated:

“Mr. President, I rise briefly in support of this bill with reservations.

“Every year it is the responsibility of the State Department of Taxation to submit a measure to place our tax law in conformity with federal law. That’s a good measure. But every year there seems to be a problem and the problem is this, that the conformity is not 100 percent. It’s not total. In other words, we don’t say we’re going to match all of the changes that were made in the federal law.

“There are two specific examples. One has to do with investment. We don’t have the same kind of investment treatment at the state level as we do at the federal level. It’s more generous at the federal. And secondly, which I think is what most people are aware of when they do their income tax is that the value or the amount for personal exemption is less in Hawaii than it is for the federal return. I think we figured out that the value of a spouse or a dependent child is about 72 percent of the federal average here in Hawaii.

“So, with those omissions, I support the bill with reservations but I would like to see that each year in fact when we do conformity, that we actually conform with federal law.

“Thank you.”

Senator Hogue rose and said:

“Please note my reservations. Thank you, Mr. President.”

The Chair so ordered.

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

Ayes, 25. Noes, none.

S.B. No. 2474, S.D. 3, H.D. 2:

Senator English moved that S.B. No. 2474, S.D. 3, H.D. 2, having been read throughout, pass Final Reading, seconded by Senator Menor.

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

“Mr. President, I rise in support.

“Mr. President, members, this is a very interesting situation we’re in with this bill, and I’m asking that we agree to it. But like I pointed out in earlier discussions, I consider this a micro-step forward. In fact, it may even be standing in place and leaning forward. But enough of it is there to make us want to move this forward. I looked back at the pattern of these types of bills before. By the way, this bill is for the renewable portfolio standard. Members, the Senate position was 30 percent by the year 20. This bill puts in 20 percent by the year 20. The administration was very convincing in their presentation to us in Committee and said they can meet the 20 percent. In fact, so convincing that we needed to move it up higher because they can meet it and it can be done.

“Unfortunately, if you read this bill, it includes fossil fuels as the renewable under certain circumstances, and that’s really

hard for me to swallow. In fact, I considered do we swallow this bitter pill or do we throw it out and be done with it. But in looking at it, I’ve decided that we have to take the homeopathic approach to it and absorb the poison so that we can become stronger in the next Session and fix some of these bad parts of this bill.

“Members, I’m going to insert into the Journal the C.D. 1 that I would have proposed in Conference because I think it incorporates our positions. It lays out what I think would have been good compromises, and it takes parts of our S.D. 3, it takes parts of the H.D. 1, and the H.D. 2 into consideration.

“I want to be really clear here that in asking everyone to agree to this House draft that we are fully cognizant of what it is. And in coming to this conclusion that we should agree, I took into consideration many factors, two important ones, very important ones – one is that it’s the administration that wants to do this, the administration that wants to make this happen, and I commend them for that. Hats off to the administration because they will make sure that the provisions here that are heinous will be read very narrowly. They will make sure that when we try to classify fossil fuels as a renewable, that it gets read very, very, very narrowly.

“The other factor is that we have a chairman of the Public Utilities Commission, Mr. Caliboso, that has shown through his actions that he’s willing to take on the challenges presented here, willing to take the PUC forward in dealing with the issues that were presented in here and willing to help to make a standard that works for all.

“I looked back at the pattern of energy bills in the past and observed something, and I’d like to share that with you. We often included very bad provisions in good energy bills. And usually a year later, we have what we call a cleanup bill that took those provisions out. Interestingly, it’s always the same types of provisions throughout the years. So I’m hoping that that pattern will hold true with this measure – that the areas that are bad will get taken out in a year or two and that we can be left with a truly workable real renewable portfolio standard.

“I’m also hoping that next year we can raise it to 30 percent, which is the Senate position and I think one that we can achieve that presents a challenge to everyone in Hawaii to conserve energy and to lean towards renewables.

“So with that, I ask for your support in moving this measure forward. Help us to take the micro-step or maybe even lean forward a little bit. But that momentum is important and for the record, I will insert into the Journal what would have been our proposed C.D. 1.

“Thank you, Mr. President.”

The Chair having so ordered, Senator English’s insert of the proposed C.D. 1 reads as follows:

“SECTION 1. Building a sustainable future in Hawaii requires the government to take a leadership role in developing programs and initiatives designed to encourage people to live within their means. The legislature finds that a significant impediment to the goal of sustainability is the large imbalance between the amount of goods and services exported from Hawaii in comparison to the amount of goods and services imported to Hawaii. Specifically, the legislature notes that Hawaii exports only \$2,000,000,000 a year in goods and services while importing \$15,000,000,000 a year in goods and services.

Enterprise Honolulu stated that “a key characteristic of a healthy economy is that it exports more than it imports. If

payments for imports exceed payments for exports, we have a 'trade deficit.' Just like a negative balance in your checking account impacts your household, if a trade deficit continues too long, the region's quality of life begins a downward slide."

The legislature also finds that Hawaii imports between \$2,000,000,000 and \$3,000,000,000 worth of oil annually. These figures represent a growing dependence on oil imports which allows electric utility companies to enjoy a financial windfall when they sell electricity to Hawaii consumers. The profits realized by electric utility companies lead to the continued importation and dependence on oil.

The legislature finds that economic diversification, import substitution, and export expansion are key to achieving sustainability. Further, import substitution may be achieved by increasing the use of renewable energy resources found in Hawaii, such as wind, solar, ocean thermal, wave, biomass resources, and others enumerated in section 269-91, Hawaii Revised Statutes, as amended by section 2 of this Act.

The purpose of this Act is to encourage import substitution by increasing the use of renewable energy resources found in Hawaii, thereby decreasing the need to import large amounts of oil annually.

In addition, renewable energy resources offer Hawaii important job creation, environmental protection, and energy security benefits. These efforts will contribute to the ultimate success of the State's efforts to develop the infrastructure for a future hydrogen energy economy based upon hydrogen produced primarily from renewable energy.

SECTION 2. Chapter 269, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§269- State support for achieving renewable portfolio standards.** (a) The department of land and natural resources and department of business, economic development and tourism shall facilitate the private sector's development of renewable energy projects by supporting the private sector's attainment of the renewable portfolio standards in section 269-92. Both departments shall provide meaningful support in areas relevant to the mission and functions of each department as provided in this section, as well as in other areas the directors of each department may deem appropriate.

(b) The department of land and natural resources shall:

- (1) Develop and publish a catalog by December 31, 2006, and every five years thereafter, of potential sites for the development of renewable energy; and
- (2) Work with electric utility companies and with other renewable energy developers on all applicable planning and permitting processes to expedite the development of renewable energy resources.

(c) The department of business, economic development and tourism shall:

- (1) Develop a program to maximize the use of renewable energy and cost-effective conservation measures by state government agencies;
- (2) Work with federal agencies to develop as much research, development and demonstration funding, and technical assistance as possible to support Hawaii in its efforts to achieve its renewable portfolio standards; and
- (3) Biennially, beginning in January 2006, issue a progress report to the governor and legislature."

SECTION 3. Section 269-27.2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The rate payable by the public utility to the producer for the nonfossil fuel generated electricity supplied to the public utility shall be as agreed between the public utility and the supplier and as approved by the public utilities commission; provided that in the event the public utility and the supplier fail to reach an agreement for a rate, the rate shall be as prescribed by the public utilities commission according to the powers and procedures provided in this chapter.

In the exercise of its authority to determine the just and reasonable rate for the nonfossil fuel generated electricity supplied to the public utility by the producer, the commission shall establish that the rate for purchase of electricity by a public utility shall not be less than one hundred per cent of the cost avoided by the utility when the utility purchases the electrical energy rather than producing the electrical energy. [~~In determining the amount of the payment in relation to avoided cost, as that cost is or shall later be defined in the rules of the commission, the commission shall consider, on a generic basis, the minimum floor a utility should pay, giving consideration not only to the near-term adverse consequences to the ultimate consumers of utility provided electricity, but also to the long-term desirable goal of encouraging, to the greatest extent practicable, the development of alternative sources of energy.~~]

~~Nothing in this subsection shall affect existing contracts between public utilities and suppliers of nonfossil fuel generated electricity."~~

SECTION 4. Section 269-91, Hawaii Revised Statutes, is amended by amending the definition of "renewable energy" to read as follows:

"Renewable energy" means electrical energy produced by wind, solar energy, hydropower, landfill gas, waste to energy, geothermal resources, ocean thermal energy conversion, wave energy, biomass, including municipal solid waste, biofuels, or fuels derived ~~[entirely]~~ from organic sources, hydrogen fuels derived ~~[entirely]~~ from renewable energy, or fuel cells where the fuel is derived ~~[entirely]~~ from renewable sources. Where biofuels, hydrogen, or fuel cell fuels are produced by a combination of renewable and nonrenewable means, the proportion attributable to the renewable means shall be credited as renewable energy. Where fossil and renewable fuels are co-fired in the same generating unit, the unit shall be considered to produce renewable electricity in direct proportion to the percentage of the total heat value represented by the heat value of the renewable fuels. "Renewable energy" also means electrical energy savings brought about by the use of solar ~~[and heat pump]~~ water heating[-], seawater air conditioning district cooling systems, and solar air conditioning."

SECTION 5. Section 269-92, Hawaii Revised Statutes, is amended to read as follows:

~~"[§269-92]~~ **Renewable portfolio standards.** Each electric utility company that sells electricity for consumption in the State shall ~~[establish]~~ meet a [renewables] renewable portfolio standard [goal] of:

- (1) Seven per cent of its net electricity sales by December 31, 2003;
- (2) Eight per cent of its net electricity sales by December 31, 2005; ~~[and]~~
- (3) ~~[Nine]~~ Ten per cent of its net electricity sales by December 31, 2010[-];
- (4) Twenty per cent of its net electricity sales by December 31, 2015; and
- (5) Thirty per cent of its net electricity sales by December 31, 2020."

SECTION 6. The public utilities commission shall:

- (1) Develop and implement a utility rate structure, which may include but is not limited to performance-based ratemaking, by December 31, 2006, to encourage Hawaii's electric utilities to use renewable energy resources found in Hawaii to meet the requirements of section 3;
- (2) Gather, review, and analyze empirical data to determine the extent to which this proposed utility rate structure would impact electric utility companies' profit margins and to ensure that these profit margins do not decrease for a period of five years following the implementation of this rate structure;
- (3) Adopt rules to implement incentives and penalties to assist electric utility companies in meeting the renewable portfolio standards established in section

269-92, Hawaii Revised Statutes, while allowing deviation from the standard in the event of circumstances beyond the control of the utility, which could not have been reasonably anticipated or ameliorated;

- (4) Using funds from its special fund, contract with qualified technical experts to conduct independent studies to be reviewed by a panel of experts from among such entities as the U.S. Department of Energy, the National Renewable Energy Laboratory, the Rocky Mountain Institute, the Electric Power Research Institute, the University of Hawaii Natural Energy Institute, or other similar institutions with the required expertise. These studies shall:
- (A) Make findings and recommendations to the commission as to the capability of Hawaii's electric utility companies to increase the percentage of renewable energy established by the standard in a cost-effective manner, or whether circumstances require that the standard be adjusted. Cost effectiveness and capability shall be assessed by factors such as the impact on consumer rates, utility system reliability and stability, costs and availability of appropriate renewable energy resources and technologies, and other such criteria deemed appropriate by the commission; and
- (B) Make findings and recommendations to the commission for projected standards to be set five and ten years beyond the then current standard; and
- (5) Based on its own studies and those contracted under paragraph (4), the commission shall report its findings and recommendations, including, in particular, recommendations for new standards and goals, adjustments of percentages, and any proposed legislation, to the legislature no later than twenty days before the convening of the regular session of 2009, and every five years thereafter.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2004."

Senator Slom rose to speak in support with reservations as follows:

"Mr. President, after the good words of the Chair of the Energy Committee, I have been swayed to support this bill with reservations.

"He wisely mentioned that the administration is committed to diversifying our energy as well as our economy. He also wisely pointed out the integrity of the PUC Chair both points of which I agree. He did kind of scare me a little bit when he talked about giving us poison, which we in the Minority hear a lot about. But fortunately Mr. President, as you know, I have a strong constitution and I'm not worried about the poison, so I'll accept it with reservations.

"Thank you very much."

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

"Mr. President, I rise to speak in favor of this legislation.

"Mr. President, the young man from Hana, the good Senator, was extremely diplomatic in supporting this bill. And I'd like to say I commend him and the Majority Party for taking a stand along with the Governor for genuine reform in the energy portfolio, reform that is long overdue.

"We all know that Hawaii is blessed with incredible natural resources, not the least of which on the Big Island is geothermal. Our sun, the rhythm of our ocean, the wind all can contribute to making Hawaii the Petri dish of genuine energy self-sufficiency.

"But we would not be honest with ourselves and with the public who we're pledged to serve if we did not put on record the truth. And the truth is that we've allowed for close to 75 years now a monopoly to have a stranglehold on our energy here in Hawaii and that is Hawaiian Electric and its subsidiary companies. This company is traded on the stock exchange. This company's CEO is one of the highest paid in the State of Hawaii. This company's profits are amongst the highest of any corporation in Hawaii, all at the expense of the consumers of the State of Hawaii. We have electric rates that are 98 percent above the national average, far exceeding the rates of gasoline and other consumer products.

"This monopoly has done a good job of protecting its interest, and to its credit, this Senate took a stand for genuine reform. Unfortunately, when this bill was sent to the House of Representatives, the minions of the monopoly saw fit to take away its teeth. To imply in circumstances or to make law that says fossil fuels can be deemed renewable energy is an insult, yet this bill does it. But in this case I have to say if nothing else wasn't done, that the Chairman of the Senate Energy Committee along with the administration put on record this Senate's desire to promote genuine energy reform. And I believe that now that it is an issue, we will start down the path of doing just that.

"Thank you, Mr. President."

Senator Hogue rose in opposition and said:

"Mr. President, I stand in support of the Senate's position and in support of the administration's efforts, and because this is neither, I'm going to oppose this bill.

"Thank you."

Senator Sakamoto rose in support of the measure and said:

"Mr. President, I stand in support and also some comments relating to the comments related to our Hawaiian Electric.

"I guess I'm not happy when people aren't able to defend themselves in an action. And I'm not saying one monopoly is good, but I am saying that's why we have the PUC. We have been, for the most part, having good utility service, and I hope the PUC would look into any accusations regarding excessive or over this or over that.

"On the other hand, Hawaiian Electric has been a big proponent of solar energy. They sponsor competitions. They put solar products on schools. Certainly they have been working to have energy efficiency into places like the Maui Community College. So I would hope that if there are some excesses, the PUC can do their job, but in other areas I think we should recognize them for the efforts they are doing to try and accomplish what we all want, which is freedom from being bound up by the oil goblins.

"Thank you."

Senator Ihara rose and said:

"Mr. President, point of parliamentary clarification.

"Subject to your further clarification, Mr. President, I believe the vote we are about to take is Final Reading on this bill. We voted to agree to the House amendments on Monday, and if this vote succeeds today, we will own it completely. We cannot say it's the House's proposal. It will be ours if we vote to pass this right now.

"Thank you."

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

Ayes, 22. Noes, 2 (Hogue, Ihara). Excused, 1 (Taniguchi).

#### FINAL ADOPTION

S.C.R. No. 199, H.D. 1:

On motion by Senator Chun Oakland, seconded by Senator Kanno 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 Finally Adopted on the following showing of Ayes and Noes:

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

#### ADOPTION OF RESOLUTION

#### MATTER DEFERRED FROM MONDAY, MAY 3, 2004

Stand. Com. Rep. No. 3535 (S.R. No. 40, S.D. 1):

Senator Chun Oakland moved that Stand. Com. Rep. No. 3535 and S.R. No. 40, S.D. 1, be adopted, seconded by Senator Hanabusa.

Senator Chun Oakland offered the following amendment (Floor Amendment No. 17) to S.R. No. 40, S.D. 1:

Page 2, lines 7-20, are amended to read as follows:

"BE IT FURTHER RESOLVED that the Senate Committee on Human Services also consider any relevant laws and policies that other states have implemented to resolve similar problems[;] and consult with the National Council of Juvenile and Family Court Judges, the National Center for State Courts, and the National Children's Rights Council for their expertise in dealing with these sensitive issues; and

BE IT FURTHER RESOLVED that the Senate Committee on Human Services is requested to report its findings and any recommendation of legislative action to resolve these issues, no later than twenty days prior to the Regular Session of 2005; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the President of the Senate and the Senior Judge of the Family Court, Administrative Director of Courts, [and] the Chief Justice of the Supreme Court[;]

Executive Director of the National Council of Juvenile and Family Court Judges, the President of the National Center for State Courts, the President of the National Children's Rights Council, and a representative of the Hawaii Children's Rights Council."

Senator Chun Oakland moved that Floor Amendment No. 17 be adopted, seconded by Senator Hanabusa.

Senator Chun Oakland rose and said:

"Mr. President, this floor amendment includes reference to three national organizations that have expertise and resources that can assist the Committee with its interim work."

The motion to adopt Floor Amendment No. 17 was put by the Chair and carried.

Senator Chun Oakland moved that Stand. Com. Rep. No. 3535 be received and placed on file, seconded by Senator Hanabusa and carried.

On motion by Senator Chun Oakland, seconded by Senator Hanabusa and carried, S.R. No. 40, S.D. 2, 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 adopted.

At 1:19 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 1:26 o'clock p.m.

#### RECONSIDERATION OF ACTION TAKEN

S.B. No. 2895, S.D. 1, H.D. 1:

Senator Kanno moved that the Senate reconsider its action taken on April 13, 2004, in disagreeing to the amendments proposed by the House to S.B. No. 2895, S.D. 1, seconded by Senator Menor 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. 2895, S.D. 1, on the following showing of Ayes and Noes:

Ayes, 3 (Kanno, Menor, Kokubun). Noes, none. Excused, 1 (Slom).

Senator Kanno moved that the Senate agree to the amendments proposed by the House to S.B. No. 2895, S.D. 1, seconded by Senator Menor.

Senator Kanno noted:

"Mr. President, the amendments the House made are technical in nature."

The motion was then put by the Chair and carried.

On motion by Senator Kanno, seconded by Senator Menor and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 2895, S.D. 1, and S.B. No. 2895, S.D. 1, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PEST CONTROL," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

At 1:28 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 1:30 o'clock p.m.

**RECALL OF H.B. NO. 1029**

Pursuant to Article II, Section 12, of the Hawaii State Constitution and Senate Rule 52, Senator Ihara moved to recall H.B. No. 1029, entitled: "A BILL FOR AN ACT RELATING TO PERMIT APPROVALS," from the joint Committee on Transportation, Military Affairs, and Government Operations and the Committee on Ways and Means.

At 1:31 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 1:32 o'clock p.m.

At this time, Senator Ihara withdrew his motion to recall H.B. No. 1029 from the joint Committee on Transportation, Military Affairs, and Government Operations and the Committee on Ways and Means.

**SENATE RESOLUTIONS**

The following resolutions (S.R. Nos. 127 to 134) were read by the Clerk and were disposed of as follows:

**Senate Resolution**

No. 127 "SENATE RESOLUTION RECOGNIZING WITH GRATITUDE EACH OF THE INDIVIDUALS WHO OPENED A DAY OF THE SENATE, TWENTY-SECOND LEGISLATURE OF THE STATE OF HAWAII, REGULAR SESSION OF 2004, WITH AN INSPIRATIONAL INVOCATION."

Offered by: Senators Hanabusa, Hemmings.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, S.R. No. 127 was adopted.

No. 128 "SENATE RESOLUTION EXPRESSING DEEPEST APPRECIATION TO THE MEMBERS OF THE VARIOUS MEDIA FOR THEIR COVERAGE OF THE ACTIVITIES OF THE TWENTY-SECOND LEGISLATURE, REGULAR SESSION OF 2004."

Offered by: Senators Hanabusa, Hemmings.

Senator Kawamoto moved that S.R. No. 128 be adopted, seconded by Senator Hogue.

Senator Slom rose to speak with reservations on the measure and said:

"Mr. President, I would like to express my deepest reservations on S.R. No. 128 which praises the media for its coverage.

"While I have no problem with some of the working media who actually work that were down here. I think this was the Session that got the least coverage by the media, and whether the discussion was made in the boardrooms or where it was made, they would not cover the issues that we have wrestled with for five months adequately. I think it is a disservice to the public, and to give, uniformly, appreciation for all the media, I think is incorrect.

"Thank you."

Senator Trimble rose in rebuttal and said:

"Mr. President, I rise in brief rebuttal. (Laughter.)

"Mr. President, I would like to cite three reasons:

1. We don't get the coverage because we are boring. (Laughter.) Mr. President, I was not meaning any individual member of the other party. I was talking about this Body as a whole. We come, we meet, and then you guys recess. You come back 45 minutes later and you actually expect them to sit in booth over there for 45 minutes while you're in recess. There are some days when the only discussion is between the Senator from Hawaii Kai and the Senator from Waikiki. Now that probably is not very interesting.
2. After a while, Trojan horses, disingenuous legislation, false facades, and fake reform are no longer news because we do it all the time.
3. It is not what the people of the media do down here, because they are professionals. What appears in the newspapers generally have gone through the cutting room and come out oftentimes quite differently than it was submitted.

"So, for those three reasons, I disagree with the good Senator from Hawaii Kai. Thank you."

The motion was then put by the Chair and carried, S.R. No. 128 entitled: SENATE RESOLUTION EXPRESSING DEEPEST APPRECIATION TO THE MEMBERS OF THE VARIOUS MEDIA FOR THEIR COVERAGE OF THE ACTIVITIES OF THE TWENTY-SECOND LEGISLATURE, REGULAR SESSION OF 2004, was adopted.

No. 129 "SENATE RESOLUTION RETURNING ALL BILLS, CONCURRENT RESOLUTIONS, AND RESOLUTIONS TO THE CLERK'S DESK."

Offered by: Senators Hanabusa, Hemmings.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, S.R. No. 129 was adopted.

No. 130 "SENATE RESOLUTION AUTHORIZING THE PRESIDENT TO APPROVE THE JOURNAL OF THIS SENATE FOR THE SIXTIETH DAY."

Offered by: Senators Hanabusa, Hemmings.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, S.R. No. 130 was adopted.

No. 131 "SENATE RESOLUTION RELATING TO THE PRINTING OF THE JOURNAL OF THE SENATE."

Offered by: Senators Hanabusa, Hemmings.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, S.R. No. 131 was adopted.

No. 132 "SENATE RESOLUTION AUTHORIZING THE PRESIDENT TO DESIGNATE THE EMPLOYEES WHO WILL WORK AFTER ADJOURNMENT."

Offered by: Senators Hanabusa, Hemmings.



On motion by Senator Kawamoto, seconded by Senator Hogue and carried, S.R. No. 132 was adopted.

No. 133 “SENATE RESOLUTION REGARDING COMPLETION OF THE WORK OF THE TWENTY-SECOND LEGISLATURE SUBSEQUENT TO THE ADJOURNMENT THEREOF.”

Offered by: Senators Hanabusa, Hemmings.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, S.R. No. 133 was adopted.

No. 134 “SENATE RESOLUTION INFORMING THE HOUSE AND GOVERNOR THAT THE SENATE IS READY TO ADJOURN SINE DIE.”

Offered by: Senators Hanabusa, Hemmings.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, S.R. No. 134 was adopted.

Senator Baker rose on a point of personal privilege as follows:

“Mr. President, I rise on a point of personal privilege.

“Mr. President, it was very late on Monday when we finally adjourned, and although I wanted to rise because it was perhaps more germane on that day than it is today to talk about and to insert some comments into the Journal about our override of H.B. No. 1043, C.D. 1, I knew that if I rose on that day at that late hour, I would have probably been lynched by my colleagues. And so I chose not to rise at that particular point. But you know, that was a very important bill. For those of you who don’t remember numbers, and sometimes I don’t either, this is the override of the HGEA arbitrated award veto.

“The concern on that day was that it came down quickly, some people have accused, and perhaps all of us were not prepared to answer. There were only two points of view. I believe that sometimes our colleagues across the way are correct – we don’t respond; we don’t put things into the Journal; we don’t let people know how we feel. And I didn’t want this Legislature to adjourn without inserting into the Journal some very important information that LRB provided for us.

“The concern was, well how could we override this veto so quickly when we hadn’t really even had a chance to look at the Governor’s veto message? Well I would just point out that on April 7<sup>th</sup>, the Governor in fact sent down a message to the Legislature that asked us not to pass it and basically outlined the same objections that she had in her veto message. So, we had fair warning and we could respond to what she had said.

“She talked about that the award should not have used CAFR, that they should have been more specific. But if you look at the law that’s on the books, it doesn’t specify that the arbitration panel could have used CAFR. It doesn’t say that there are any specific or precise actions that they must take. So the arbitration panel was well within their prerogative to issue the award in the manner that they did.

“The one thing that’s curious, Mr. President, is that there’s a specified period of time when the employer can announce that there are problems with the way the award was done and ask for technical corrections. None of that was ever done.

“Finally, Mr. President, I must note for the record that all three members of the arbitration panel signed this award free

and clear. There were no reservations on the part of the employee member. There were no additional comments.

“So there are two things I’d like to have inserted into the Journal because I think it’s important for the historic perspective. I’d like a copy of the entire arbitration award included in our Journal, and I’d also like a copy of the memo that was done for one of our colleagues, the Senator from Makiki, to be inserted. I received his permission as well as the researcher for LRB’s permission to insert this into the Journal because it responds to the information that the Governor provided as to the errors and refutes some of that information.

“Thank you, Mr. President.”

The Chair having so ordered, Senator Baker’s inserts of the memo and the arbitration award are identified as ATTACHMENT “C” and ATTACHMENT “D,” respectively, to the Journal of this day.

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

“Mr. President, I rise on a point of personal privilege.

“Mr. President, the good Lord willing and with all the faculties I have in my control, I hope to be back next year, but if I’m not, I’d just like to say, number one, thank you to my staff – Nora, Ross, Neil, Stacey, Art and Ken. I’d like to thank your staff for your support, and the supporting cast of this Senate who for 10 years have done a great job – starting from the print shop to the sergeant-at-arms. I thank my colleagues for an enjoyable 10 years.

“I have only one request. The only request I have is that all of those who are coming back ensure that you take care of this Body. This Body is the only we have in this State. It has a long and proud history, and I ask all of you to really remember this Senate. I ask all you Senators to live up to the golden rule, treat each other with love and respect and honor that you all deserve.

“I thank you for a long journey. Thank you.”

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

“Mr. President, I rise on a point of personal privilege.

“Members, I’d like to take this opportunity to thank a number of people, and I’ll be very brief because I see we have the House waiting for us. I just have to note that this is one of the first years they came to our Chamber.

“First of all, I’d like to thank my office staff – Elsbeth Mckeen, my office manager; Jennifer Chow, the committee clerk; Libby Kimball, the receptionist; Michele Van Hessen, one of my analysts; and Chris Martelles, an analyst – for supporting all the work that we’ve done. I’m most grateful to them and I thank them for their dedication and for multi-tasking for all of the things that I had to get done.

“I’d also like to thank the members of the Energy and Environment Committee for serving on that Committee and for working. All of the other Committees that I served on, thank you to the Chairs and members.

“I’d like to thank this Body for the opportunity to serve and thank you for providing me with such insight, such support and guidance. We’ve all grown together . . . my have we grown together. I think we have done well for the people of Hawaii.

"Finally, Mr. President, I want to thank the people of Maui, Moloka'i, and Lana'i for this great privilege to serve in the Senate as their Senator and to thank them also for their support and their guidance throughout this entire process.

"Mahalo everyone and have a good interim."

Senator Hemmings, Minority Leader, rose to deliver his closing remarks as follows:

"Mr. President, first of all I do want to have the record reflect that your Loyal Opposition, the Republican Minority, is grateful that you have started the tradition of having closing remarks reflect our point of view on what happened this last Legislative Session. And if nothing else, we have all fought hard for what we believe in our hearts is the right thing to do, and that's what this Legislature is best at doing.

"In my remarks I do want to point out what we feel we did, or more importantly may not have done. The pounding of the gavel will herald the close of this Legislature. I was passed out a quote or a poem yesterday that I wish to enter into the record. What happened is best summed up with these poignant words from the poet John Greenleaf Whittier: 'For all sad words of tongue or pen, the saddest are these: it might have been.'

"Hawaii entered a new era of politics in the election of 2002. One political party no longer had absolute control over the executive, legislative and therefore the judicial branches of government. With the departure of a monopoly and an emergence of a fledgling two-party system, there were high hopes that we could work together cooperatively to find common solutions to the problems that challenge the people we serve. At the opening of Session, we, your Republican colleagues, offered the Majority Party our hand of cooperation. If you recall, I stated that we hoped our efforts would not be met with partisanship and blind allegiance to the status quo. I'm pleased to report that there were incidences where we cooperated and we did indeed make good things happen.

"Hawaii Rx is something we can all be proud of. During the final passage of Hawaii Rx, it was heartwarming for me to see the more ecumenical amongst the Majority Party recognize the Governor for her cooperation and leadership with this issue. Likewise, the Republicans in the Senate recognize the Majority Party's leadership and spirit of bipartisan cooperation on this issue. Mr. President and colleagues, when we work together everyone wins, especially the public. Unfortunately, incidences of us really working together to make good things happen were few and far between.

"The record should reflect, concerning education, in spite of the words uttered on this Floor today, no one denies that our children are not capable of achieving, and no one denies that our teachers are not devoted. The good news is the education establishment finally acknowledged that the system is broken, or in the words of Superintendent Pat Hamamoto, is obsolete. The numbers also show that the taxpayers of Hawaii, in spite of other's claims, are very generous with education spending. The education status quo for years would have us believe otherwise.

"The Governor, the CARE committee, along with community leaders and the House-Senate Republicans, proposed genuine and honest reform, and what emerged was S.B. No. 3238, what you see is not what you get.

"Ultimately, if S.B. No. 3238 were implemented, the system of governance would remain with the same cabal of leaders in the centralized system. The people of the neighbor islands and Oahu districts were denied the right to even vote on whether to dismantle the statewide system. S.B. No. 3238 was vetoed.

The Governor offered a genuine compromise by amending a bill that included five basic reforms. The compromise proposal, H.B. No. 2002, was passed. At best, the alleged compromise, H.B. No. 2002, represents little reform and much delay. The truth is honest and systemic education reform was a missed opportunity in many ways.

"There is good news – the Governor did negotiate a much-deserved pay raise, and I emphasize the word negotiate, for teachers and the University of Hawaii Professional Assembly. Speaking of salary increases, we are now paying the price for the flip-flop the Majority Party did on binding arbitration. As predicted, the decision on binding arbitration for the HGEA resulted in costs that future state budgets will have a difficult time covering. Once again the Majority Party overrode the veto of the HGEA 7.5 percent pay increases contained in S.B. No. 2724. The HGEA arbitrated pay raises will result in huge future deficits. The numbers cannot be denied. Unfortunately, this could result in layoffs. The Governor will do what needs to be done to keep vital services available to our citizens.

"Senate Republicans also advocated a budget that would get us back to paying our bills with existing cash flow. It always amazes me that the Majority Party claims to be advocates of the sick, the elderly and the keiki, and yet holds public-funded human service programs hostage in raid bills. Human services should be part of the state's operating budget, not an adjunct. We know that balancing the budget by raiding funds, depleting the rainy day fund, taking money out of the retirement system, dismantling one of the best run departments in state government, and other short-term tactics will eventually lead to financial hardship for all the citizens of Hawaii, including the members of the unions of government. Republicans agree some vacant positions should be eliminated, but not at the expense of human services.

"I believe we all now realize that parts of the state's hastily produced omnibus spending bill, H.B. No. 1800, created problems. Fortunately, our Governor offered to fix those problems and, I might add positively, with the cooperation of the Chairman of the Senate Ways and Means Committee and members of the Finance Committee in the House, something was done. The Majority Party could not muster the votes to override the ill-conceived legislation to dismantle the DCCA, though the subsequent raid of \$10 million from their compliance fund is problematic, especially for those businesses that pay into the fund. The Majority Party failed to bring stability and fiscal accountability to the states financial management. We seem to live from year to year. This is another missed opportunity.

"In the wake of Lt. Gov. Aiona's initiatives concerning the ice epidemic, the Majority Party picked up the gauntlet. After a summit and numerous hearings, it became obvious that the road to recovery incorporated two components. First, and we support this, rehabilitation when feasible, and second, law enforcement. Only half the job was done. The classic ploy of throwing more money at the problem addressed rehabilitation. Left out were a number of law enforcement initiatives supported by state and national law enforcement agencies. The Majority Party promptly overrode the Governor's veto of the problematic ice bill, S.B. No. 2003. It seems obvious that once again some in this Legislature are more concerned about criminals than protecting victims and law-abiding citizens.

"The long time ploy of the Majority Party to feign reform and delay it through an election cycle is evident again. If a gas cap, a bottle bill, and education reform are so critical, why was their implementation delayed? It must be noted that this Session was incredibly adversarial to the executive branch of state government. Much was done to try and erode the powers

of the Governor. After 40-years of one-party rule, suddenly the power of the executive branch needed to be changed. The Majority Party tried to dismantle her best-running department – DCCA. You tried to curtail the Governor’s appointments to boards and commissions, including the board of regents. You tried to take away her management of this building and abolish security guards that protect her Lt. Governor and his family. You tried to eliminate the pay of her advisors. In short, you tried to hamstring the Governor’s effectiveness rather than work with her cooperatively to move our State forward for the benefit of all. The question that must be asked is why? I believe that the people of Hawaii know the answer. It’s been enunciated on the editorial pages of our state’s newspapers – petty politics.

“The aging and effete agents of the status quo are being challenged by a bold Governor and the growing number of us across this state who support genuine change.

“Before I close I do want to say thank you. I want to say thank you to those who work with us, those hardworking members of the legislative staff, those legislative agencies, especially our Clerk, the Sergeant-at-Arms Office, the Legislative Reference Bureau who do an excellent job of rising above the fray of politics and do indeed treat each of us Legislators individually and aid us in every way possible. For that, your Minority Party is most grateful.

“An honest assessment of this Session has to be that the Majority Party did indeed stifle the reform this government so desperately needs. In closing, our quest was clear, we could have planted seeds whose shade would nurture future generations. Regrettably, some of the seeds have fallen on the fallow ground of petty politics. Mr. President, my colleagues, we’re proud to be here, we’re proud to be part of the process. We’re pleased, Mr. President, that you and the Majority Party has allowed us open and unabated debate on the issues that affect so many of our lives. We the Senate Republicans will continue to till the soil and nourish the seeds of genuine reform and a new beginning. Mr. President, we remain optimistic.

“Aloha.”

The President then delivered his closing remarks as follows:

“I have to say that we are concluding on a very successful Legislative Session. While some among us would prefer to dwell on their losses, their inability to have their ideas resonate with voters, the lack of success in moving their legislation forward in this arena, I say that is simply the nature of governance. I don’t think any of us ever enjoys complete success having his or her proposals enacted. We listen to our constituents, form the ideas, and hope that we can convince others of their merit. And that’s what we did this year.

“We approved major legislation on education, drug abuse, and prescription drugs. They are not the be-all and end-all of legislation. They are merely starting points for further work.

“What we achieved was thanks to all of you. I most especially would like to personally thank all of the Chairs for their creativity and hard work.

“Our Education Chairman Norman Sakamoto and his House counterpart, Representative Roy Takumi, boldly crafted landmark legislation that became a core element of our Senate-House Majority package for 2004. This reform measure will invigorate our schools and support student achievement by directing more money to the classroom, giving principals more authority, and involving parents and the community in school governance.

“Also at the heart of our Majority package was legislation giving us the tools and means to fight the epidemic of drug abuse, ice in particular. Our Joint House-Senate Task Force on Ice and Drug Abuse spent many months crisscrossing the islands to hear from those affected by, or involved in, the ice problem and its cures. The result was legislation which responded to input we received directly from the community and which represented an effective combination of tougher penalties, with more resources for education, prevention, and treatment.

“Senator Colleen Hanabusa, who Co-Chaired the task force along with Senator Melodie Aduja, was instrumental in drafting the ice bills and serving as a staunch champion of the proposals in the face of unreasonable opposition.

“A special recognition is due to the Ways and Means Committee Chairman Brian Taniguchi and his House counterpart, Dwight Takamine, who had the very difficult task of balancing the budget while accommodating the critical funding needs of the education and ice acts, as well as pay raises for teachers and other public employees. They are to be commended for their leadership in shaping a complex, solid budget framework for the coming year.

“Unfortunately, some have chosen to denigrate everything we’ve worked so hard to accomplish. A few vocal parties didn’t get everything they wanted in the ice bills so they got the Governor to veto one. Well, the bills were crafted from recommendations gathered from hundreds of people in hours of testimony across the state, countless site visits, and all manners of public input. The administration, meanwhile, held an invitation-only drug summit, and came to the conclusion that further study was warranted. As the Senator from Waianae pointed out, not only did we listen to the people, but we also knew we couldn’t wait another year before acting. The result was the ice bills, a comprehensive first step in attacking our drug problems.

“The debate over seven local school boards overshadowed the meaningful reform measures we adopted, even when the Governor’s own poll showed that folks care far more deeply about smaller classes, more textbooks, better classrooms, and teacher salaries than school boards.

“Our success this Session had its roots in our 2003 Session. At that time, our willingness to work together to support a common agenda resulted in our ability to help the needy and disadvantaged, to protect our precious farmlands, and to ensure public health and safety.

“Our accomplishments this year build on that foundation. We did so through a commitment to common goals . . . to believing in the necessity of compromise when consensus is unattainable . . . to a willingness to share ideas and approaches to problems affecting us all . . . and to upholding our duty to do our very best in serving the people of Hawaii.

“I hope these principles will inspire us into the 2005 Session of the Legislature and beyond.

“Mahalo.”

At 2:00 o’clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 2:13 o’clock p.m.

**ADJOURNMENT**

Senator Kawamoto moved that the Senate of the Twenty-Second Legislature of the State of Hawaii, Regular Session of 2004, adjourn Sine Die, seconded by Senator Hogue and carried.

At 2:14 o'clock p.m., the President rapped his gavel and declared the Senate of the Twenty-Second Legislature of the State of Hawaii, Regular Session of 2004, adjourned Sine Die.

ATTACHMENT "A"



HOUSE OF REPRESENTATIVES  
STATE OF HAWAII  
STATE CAPITOL  
HONOLULU, HAWAII 96813

# A Survey of Public School Principals

April 28 – May 4, 2004

**By Rep. K. Mark Takai  
and Rep. Roy Takumi**

2004050101

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## Survey Overview

On Wednesday, April 28, an email survey was sent to all public school principals throughout the State of Hawaii. A total of 252 school principals were contacted. By Friday, April 30, a total of 129 school principals responded (51.2 percent). On Friday, April 30, another email was sent to those principals who had not completed the survey. By Tuesday, May 4, a total of 152 school principals responded (60 percent).

Although the survey's authors have spoken to numerous principals over the past few months, they created and implemented this study to accurately assess the general thoughts of our school leaders.

As the governor and state legislators debate the issue of school reform, the authors believe that it is critical to understand how proposed changes to our state laws will impact our schools and how our school leaders feel about these proposed changes.

A total of five questions were asked. Respondents were given five answers for each question. There were Strongly Agree (SA), Agree (A), Neither Agree Nor Disagree (NA), Disagree (D), and Strongly Disagree (SD). No response to a question is listed as a Blank (BLK).

Special mahalo to Lenna Mulipola-Ayres for her assistance in compiling the data.

The survey tool is attached as Appendix A.

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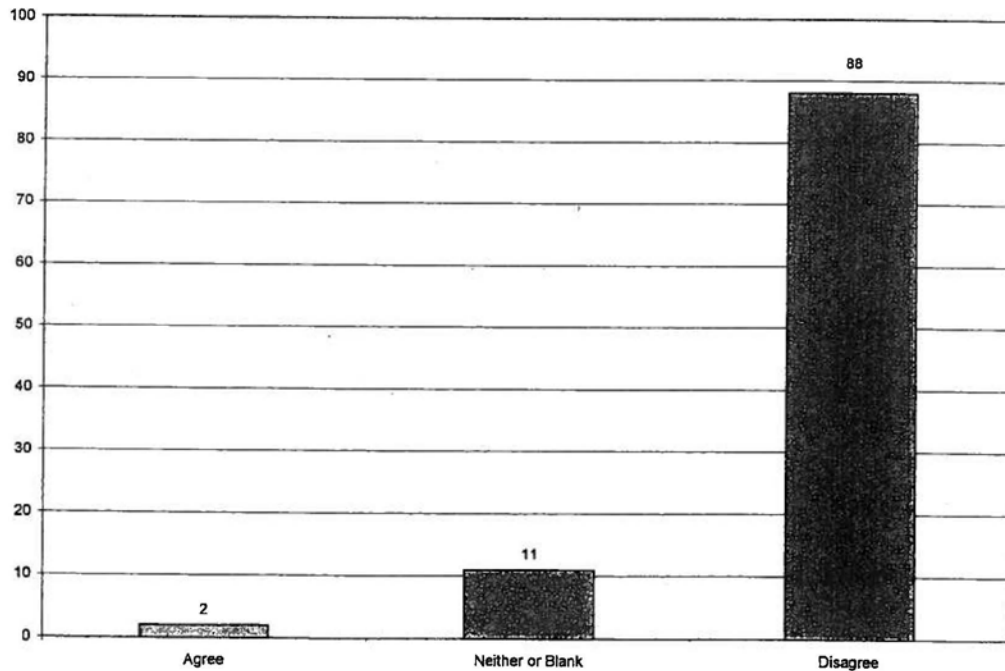
**1. The Governor's proposal to replace a statewide school board with at least four (or seven) school boards will improve student achievement.**

Strongly Agree .....	2	1 percent
Agree .....	1	1 percent
Neither Agree nor Disagree.....	16	11 percent
Disagree.....	46	30 percent
Strongly Disagree.....	87	57 percent
Blank .....	0	0 percent

**Combined Responses**

Strongly Agree or Agree .....	3	2 percent
Neither Agree nor Disagree or Blank.....	16	11 percent
Disagree or Strongly Disagree .....	133	88 percent

Nearly 90 percent (88 percent) of the respondents believe that creating local school boards will not improve student achievement. Only 2 percent believe that creating local school boards will improve student achievement.



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**Responses by Principals:**

*Change the way schools are funded. Have our governor/legislators visit schools, spend the day and see what happens daily so they can see the difficulties we actually face. Four or seven school boards is not the answer at this time. – Lindsey Ball, King Kamehameha III Elementary*

*Timely delivery of educational program supports for our students is critical. In the case of seven school boards, I view it as another layer for the schools to go through. I question what is the difference between what we have now and these seven school boards. In my opinion, nothing. – Myron Brumaghim, Nanaikapono Elementary*

*Again, more bureaucracy? I believe the SCBM councils (or something like that) should be given that role. That way the voices of the vested public are heard. – Clayton Chun, Kau High and Pahala Elementary*

*Local school boards actually will work, but only if the funding is similar, i.e., basic funding from the state, but local control of the funds for both spending and raising them. That has always brought up the question of equity between rich and poor districts. Are we ready to use property taxes to fund schools? – Peter Chun, Kaiser High.*

*Keep the present BOE. The fact that there is only one board now does not determine student achievement either, there are other factors, such as the adequate resources, parent involvement, student responsibility, in addition to high expectations/teaching standards that our teachers have. – Elynne Chung, Pearl Harbor Kai Elementary*

*There has been no information presented that indicates how local school boards will improve education. Research actually indicates that student achievement is improved through specific efforts taken by the school community. Those efforts include an articulated vision on what we expect for our students, focused attention and alignment on the standards that are to be achieved, varied strategies and supports provided to students in order to facilitate achievement, consistent use of data to assess how well students are meeting the expectations, strong parental involvement in the educational process, and a professional development component. Therefore, I can't agree with local boards until I see how achievement will be impacted by them. – Maureen Duffy, Waiakea Intermediate*

*From all of the research that I have read, nothing has been found that shows that student achievement is directly or indirectly tied to the layers of governance. – Robert Ginlack, Mililani High*

*As far as I know, there is no compelling evidence to support this position. – Curtis Young, Honowai Elementary*

*If the Governor's position is that 'decision-making power' belongs closer to the school, then bring it directly to the school without an intermediary group. No one knows our school better than my faculty, staff and parents. Why create another group outside of our school that may have other interests, since they would represent an area not a school. – Heather Wilhelm, Mauka Lani Elementary*



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*Having more school boards definitely will not impact student achievement. Five years ago, our school adopted a Comprehensive School Reform Model that is Standards-based. Each year since the adoption of the model, our students have continued to make gains in achievement in the Hawaii State Assessment, as well as measures by school wide and classroom assessments. The decision, agreements, commitment, dedication to the hard work required in becoming standards-based was made by the faculty and school community. This was our school's choice, and not because of a school board. We strongly felt a responsibility to our students in preparing them for their future. Also, we are a rural school that is relatively geographically isolated. A school board, be it 1, 4 or 7, would still be a decision-making body that would be very distant from us anyway.*  
– *Lyndia Uchimura, Hookena Elementary*

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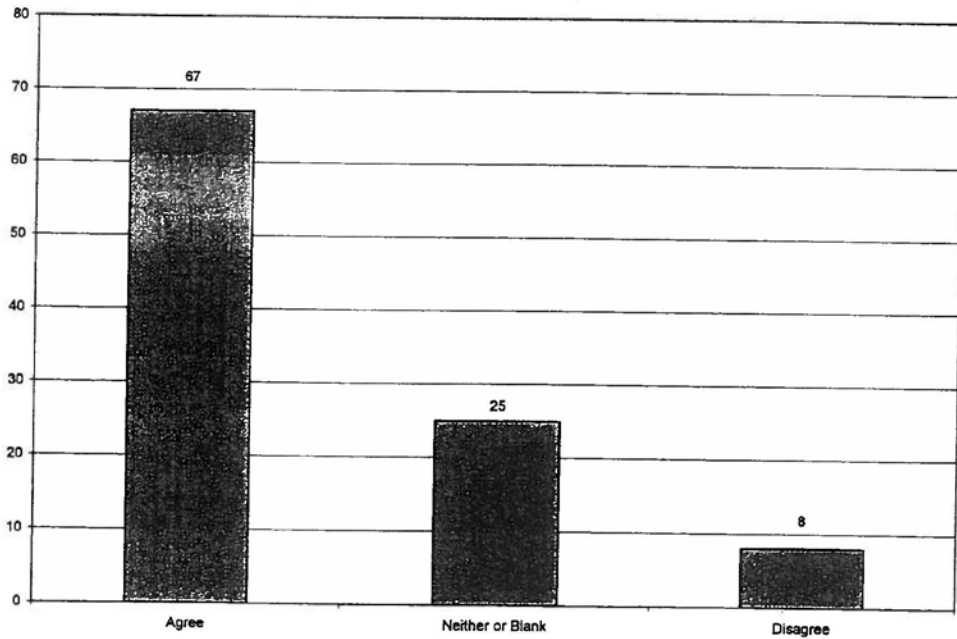
**2. Giving principals more resources and greater flexibility and autonomy will improve student achievement at my school.**

Strongly Agree .....	43.....	28 percent
Agree .....	59.....	39 percent
Neither Agree nor Disagree.....	38.....	25 percent
Disagree.....	8.....	5 percent
Strongly Disagree.....	4.....	3 percent
Blank .....	0.....	0 percent

**Combined Responses**

Strongly Agree or Agree .....	102.....	67 percent
Neither Agree nor Disagree or Blank.....	38.....	25 percent
Disagree or Strongly Disagree .....	12.....	8 percent

Nearly 70 percent (67 percent) of the respondents believe that student achievement will improve if principals are given more resources and greater autonomy. Nearly 10 percent (8 percent) believe that student achievement will not improve despite additional resources and flexibility. More than 20 percent (25 percent) are undecided.



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### Responses by Principals:

*It will improve only if funding is increased substantially. By that I mean schools getting funds to purchase additional teacher positions and part time teacher positions. With the current level of state funding at the school level we already have flexibility. The area of Special Ed has a life of its own which principals truly have very little control. Please keep the Special Ed funding at the State level. Also, I want state level to continue handle transportation, utilities, and school food services. These areas are purely business concerns. Principals do NOT need to deal with these areas to affect student achievement. – Susan Young, Heeia Elementary*

*I believe that having greater control of funds would enable us to use funding for staffing (hiring more PTT's for example) to target students who need extra help to reach proficiency levels. Having more resources will be the key. I look forward to having more flexibility with resources. A concern that I have is: I am not sure yet how my school will fare under the weighted student formula. That will be important for us to see. I am hoping that we will not lose resources under this system—that it won't take away from small schools that don't have really high levels of SPED, ESLL, etc. I do agree that funds should follow needs but there is a basic level of need that we all have. Small schools tend to have far fewer resources and it makes a big difference in how we can serve our children. – Ruth Holmberg, Sunset Beach Elementary*

*Often resources are allocated to programs that don't meet the unique needs of our school. As an example, we recently received \$4000 to educate students who are suspended for 92+ days, yet we have no students out on long-term suspensions. Given the choice, we would have used this money to purchase books for our reading program. Also, if I had a choice of who needs to be on campus year-round, I would have asked for a counselor to stick around during the summer, rather than a Student Activities Coordinator, as was recently passed in the Omnibus bill. Students request credit checks, letters of recommendation, and parents call all summer and principals usually pick up this responsibility. I also believe that public schools are funded for mediocrity and that, while principals often do Herculean fundraising efforts to supplement our budgets, it's very difficult to find funding for some positions we consider essential. Our 27:1 ratio doesn't allow for much discretion. Right now, for example, curriculum and testing/data coordinators would help us meet NCLB benchmarks, but I haven't yet found a grant source or community partner willing to fund such seemingly mundane initiatives as this. – Lisa DeLong, Kahuku High and Intermediate*

*On the whole it should help improve student achievement, but there are no guarantees. My school is small with a heavy percentage of special education students (SPED). Several are severely handicapped students and were programmatic placed here from other schools and cannot take any type of standardized test. Unfortunately their test scores, which will either be zero (0) or non-participating, will still count against my total school test scores and will bring my school's scores down. It will appear, on paper, that the school is failing but this is far from the truth. The non-Sped students are learning well and meeting AYP and HCPS goals, but having nearly 1/3 to 40% of those taking the test being SPED students and taking the same standardized test as their normally developing peers will obscure and distort what is really happening at school. I know I'm not alone with this issue, but it will really reflect more at my school due to how small our enrollment is. – James Toyooka, Queen Liliuokalani Elementary*

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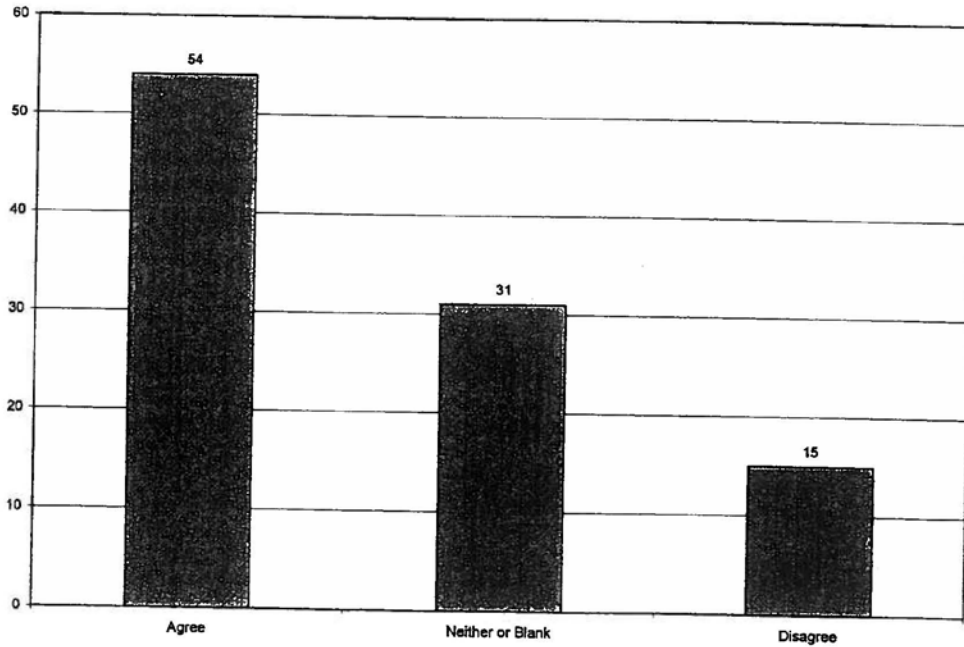
**3. If I were given more resources and greater flexibility and autonomy, I would be willing to take on more responsibility for student achievement at my school.**

Strongly Agree .....	44.....	29 percent
Agree .....	38.....	25 percent
Neither Agree nor Disagree.....	40.....	26 percent
Disagree.....	15.....	10 percent
Strongly Disagree.....	8.....	5 percent
Blank .....	7.....	5 percent

**Combined Responses**

Strongly Agree or Agree .....	82.....	54 percent
Neither Agree nor Disagree or Blank.....	47.....	31 percent
Disagree or Strongly Disagree .....	23.....	15 percent

More than half (54 percent) of the respondents would be willing to be more responsible for student achievement if they were provided with more resources and autonomy.



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**Responses by Principals:**

*I am held accountable for student achievement as it is. – Joseph Theroux, Keaukaha Elementary*

*There is nothing 'wrong' with what is going on presently regarding student achievement. I am asked to do more with less. As a small school with a declining enrollment, each year I get fewer teachers, less money yet expected to improve student progress. This is not ok. I am very clear what staff and community need to do to help all children succeed, but unless we are given the resources- it will not happen. I resent the implication that more resources makes it ok for more responsibility or things to do. – Billi Smith, Kekaha School*

*I already feel that I have great responsibility for student achievement and I cannot be held to more. Teachers have a share in that responsibility, but moreover, students and parents need to be held accountable. It is a two way street. Society has changed from the years when the teachers could teach and students would learn. Now there are so many challenges that come with the students that teachers need to get through barriers before students will actually learn. If there is anything that will drive teachers or administrators to leave education it is the attitude of students and parents today. We educators cannot do the job alone. Every time we get "hit" with criticisms is another reason to go find another job or retire where we wont have to put up with %\$#@#\$ from people who have no clue of what it takes to teach or operate schools these days. – Annette Nishikawa, Kapolei Middle*

*I take full responsibility for the success of my students. It's an unwritten rule of our commitment and philosophy. – Amy Martinson, Highlands Intermediate*

*As the term, "more resources, greater flexibility and autonomy" become clearer, it appears that the principal's time will be spent procuring, monitoring, and evaluating services that are presently done by district and/or state personnel. The important "little details" are being done by the support staff. If principals are given those responsibilities, then even less time will be available to be a curriculum leader. It appears that principals may be expected to do both line and staff functions. Presently, I spend a lot of time at meetings that are related to Special Education, 504, student support teams. Preparation and follow up for each meeting takes time, and in-depth work with regular education teachers are difficult to come by; most are beyond the regular teacher's work day. It is through the goodness of their hearts that teachers are willing to meet with me. – Justin S.N. Mew, Aina Haina Elementary*

*My plate is overflowing right now. Flexibility in personnel matters would help me, however, I don't want full autonomy because I would have to pick up responsibilities which are currently being done by centralized experts. I am willing to improve for student achievement at my school no matter what. It's all about the students. – Marsha S. Nakamura, Lahaina Intermediate*

*I will accept more responsibility for student achievement if we are truly given more flexibility and autonomy. I want to be free of certain contractual obligations, e.g., removing bad employees after repeated attempts to remedy situation, I want procurement laws changed to give us more flexibility, I want to be able to hold parents accountable for certain situations that we have no control of, I want more authority over discipline problems, etc. I want to make it clear, as I have done so with the Governor and Randy Roth, we need more than just fiscal flexibility to have true reform. – Bruce Naguwa, Kipapa Elementary*

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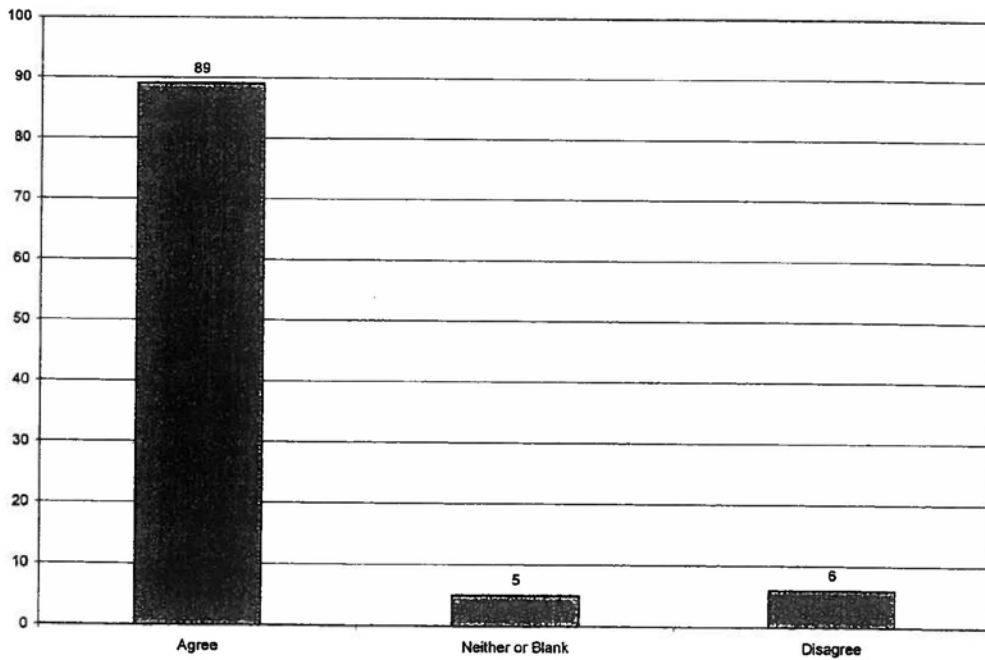
**4. If schools receive more resources and greater flexibility and autonomy, there must be additional training provided for planning and managing the use of resources.**

Strongly Agree .....	101.....	66 percent
Agree .....	34.....	22 percent
Neither Agree nor Disagree.....	6.....	4 percent
Disagree.....	3.....	2 percent
Strongly Disagree .....	6.....	4 percent
Blank .....	2.....	1 percent

**Combined Responses**

Strongly Agree or Agree .....	135.....	89 percent
Neither Agree nor Disagree or Blank.....	8.....	5 percent
Disagree or Strongly Disagree .....	9.....	6 percent

Nearly 90 percent (89 percent) of the respondents say that they need additional training if schools receive additional resources and greater flexibility. (This was the highest response category for the entire survey.) Only 6 percent do not believe that additional training should be provided.



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**Responses by Principals:**

*You keep going back to resources and leaving out flexibility and autonomy. I would rather have more flexibility and autonomy with the dollar resources that I have now, than having more dollar that have to go to salary, fringe benefits, and so on. Having earmarked money only accounts for advanced bookkeeping -no additional money for the classroom. – Larry Biggs, Mokapu Elementary*

*Increased tasks amounts to increased responsibilities and increased personnel to implement this. If this is not met, it would be better to return to centralization of services. – Ruth Silberstein, Palolo Elementary*

*Not only training is needed. Please give the principals a business person to manage that aspect. Principal's primary responsibility is to be the instructional leader. This will lead to increased student achievement. Being a chief financial officer in addition will give principals 2 jobs. We are already being criticized for not doing one job well. Now we would be expected to do 2 jobs well? That doesn't make sense to me. – Susan Young, Heeia Elementary*

*If administrators are taking on additional responsibilities, there will need to be additional supports and trainings. I personally do not want to manage the cafeteria, buses, payroll, sped, and other things that are handled state wide. I cannot imagine having the time to do this. My school at 350 does not have a vice principal. There is only me, but, given the choice, I would not use funding for a vice principal if direct classroom services to students were impacted. More training will definitely be necessary. – Ruth Holmberg, Sunset Beach Elementary*

*Currently, I am not equipped to handle a large sum of money. My responsibilities are increasing but will my support increase? There needs to continuous on-going training. – Lindsay Ball, King Kamehameha III Elementary*

*Everyone is at different levels of expertise, so training cannot be the "one-size-fits-all" model that is the current approach. Furthermore, teachers are now being pulled out of school far too much for the training that is being mandated. This is not good for students. Some of the additional resources need to go to longer work years for principals and teachers so that training can be accomplished without substitutes replacing teachers on so many days. This would also make it possible for us to require teachers to attend the training without diminishing instructional time for students. – Catherine Payne, Farrington High*

*When will I have the time to dedicate my time to student achievement if I have to do all the procuring, maintenance of facilities, CIP, processing of personnel, etc.? We are educators first, not business managers. Our product is students with quality education. Does that mean we will have to hire more personnel to assist us? Will we be accused of being top heavy at the school level next? – Marsha S. Nakamura, Lahaina Intermediate*

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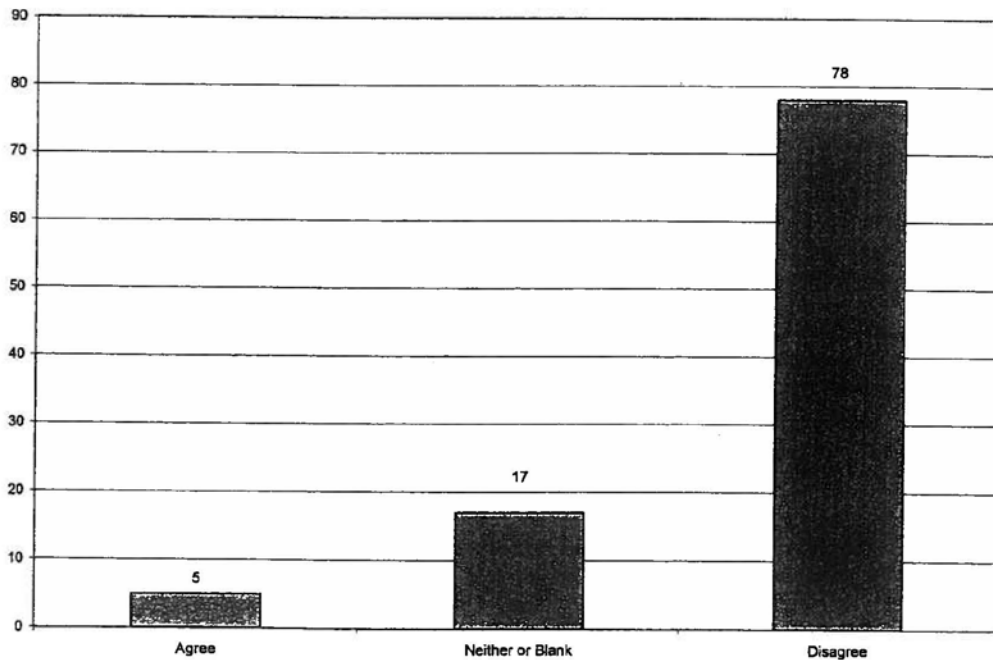
**5. I support the Governor's proposal that a minimum of 90% of the DOE's operating budget must be controlled by the principal. (This would mean that principals will be directly responsible for transportation, special education, food service, adult education, A+, etc.)**

Strongly Agree .....	5	.....3 percent
Agree .....	3	.....2 percent
Neither Agree nor Disagree.....	14	.....9 percent
Disagree.....	36	.....24 percent
Strongly Disagree.....	82	.....54 percent
Blank .....	12	.....8 percent

**Combined Responses**

Strongly Agree or Agree .....	8	.....5 percent
Neither Agree nor Disagree or Blank.....	26	.....17 percent
Disagree or Strongly Disagree .....	118	.....78 percent

Nearly 80 percent (78 percent) of the respondents do not support attempts to place a minimum of 90% of the DOE's operating budget under their control. Only 5 percent want to control these resources.





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**Responses by Principals:**

*I am a principal, not a business manager. Please let me focus on attaining high student achievement. – Amy Martinson, Highlands Intermediate*

*These types of responsibilities would be an extra burden to an already demanding job. As it is now EOs (principals) are stretching their health and family lives due to the existing demand. – Beverly McCall, Waiakeawaena Elementary*

*I already put in 13 hours a day in school, plus a few hours at home. When am I expected to take on this additional responsibility? I am tasked with being a manager of the school, as well as the instructional leader. Realistically, the demands of managing 90 percent of the operational budget, as well as, being the instructional leader are unrealistic and unreasonable. This proposal demonstrates the lack of knowledge of what occurs at the school level and the level of responsibility that the principal is challenged with. – Randall Miura, Leihoku Elementary*

*There is NO WAY that I want these responsibilities. There is NO WAY that I can do service to the students and families if I was held responsible for everything. There is NO WAY that I will remain an educator in that scenario. I have surpassed the requirements for retirement (55/30). I am here because I want to be. I do not want to be in that scenario. – Annette Nishikawa, Kapolei Middle*

*I don't think that we should identify a percentage until we identify WHAT tasks the schools will be taking on. After all the talking about how important principals are to school reform and all the talk about making us accountable for our schools (performance contracts and all that), there has been NOTHING forthcoming from the DOE, the BOE, the legislature, HGEA, or the Office of Collective Bargaining that could be viewed as meaningful support or acknowledgement of our role as leaders. I worry about the future. We need to think through the consequences of the decisions that we make. My prediction is that lots of folks, including the governor, will take credit for 'doing something' and the blame for the problems, the failures, and the slow pace of change, will rest solely on the heads of principals. – Catherine Payne, Farrington High*

*If you want us to concentrate on student achievement, you can't have our time taken up with things that do not relate to student achievement. – Carol Petersen, Mililani Mauka Elementary*

*If all of these responsibilities are shouldered by the principal, each school will need a fiscal officer to handle all the additional responsibilities. There should be centralized services for particular services such as transportation, special education, food service, etc. – Jane Serikaku, Iliahi Elementary*

*I am more than willing to manage funding that links directly to student achievement. So much of what is included in this has nothing to do with education and I will not do it. I am trying to reduce the non-educational stuff so I can focus on teachers and what goes on in the classroom. – Billi Smith, Kekaha Elementary*

*I don't believe schools having 90 percent of the operational budget will result in greater student achievement. Presently, the centralized services we receive allow schools to concentrate on those factors that directly affect student instruction and academic improvement. School level administrators have only so much time and energy and placing additional responsibilities without additional appropriate personnel will not work for schools – Stan Tamashiro, Ewa Elementary*

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## APPENDIX A

### SURVEY OF PRINCIPALS

Rep. Roy Takumi and Rep. K. Mark Takai are soliciting your comments on a few items as it relates to our education system and some of the proposals being considered by the State Legislature.

Both legislators have met with many principals and educators regarding these proposed changes. However, there has not been a survey on the opinions of our school leaders, the principals of our schools.

Your responses will be used for statistical purposes only. Attribution of your comments will be made only with your approval. (Should you wish to remain anonymous, please indicate by writing ANONYMOUS on "name.")

Please respond back as soon as possible and send directly to [reptakai@capitol.hawaii.gov](mailto:reptakai@capitol.hawaii.gov).

Thank you for taking the time to complete this survey. Your responses will be very helpful as we continue to debate education reform issues. If you choose to remain anonymous, please indicate by writing ANONYMOUS on "name."

Mahalo for all you do for our children and for assisting us with our efforts to improve our education system.

I will allow for the use of my name and my comments:

Name:

School:

Contact Phone Number:

Please indicate your opinion for each statement:

1. The Governor's proposal to replace a statewide school board with at least four (or seven) school boards will improve student achievement.

- Strongly agree  
 Agree  
 Neither agree nor disagree  
 Disagree  
 Strongly disagree

Comments:

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2. Giving principals more resources and greater flexibility and autonomy will improve student achievement at my school.

- Strongly agree  
 Agree  
 Neither agree nor disagree  
 Disagree  
 Strongly disagree

Comments:

3. If I were given more resources and greater flexibility and autonomy, I would be willing to take on more responsibility for student achievement at my school.

- Strongly agree  
 Agree  
 Neither agree nor disagree  
 Disagree  
 Strongly disagree

Comments:

4. If schools receive more resources and greater flexibility and autonomy, there must be additional training provided for planning and managing the use of resources.

- Strongly agree  
 Agree  
 Neither agree nor disagree  
 Disagree  
 Strongly disagree

Comments:

5. I support the Governor's proposal that a minimum of 90% of the DOE's operating budget must be controlled by the principal. (This would mean that principals will be directly responsible for transportation, special education, food service, adult education, A+, etc.)

- Strongly agree  
 Agree  
 Neither agree nor disagree  
 Disagree  
 Strongly disagree

Comments:

ATTACHMENT "B"

**EDUCATION  
BILLS  
May 6, 2004**

<p><b>FACILITIES &amp; REPAIRS &amp; MAINTENANCE</b>                  HB 1929 DOE; Repairs and Maintenance; Hawaii 3Rs                  HB 1900 STATE BUDGET.                  • \$180,000,000 State Educational Facilities Improvement Special Fund. Of these funds:                  • \$80,00,000 construction of new public school facilities &amp; improvement &amp; upgrade of existing facilities                  • \$100,000,000 major, bond-financed repairs to protect structural integrity and aesthetics of school buildings. Of this amount:                  • \$7,000,000 are previously authorized funds that are being transferred from the DAGS to DOE</p>	<p><b>TEACHERS</b>                  HB 1926 Hawaii Teacher Standards Board Act 21                  HB 2645 Retired Teachers; Counselor Waiver; Substitute Teachers                  SB 3238 Appropriates                  • \$480,000 for the National Board Certification Incentive Program                  • \$92,000 for the administration of the Hawaii Teacher Standards Board                  • \$2,143,350 to lower class sizes in grades K-2 (allow 75 additional teachers to be hired)</p>	<p><b>PRINCIPALS</b>                  SB 3238 Appropriates:                  • \$2,000,000 for information technology                  • \$500,000 for a Hawaii principals academy                  • \$183,780 for the Administrator Certification for Excellence (ACE) program                  • \$400,000 to compensate principals for professional development</p>
<p><b>PARENT/COMMUNITY</b>                  HB 1780 Family Leave-Limited to 2 hours                  HB 2286 Commission for National &amp; Community Service; Appropriation (\$142,000)                  SB 3230 Early Childhood Care; (\$200,000)                  SB 3238 Appropriates                  • \$1,743,900 for Parent-Community Networking Centers;                  • \$350,000 for School Community Councils                  • \$100,000 for parent support programs                  • Requires BOE to hold community meetings within their districts                  SCR 133 BOE; Review policies that determine meeting sites to encourage community participation</p>	<p><b>STUDENTS</b>                  SB 17 Two-Tiered Junior Kindergarten and Kindergarten Program; Entrance Age Education; Trust Fund; GEAR UP                  HB 1893 Textbook List; Textbook &amp; Instructional Materials Fee Special Account                  SB 2063 Student Medical Self-Administ. Act 19                  HB 2198 DOE; UH; Running Start                  SB 2200 Hawaiian Language                  HB 2667 Appropriates                  SB 3238 • \$2,500,000 for mathematics textbooks;                  • \$460,000 to provide year round Student Activities Coordinators;                  SCR 164 Establish Student Exchange Program for Hawaii/Philippine Sister-States                  SCR 131 Development and Support for Robotics Education in Hawaii                  HCR 60 Development, Relief, and Education for Alien Minors ("Dream") Act                  HCR 117 Support Perkins Act</p>	<p><b>ADMINISTRATION</b>                  HB 1908 Federal Impact Aid; Military Liaison; School Repair (\$100,000)                  SB 2056 Auditor, Confidentiality of Records                  HB 2871 Tobacco Use in Public School Functions; Prohibited                  SB 3020 Multi-Track Schooling; Approp. (\$175,000)                  SB 3238 Appropriates:                  • \$2,000,000 for information technology                  • \$400,000 to pilot school community councils                  • Establishes a weighted student formula                  • Improves the accountability system                  • Transfers certain services to the DOE from DAGS, Budget &amp; Finance, Health, Human Resources Development, AG, and HMS                  HB 2002 After-school Plus Program Revolving Fund; education reinvention. (S) HB 2002 clarifies SB 3238                  HCR 63 Joint Senate-House Investigative Committee; Felix Consent Decree                  HCR 203 DOE; Therapists</p>

**EDUCATION  
BILLS  
May 6, 2004**

<u>CHARTER SCHOOLS</u>	<u>SPRBS</u>	<u>UNIVERSITY OF HAWAII</u>
SB 2424 DOE; New Century Conversion Personnel (Civil Service Status) SB 2425 New Century Charter Schools; Funding HB 2911 Education; Charter Schools SB 3148 Host Culture Charter School District.; Charter School District; Study(\$\$)	SB 2538 Special Purpose Revenue Bonds; Education; \$ (Iolani School) SB 2671 Damien Memorial High School; SPRB (\$) SB 2790 Haleakala Waldorf School; Special Purpose Revenue Bonds (\$) SB 2791 Montessori School of Maui; Special Purpose Revenue Bonds (\$) SB 3086 SPRBs; Island Pacific Academy (\$)	HB 1710 UH; Student Scholarship Assistance Special Fund SB 2073 University of Hawaii Optional Retirement Plan HB 2547 UH Foundation; Reports SB 2716 Higher education statutory analysis interim study group SB 3238 Appropriating \$500,000 for teacher education faculty positions at the University of Hawaii College of Education SCR 20 UH; update 1994 DAGS' Master Plan for College of Education SCR 92 UH; Rebuild School of Global and Public Health SCR 114 UH; Release funds for acquisition of Paradise Park in Manoa SCR 115 Management and Financial Audit of Lyon Athorium SCR 136 Establish Asia-Pacific Risk Management and Insurance Program at UH-Manoa

ATTACHMENT "C"

**Subject:** Governor's Comments on the Hawaii Government Employees Association Arbitration Award

This responds to your request regarding the Governor's Message requesting the Legislature to reject the HGEA arbitration award and determining the validity of her reasons stated therein, I submit the following for your review:

**Governor Cites Three Errors**

In her April 7, 2004, Governor's Message, Governor Lingle opined that the arbitration panel made at least three errors in assuming the State could afford the arbitrated award. The Governor's three reasons are as follows:

- (1) *The arbitrators mistakenly accepted that the State had a balance of \$972 million in unrestricted funds at the end of fiscal year 2003.*

According to the Governor, "the arbitrators mistakenly accepted that the State had a balance of \$972 million in unrestricted funds at the end of FY 2003. This figure represents the net of \$1.065 billion in assets from the Airports Fund, the Harbors Fund, and the Unemployment Compensation Special 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. This misleading and incorrect assessment of the State's fiscal condition produced the erroneous conclusion that the State could pay for the wage increase."

- (2) *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 Governor also states that "the Arbitration Panel incorrectly used the State of Hawaii Comprehensive Annual Financial Report (CAFR) to estimate available funds at the end of FY 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 FY 2003 but not collected until FY 2004. The figures also included expenditure liabilities (such as Medicaid and payroll) incurred in FY 2003 but not paid out until FY 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."

- (3) *The arbitration panel referenced the State's good credit rating to conclude the State could pay for this award.*

Finally, the Governor argues that "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 contributes 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."

Discussion on the Governor's Perceived Errors***The arbitrators mistakenly accepted that the State had a balance of \$972 million in unrestricted funds at the end of fiscal year 2003***

Upon a review of the arbitration decision and award, there is no indication as to the weight that was given by the arbitration panel to this particular factor in rendering its decision on the employer's ability to pay. However, the panel did state that:

In sum, the Employer, in focusing its case on spending priorities, has not presented a convincing argument to the panel. Nor has the Employer rebutted the Union's evidence, i.e., that the CAFRs, when considered in tandem with the Union's last and final offer, establish an ability to pay on the part of each jurisdiction. *In re: Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO (Bargaining Units 2, 3, 4, 6, and 13). HLRB Case No. I-02-96. p.20., (2004)*

Regardless of the issue as to whether the arbitration panel mistakenly accepted that the State had a balance of \$972 million in unrestricted funds at the end of fiscal year 2003, it does seem that the union's representation that the funds comprising the \$972 million were unrestricted was incorrect. In the interest arbitration decision and award, *In re: United Public Workers, AFSCME, Local 646, AFL-CIO. HLRB Case No. I-10-95. p.11., (2003)*, Gerald Bachecki, the certified public accountant that prepared the union's position on the employer's ability to pay, testified that "the State had a balance of \$959.2 million in its restricted assets as of June 30, 2002, that could be used for any purpose, implying that such monies could be used to fund the Union's wage proposal." However, the decision and award went on to note that "on cross examination, Mr. Bachecki conceded that the \$959.2 million figure included the Airports Fund, Harbors Fund, and Emergency and Budget Reserve ("EBR") Fund or "Rainy Day" fund, all of which are restricted funds that are set aside for special purposes." In light of this concession by Mr. Bachecki in the UPW decision and award, and not having access to Mr. Bachecki's actual testimony, it seems that the Governor is correct to the extent that the \$972 million is comprised, at least partially, of restricted funds that may not be used for salary or wage purposes.

However, it can also be argued that the presence of healthy special, revolving, and trust fund balances serve to relieve pressure on the need to divert general funds to a special, revolving, or trust fund in the event of a particular fund's insolvency or near insolvency. Although not related to this arbitration proceeding, the arbitration panel for *United Public Workers, AFSCME, Local 646, AFL-CIO. HLRB Case No. I-10-95. (2003)*, noted:

"There is also a need to assess the health of special funds. If these fund balances are healthy, there is no need for the General Fund to support them in meeting their designated obligations, thus freeing monies in the General Fund for other purposes, including the funding of collective bargaining increases. All of these special fund balances appear to be strong and healthy." *In re: United Public Workers, AFSCME, Local 646, AFL-CIO. HLRB Case No. I-10-95. p.32., (2003)*

***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***

According to the arbitration panel's decision and award, the panel utilized the CAFR as a basis to determine an employer's ability to pay for the following reason:

Moreover, the Employer's case for inability to pay is based on conservative budgeting and future spending priorities, as opposed to the Employer's *audited* financial condition. . . . In the opinion of the panel, the CAFRs of each jurisdiction provide more persuasive evidence of the

financial condition of each separate jurisdiction than the budgetary documents presented by the employer. *In re: Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO (Bargaining Units 2, 3, 4, 6, and 13). HLRB Case No. I-02-96. p.19., (2004)*

In a review of Chapter 89, Hawaii Revised Statutes, no provision of law prohibits an arbitration panel's use of CAFRs in rendering a decision. In a previous arbitration case to which the State was a party, a different arbitration panel similarly used CAFRs as a basis to determine an employer's ability to pay. In that instance, the Governor did not recommend that the Legislature reject appropriating moneys to fund the award. For further discussion on this particular arbitration award, see the discussion on section 89-11(f)(1), Hawaii Revised Statutes, below.

***The arbitration panel referenced the State's good credit rating to conclude the State could pay for this award***

Upon a review of the arbitration decision and award, the only reference to the State's credit rating in the decision and award is contained in the Union's position on refuting the employer's inability to pay. *In re: Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO (Bargaining Units 2, 3, 4, 6, and 13). HLRB Case No. I-02-96. p.15., (2004).* Nowhere in the arbitration panel's determination of the ability to pay issue section is the subject of the State's "good credit rating" mentioned as a reason for its award.

**Governor Cites Five Legal Flaws**

The Governor states that in addition to the three erroneous assumptions made by the arbitration panel, there are also legal concerns with the arbitration panel's findings. According to the Governor, the panel failed to adequately explain how it took into account at least five factors set forth in section 89-11(f), Hawaii Revised Statutes. They are:

- (1) *Section 89-11 (f)(1) - Lawful Authority of the Employer;*
- (2) *Section 89-11 (f)(3) - Interest and Welfare of the Public;*
- (3) *Section 89-11 (f)(4) - Ability to Pay;*
- (4) *Section 89-11 (f)(6) - Wage Comparisons; and*
- (5) *Section 89-11 (f)(8) - Overall compensation package.*

Discussion on the Governor's Legal Concerns

***Lawful Authority of the Employer - Section 89-11 (f)(1), Hawaii Revised Statutes***

The Governor argues that the arbitration panel violated section 89-11(f)(1), Hawaii Revised Statutes by substituting reliance on CAFR for the legally imposed process. A review of Chapter 89, Hawaii Revised Statutes, no provision of law prohibits an arbitration panel's use of CAFRs in rendering a decision. According to the decision and award, the arbitration panel stated:

After examining all of the evidence and the arguments of the parties, the panel must conclude that the Employer failed to meet its burden of establishing an inability to pay. (underscoring added) *In re: Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO (Bargaining Units 2, 3, 4, 6, and 13). HLRB Case No. I-02-96. p.19., (2004)*

This passage would indicate that the arbitration considered the entirety of information



provided to it and did not solely rely upon CAFRs to render its decision.

In an arbitration proceeding for the United Public Workers Bargaining Unit 10 (UPW), to which the Governor was a party, a different arbitration panel came to the same conclusion that that the use of CAFRs was a legitimate fiscal tool to measure the State's fiscal health. In its award, the UPW arbitration panel stated:

Although the Employer does not rely on CAFR's, which are retrospective in nature, to calculate budgetary information prospectively, the arbitration panel finds that CAFR's are audited and give a more precise depiction of the State's actual finances and are therefore more useful than the budgetary tools relied upon by the Employer which are more reflective of budgeting priorities. CAFR's reflect the State's past utilization of resources and the use of such information to establish trends in order to ascertain how the State would utilize its resources in the future is accepted by the arbitration panel. Furthermore, use of the GAAP method, as required by the Government Accounting Standards Board ("GASB"), to make adjustments to the information contained in the CAFR's, is appropriate for purposes of assessing the Employer's financial condition. *In re: United Public Workers, AFSCME, Local 646, AFL-CIO. HLRB Case No. I-10-95. p.31., (2003)*

It may be interesting to note that in this particular instance, the Governor did not elect to petition the Legislature to reject this award nor has she made the argument that the arbitration panel's use of CAFRs was violative of section 89-11(f)(1), Hawaii Revised Statutes.

***Interest and Welfare of the Public - Section 89-11 (f)(3), Hawaii Revised Statutes***

The Governor argues that the arbitration panel: failed to consider competing interests, most notably the State's spending priorities as reflected in its printed budgets; did not provide a discussion or explanation as to which priorities were not justified or could be reduced to pay for collective bargaining increases; gave no indication or identification of where in the budget the moneys should come from to pay for the award; and cited as its only public interest, a "public interest" in public employees receiving a pay raise.

In its decision and award, the arbitration panel stated:

The panel's award effectuates the legislature's intent and purpose in enacting the law and, therefore, promotes the interests and welfare of the public by contributing to more effective government and the continuation of necessary services.

\* \* \*

Bargaining unit employees covered by the panel's award are employed in every facet of governmental operations and provide services to the general public, thereby affecting the lives and well being of individuals, families and businesses throughout the state of Hawaii. In the opinion of the panel, recognizing these employees for their contributions through issuance of a fair and reasonable arbitration award serves the best interests and welfare of the public. *In re: Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO (Bargaining Units 2, 3, 4, 6, and 13). HLRB Case No. I-02-96. p.29., (2004)*

In a review of Chapter 89, Hawaii Revised Statutes, no provision of law requires that an arbitration panel to specify any of the issues raised by the Governor other than that the panel give weight to the interests and welfare of the public. In a plain reading of the excerpted passage above, it would seem that

the panel fulfilled this obligation.

***Ability to Pay - Section 89-11 (f)(4), Hawaii Revised Statutes***

The Governor argues that "[t]he panel imposed a burden on the State to demonstrate inability to pay. Nowhere in Chapter 89, Hawaii Revised Statutes, is this burden placed on either party. To place a burden of persuasion without any authority or agreement is unlawful." Although Chapter 89, Hawaii Revised Statutes, indeed does not specify this burden, according to the arbitration decision and award, the arbitration panel notes:

"The Employer acknowledges the general rule that employers have the burden of producing sufficient evidence to support a claim of inability to pay. Elkouri & Elkouri, *How Arbitration Works*, (5<sup>th</sup> Edition 1997) at page 1126." *In re: Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO (Bargaining Units 2, 3, 4, 6, and 13). HLRB Case No. I-02-96. p.8., (2004)*

In addition to the tacit acceptance of this evidentiary burden, upon a review of the decision and award, no mention is made of the State arguing against the imposition of this burden.

***Wage Comparisons - Section 89-11(f)(6), Hawaii Revised Statutes***

The Governor argues that "[t]he panel disregarded the wage comparison analysis conducted by the State's wage expert, despite evidence that she conducted careful job matches with private and public sector employees performing "similar services." Instead, the panel chose to focus its analysis on pay raises awarded to other State and county employees, most notably first responder personnel. In doing so, the panel failed to follow the statutory mandate that requires the panel to consider both the conditions of employment of other persons performing "similar services" and "of other state and county employees of Hawaii."

The Governor also argues that "the panel found that "each party, in presenting wage data pertaining to employees performing similar services, has selected data which is supportive of its own position." This is not borne out by the record. The State's wage expert presented objective wage data for classes where she could find appropriate job matches. She did not selectively present the data. In fact, the record indicates that she provided data that argued in both the affirmative and negative including job classifications where the State fell behind its private and public sector counterparts."

With regard to the Governor's allegation that the panel failed to meet its statutory responsibility to consider both the conditions of employment of other persons performing "similar services" and "of other state and county employees of Hawaii," upon a review of section 89-11(f)(6), Hawaii Revised Statutes, a plain English reading of the law only requires the panel to "give weight" to those factors. While section 89-11(f), Hawaii Revised Statutes, does require an arbitration panel to "give weight" and "include in its written report or decision an explanation of how the factors were taken into account", the statute does not set forth specific requirements as to the form or length at which a panel must elaborate on its deliberation over these factors. Based on the lack of statutory specificity regarding how these factors are to be weighted and reported upon and a review of the arbitration decision and award, it can be argued that panel's discussion of the two comparators could qualify as "giving weight" to the factors. See *Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO (Bargaining Units 2, 3, 4, 6, and 13). HLRB Case No. I-02-96. pp.25-27., (2004)*

With regard to the Governor's assertion that the arbitration panel erroneously believed that the employer's expert selectively presented wage comparison data, based solely upon what is reported in the arbitration decision and award, it is not possible to ascertain the validity of this allegation.

***Overall compensation package - Section 89-11 (f)(8), Hawaii Revised Statutes***

The Governor argues that "[i]n evaluating the proposals, the panel only addressed wage comparisons, but it is mandated to consider the overall compensation package including medical and hospitalization benefits, vacation, sick leave, retirement benefits and the like. Additionally the panel was tasked to factor in the continuity and stability of employment. The panel did not incorporate these conditions into its final decision." The Governor also asserts that "[i]n ignoring this evidence, the panel erred in its evaluation of the true value of the State's complete compensation proposal."

Upon a review of the arbitration decision and order, it seems that specific discussion by the panel on this particular factor does not exist. However, whether or not the exclusion of specific discussion on this factor provides a legal basis upon which to nullify the award and absent any specific statutory language to determine the consequences of the exclusion would seem to leave this issue subject to judicial interpretation.

#### Responsibility of Parties Participating in the Arbitration Process

It should be noted that under section 89-11(e)(2)(D), Hawaii Revised Statutes, it is the responsibility of the parties to the arbitration to review for completeness, technical correctness, and clarity the draft arbitration decision prior to its finalization.

- "(D) Arbitration decision. Within thirty days after the conclusion of the hearing, a majority of the arbitration panel shall reach a decision pursuant to subsection (f) on all provisions that each party proposed in its respective final position for inclusion in the final agreement and transmit a preliminary draft of its decision to the parties. The parties shall review the preliminary draft for completeness, technical correctness, and clarity and may mutually submit to the panel any desired changes or adjustments that shall be incorporated in the final draft of its decision. Within fifteen days after the transmittal of the preliminary draft, a majority of the arbitration panel shall issue the arbitration decision." (underscoring added)

It could be argued that if the Governor or the Governor's representatives were truly concerned over the issue of including a recitation of the arbitration panel's consideration of each of the ten factors enumerated in section 89-11(f), Hawaii Revised Statutes, and if the Governor was participating in the arbitration process in good faith, then it could be assumed that this issue should have surfaced at this juncture. According to anecdotal information, given the short time period under which the arbitration process was to be executed, and to accommodate the employer's request for oral closing arguments, it was mutually agreed upon by both parties to waive the fifteen day review period required under this provision of law. However, regardless of the waiver, either party would have been able to apprise the panel of this concern,

#### Legislature's Role in the Arbitration Process

According to sections 89-10(b) and 89-11(g), Hawaii Revised Statutes, all items requiring any moneys shall be subject to appropriations by the appropriate legislative bodies.

#### *Section 89-10(b), Hawaii Revised Statutes*

"(b) All cost items shall be subject to appropriations by the appropriate legislative bodies. The employer shall submit within ten days of the date on which the agreement is ratified by the employees concerned all cost items contained therein to the appropriate legislative bodies, except that if any cost items require appropriation by the state legislature and it is not in session at the time, the cost items shall be submitted for inclusion in the governor's next operating budget within ten days after the date on which the agreement is ratified. The state legislature or the legislative bodies of the counties acting in concert, as the case may be, may approve or reject the cost items submitted to them, as a

whole. If the state legislature or the legislative body of any county rejects any of the cost items submitted to them, all cost items submitted shall be returned to the parties for further bargaining." (underscoring added)

*Pertinent Part of Section 89-11(g), Hawaii Revised Statutes:*

\* \* \*

"Agreements reached pursuant to the decision of an arbitration panel and the amounts of contributions by the State and counties to the Hawaii public employees health fund, as provided herein, shall not be subject to ratification by the employees concerned. All items requiring any moneys for implementation shall be subject to appropriations by the appropriate legislative bodies and the employer shall submit all such items within ten days after the date on which the agreement is entered into as provided herein, to the appropriate legislative bodies." (underscoring added)

According to these provisions, the only duty the Legislature has in the arbitration process is to provide, or not provide adequate moneys to fund an award. As such, it seems that the only issue before the Legislature is whether to fund or not fund a collective bargaining agreement, regardless of whether the amount to be appropriated was reached through a negotiated settlement or an arbitrated agreement. The responsibility of representing the State in negotiating collective bargaining agreements, advocating the State's position as an employer in arbitration proceedings, and reviewing preliminary drafts of arbitration awards for completeness, technical correctness, and clarity, rests with the Governor.

#### Conclusion

In conclusion, the sole issue before the Legislature at this time is whether to fund, or not fund, the cost items contained in the arbitrated settlement between the State and the Hawaii Government Employees Association. If the Governor believes the amounts decided upon in the arbitration award and appropriated by the Legislature are in excess of what the State can afford, then she has the power to veto the appropriations and risk a veto override. If the Governor wishes to amend the public employment collective bargaining law in a manner that she believes would remedy her perceived flaws in the collective bargaining process, then such an amendment should be appropriately brought before the Legislature for its consideration in the form of legislation. If the Governor believes that the process by which the award was rendered was not executed in accordance with law, then the Governor should seek judicial relief. The circumstances being as outlined above, it appears that the appropriate venue for the legal issues raised by the Governor would be in a court of competent jurisdiction, not the Legislature.

ATTACHMENT "D"

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IMPASSE ARBITRATION PROCEEDINGS

PURSUANT TO SECTION 89-11, HAWAII REVISED STATUTES

In the Matter of a Controversy between )  
 )  
**HAWAII GOVERNMENT EMPLOYEES** )  
**ASSOCIATION, AFSCME, LOCAL 152,** )  
**AFL-CIO** (Bargaining Units 2, 3, 4, 6, 8, and 13), )  
 )  
 Union, )  
 )  
 and ) **DECISION AND AWARD**  
 ) **OF ARBITRATION PANEL**  
 ) *HLRB Case No. 1-02-96*  
**LINDA LINGLE**, Governor, State of Hawaii; )  
**JEREMY HARRIS**, Mayor, City and County of ) Order No. 2158  
 Honolulu; **HARRY KIM**, Mayor, County of )  
 Hawaii; **JAMES APANA**, Mayor, County of Maui, ) Arbitration Panel:  
**BRYAN J. BAPTISTE**, Mayor, County of Kauai, ) Catherine Harris, Esq. Neutral Chair  
**RONALD T. Y. MOON**, Chief Justice, Judiciary, ) Lawrence Ishimi, Union Panel Member  
 State of Hawaii; **HAWAII HEALTH SYSTEMS** ) Michael Ben, Employer Panel Member  
**CORPORATION BOARD**; Board of Regents of )  
 the **UNIVERSITY OF HAWAII**, and the ) Bargaining Units 2, 3, 4, 6, 8 & 13  
**BOARD OF EDUCATION**, )  
 )  
 Employers. )

APPEARANCES:

For the Union: Alan C. Davis, Esq.  
 Davis & Reno  
 San Francisco, CA

For the Employer: James E. Halvorson James K. Tagupa, Esq.  
 Wendy Matsumoto Chun County of Kauai  
 Daniel A. Morris  
 Maria C. Cook John D. Kim, Esq.  
 Deputy Attorneys General County of Maui

Duane W. H. Pang, Esq. Gary Hynds, Esq.  
 City and County of Honolulu Hawaii Health Systems Corporation

Gerald A. Takase, Esq.  
 County of Hawaii

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The HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME,  
LOCAL 152, AFL-CIO (herein "the Union") is the exclusive bargaining representative of employees in the following six bargaining units which are the subject of this proceeding:

- Unit 2 Blue Collar Supervisory Employees<sup>1</sup>
- Unit 3 White Collar Non-Supervisory Employees<sup>2</sup>
- Unit 4 White Collar Supervisory Employees<sup>3</sup>
- Unit 6 Educational Officers (Department of Education)<sup>4</sup>
- Unit 8 Administrative, Professional & Technical Employees (University of Hawaii and Community College System)<sup>5</sup>
- Unit 13 Professional and Scientific Employees<sup>6</sup>

The distribution of employees by jurisdiction is as follows:

Bargaining Unit 2 Bargaining Unit 3 Bargaining Unit 4 Bargaining Unit 13	State of Hawaii, Hawaii Health Services Corporation, Judiciary, City and County of Honolulu, County of Hawaii, County of Maui, and County of Kauai
Bargaining Unit 6	State of Hawaii, Board of Education, including the Department of Education
Bargaining Unit 8	State of Hawaii Board of Regents, University of Hawaii

<sup>1</sup> Within Unit 2 are approximately 425 full time equivalent (FTE) positions including school food service managers and institutional food service managers.

<sup>2</sup> Within Unit 3 are over 13,000 FTE positions including such wide ranging classifications as clerks, water safety personnel, police and fire dispatchers, and state deputy sheriffs.

<sup>3</sup> Unit 4 has 834 FTE positions. Its largest classification is school administrative assistant.

<sup>4</sup> Unit 6 includes 750 FTE positions, i.e., educational officers (Department of Education).

<sup>5</sup> Unit 8 contains approximately 1086 FTE positions, i.e., institutional support employees of the University of Hawaii.

<sup>6</sup> Unit 13 includes approximately 7200 FTE positions, i.e., professional and scientific employees working in more than 100 classifications including social workers, accountants, data processing analysts, and engineers.

1 After negotiations for renewed agreements reached impasse approximately one (1) year ago, the  
2 Hawaii Labor Relations Board declared February 1, 2003 as the date of impasse. An Order  
3 Appointing a Mediator was issued on February 24, 2003. On April 25, 2003, the parties  
4 extended their existing agreements (which would have otherwise expired on July 1, 2003)<sup>7</sup> to  
5 and including June 30, 2004  
6

7 On December 9, 2003, the parties agreed, in writing, to a joint alternate impasse  
8 procedure, as specifically authorized by HRS 89-11 (a).<sup>8</sup> By the terms of the alternate impasse  
9 procedure, the panel (including the neutral chairperson) was selected, dates were designated for  
10 the arbitration hearing, and deadlines were established for preparation of the reporter's  
11 transcript,<sup>9</sup> submission of final argument, and issuance of the panel's decision.  
12

13 In accordance with the procedures set forth in HRS Section 89-11, evidentiary hearings  
14 were held January 12, 13, 14, 15, 16, 17 and 19, 2004 at Honolulu. The parties were afforded  
15 a full opportunity to present testimonial and documentary evidence, to cross-examine each  
16 other's witnesses, and to make argument to the arbitration panel.<sup>10</sup> With the full cooperation and  
17 consent of the parties, the panel also exercised its authority under HRS Section 89-11, to assist  
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20 <sup>7</sup> Over the Governor's veto, HRS 89-11 (e) was revised effective July 8, 2003 to provide for  
binding arbitration in bargaining units 2, 3,4, 6, 8, and 13

21 <sup>8</sup> This section provides: "A public employer and an exclusive representative may enter, at any  
22 time, into a written agreement setting forth an alternate impasse procedure culminating in an arbitration  
23 decision pursuant to subsection (f), to be invoked in the event of an impasse over the terms of an initial  
or renewed agreement."

24 <sup>9</sup> By agreement of the parties, the proceedings were transcribed by the court reporting firm of  
25 Donna N. Baba & Associates.

26 <sup>10</sup> The parties mutually agreed that the original of the transcript would be supplied to the  
27 arbitrator with copies to the parties. In accordance with a stipulation reached at the hearing, post-  
hearing briefs had been received by the chairperson as of February 25, 2004 at which time the record  
28 was closed and the matter was taken under submission by the panel.

1 the parties in a voluntary resolution of the impasse through the mediation process.<sup>11</sup> After the  
 2 briefs were submitted by the parties, the panel conducted its deliberations during telephonic  
 3 conferences held on March 19, 20, 22, 23, 24, and 25, 2004.<sup>12</sup>  
 4

5 **Issues in Dispute**

6 Prior to the arbitration hearing, i.e., in late December 2003 or early January 2004, the  
 7 Employer and the Union exchanged final offer positions on the following Articles:

8 <b>BU</b>	<b>Employer Proposals</b>	<b>Union Proposals</b>
9 02	Art. 4-Personnel Policy Changes*	
10	Art. 14-Compensation Adjustments	Art. 14-Compensation Adjustments
11	Art. 23-Overtime	
12	Art. 31-Working Condition Differential	Art. 31-Working Condition Differential
13	Art. 35-Vacation Leave	
14	Art. 36- Sick Leave	
15	Art. 41-Travel	Art. 41-Travel
16	Art. 42-Other Leaves of Absence	
17	Art. 51-Salaries	Art. 51-Salaries
18	Art. 54-Duration	Art. 54-Duration
19		Art. (New)-Licenses*
20	03 Art. 4-Personnel Policy Changes*	
21	Art. 14-Compensation Adjustments	
22	Art. 23-Overtime	
23	Art. 31-Working Condition Differential	Art. 31-Working Condition Differential
24	Art. 35-Vacation Leave	
25	Art. 36-Sick Leave	
26	Art. 40-Other Leaves of Absence	
27	Art. 44-Travel	Art. 44-Travel
28	Art. 53-Salaries	Art. 53-Salaries
	Art. 56-Duration	Art. 56-Duration

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24 <sup>11</sup> Hawaii's public bargaining law provides for impasse procedures which authorize both  
 25 mediation and arbitration by the panel . By agreement of the parties, mediation sessions were conducted  
 by the panel on January 16, 17, 18, 20, and 21.

26 <sup>12</sup> The parties specifically authorized the panel, either individually or collectively, to contact  
 27 Gordon Chang, Department of Budget and Finance, State of Hawaii to ascertain any costs identified by  
 28 members of the panel.



1	<b>BU</b>	<b>Employer Proposals</b>	<b>Union Proposals (continued)</b>
2	04	Art. 4-Personnel Policy Changes*	
3		Art. 14 Compensation Adjustments	
4		Art. 23-Overtime	
5		Art. 35-Vacation Leave	
6		Art. 36-Sick Leave	
7		Art. 40-Other Leaves of Absence	
8		Art. 44-Travel	Art. 44-Travel
9		Art. 53-Salaries	Art. 53-Salaries
10		Art. 56-Duration	Art. 56-Duration
11	06	Art. 30 Salaries	Art. 24-Travel
12		Article 33-Duration	Art. 30-Salaries
13		Art. 42-Duration	Art. 33-Duration
14	08	Art. 39 Salaries	Art. 35-Travel*
15		Art. 42 Duration	Art. 39-Salaries
16			Art. 42-Duration
17	13	Art. 4-Personnel Policy Changes*	
18		Art. 14-Compensation Adjustments	
19		Art. 25-Overtime	
20		Art. 36-Vacation Leave	
21		Art. 37-Sick Leave	
22		Art. 41-Other Leaves of Absence	
23		Art. 44-Working Condition Differential	Art. 44-Working Condition Differential
24		Art. 45-Travel	Art. 45-Travel
25		Art. 50- Salaries	Art. 50-Salaries
26		Art. 53-Duration	Art. 53-Duration

27 With regards to the proposals listed above with an asterisk, these articles have been withdrawn  
 28 from bargaining.<sup>13</sup> Based on the authority granted to the panel under HRS 89-11, the arbitration  
 panel must now resolve all of the remaining open issues.

**The Statutory Criteria**

In accordance with the requirements of HRS Section 89-11 (f), the arbitration panel, in

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<sup>13</sup> The parties agree that where a proposed modification of an existing article has been withdrawn, the existing article will be carried over into the successor contract without modification except that the proposed new article entitled "Licenses for Bargaining Unit 2" (as proposed by the Union) will *not* be included in the new Bargaining Unit 2 contract.

1 reaching its decision, must give weight to the following enumerated factors:  
2

3 (1) The lawful authority of the employer, including the ability of the employer to use  
4 special funds only for authorized purposes or under specific circumstances because of  
limitations imposed by federal or state laws or county ordinances, as the case may be.

5 (2) Stipulations of the parties.

6 (3) The interests and welfare of the public.

7 (4) The financial ability of the employer to meet these costs; provided that the  
8 employer's ability to fund cost items shall not be predicated on the premise that the  
9 employer may increase or impose new taxes, fees, or charges, or develop other sources  
of revenues.

10 (5) The present and future general economic condition of the counties and the State.

11 (6) Comparison of wages, hours, and conditions of employment of the employees  
12 involved in the arbitration proceeding with the wages, hours, and conditions of  
13 employment of other persons performing similar services, and of other state and county  
employees in Hawaii.

14 (7) The average consumer prices for goods or services, commonly known as the cost of  
15 living.

16 (8) The overall compensation presently received by the employees, including direct wage  
17 compensation, vacation, holidays and excused time, insurance and pensions, medical and  
18 hospitalization benefits, the continuity and stability of employment, and all other benefits  
received.

19 (9) Changes in any of the foregoing circumstances during the pendency of the arbitration  
20 proceedings.

21 (10) Such other factors, not confined to the foregoing, which are normally or  
22 traditionally taken into consideration in the determination of wages, hours, and  
23 conditions of employment through voluntary collective bargaining, mediation, fact-  
finding, arbitration, or otherwise between the parties, in the public service or in private  
24 employment.

25 In accordance with HRS 89-11, the arbitration panel is also required to include in its written  
26 report an explanation of how the statutory factors were taken into account in resolving the  
27 disputed issues.  
28

1 **The Parties' Final Offer Positions (Compensation Issues)**

2 In its final offer (submitted prior to arbitration), the Union proposed a two-year  
3 agreement with a four percent (4%) salary increase effective July 1, 2003 and another four  
4 percent (4%) increase effective July 1, 2004 (for all six bargaining units). The Union also  
5 proposed step movements as follows:  
6

7 **Bargaining Unit 2:** movement from Step A to Step B during the first year of the  
8 agreement, drop Step A and designate Step B as Step A, and implementation of  
9 longevity steps (L1 and L2) during the second year

10 **Bargaining Unit 3:** continuation of step movement plan

11 **Bargaining Unit 4:** continuation of step movement plan

12 **Bargaining Unit 6:** grant step increases to eligible employees in each fiscal year

13 **Bargaining Unit 8:** grant step increases to eligible employees in each fiscal year

14 **Bargaining Unit 13:** continuation of step movement plan

15 Additionally, the Union proposed an extension of a working condition differential in Bargaining  
16 Units 2, 3 and 13. In its final offer (submitted prior to arbitration), the Employer opposed any  
17 extension of the working condition differential and proposed a zero percent ( 0%) wage  
18 increase effective July 1, 2003 and a one percent (1%) across the board increase effective July  
19 1, 2004.<sup>14</sup> The Employer has not proposed a continuation of step movement plans, or any new  
20 step movements.<sup>15</sup>  
21

22 At the hearing and in post-hearing brief, the Union highlights the undisputed fact that its  
23

24 \_\_\_\_\_  
25 <sup>14</sup> As further explained herein, the parties agree as to the duration of the contract but disagree as  
26 to the language to be included in the Duration article.

27 <sup>15</sup> According to data supplied by Gordon Chang, the increase to base associated with the  
28 Union's proposal is 10.33% for those employees paid out of the State's General Fund, as compared to  
an increase to base of 1% associated with the Employer's wage proposal.

1 salary proposals closely parallel three out of four arbitration awards issued over the last year in  
2 Bargaining Units 11 (firefighters), 9 (registered professional nurses) and 10 (institutional, health,  
3 and correctional workers).<sup>16</sup> Moreover, the Union urges the panel to find that its members are  
4 underpaid in comparison to other employees performing similar services. On the other hand,  
5 the Employer has taken the position (in hearing and in final argument) that it cannot afford to  
6 pay for the Union's wage proposals, that comparisons with mainland jurisdictions are  
7 inappropriate, and that the Union has failed to establish that its members' salaries have not kept  
8 pace with the cost of living. As a threshold matter, the panel addresses the parties' contentions  
9 with regard to the "inability to pay" issue.  
10

11 **I. The Claim of Inability to Pay/The Employer's Position**

12 ***A. The State of Hawaii***

13  
14 The Employer acknowledges the general rule that employers have the burden of  
15 producing sufficient evidence to support a claim of inability to pay. Elkouri & Elkouri, *How*  
16 *Arbitration Works*, (5<sup>th</sup> Edition 1997) at page 1126. In an effort to meet its burden, the  
17 Employer offered an overview of the state's finances through the testimony of the State's  
18 Budget and Finance Director Georgina Kawamura. Kawamura explained that her department is  
19 mandated by the Hawaii Constitution and statutory law to consider revenue estimates prepared  
20 by the Council on Revenues (an independent body) in budget preparation, funding authorization,  
21 and expenditure controls and to insure that General Fund expenditures for any fiscal year do not  
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26 <sup>16</sup> The Union further notes that its salary proposals also mirror the cost of the first two years of  
27 the Unit 12 (SHOPO) arbitration award. The Union presented un rebutted evidence that the average  
28 increase to base of these four arbitration awards for the period July 1, 2003 to June 30, 2005 is 10.38%.

1 exceed the State's General Fund resources.<sup>17</sup> In her testimony before the panel, she testified that  
2 since FY 2002, the State has been operating with annual deficits and that while the annual  
3 General Fund revenue has increased nearly \$600 million from FY 1996 to FY 2003, over the  
4 same period collective bargaining appropriations have totaled over \$710 million.<sup>18</sup> Kawamura  
5 further noted that 83% of the General Fund operating budget is dedicated to non-discretionary  
6 expenses, thus severely limiting the State's flexibility with general fund revenues. She also  
7 cautioned the panel that, while the State has transferred excess special fund balances to the  
8 General Fund (approximately \$669 million from FY 1997 to FY 2004), these one-time measures  
9 are not a dependable or recurring sources of revenue. According to Kawamura, the State  
10 continues to operate at an annual deficit, which is projected to continue through FY 2006, and  
11 these deficits will occur *even absent implementation of the Union's proposed wage increases*.<sup>19</sup>  
12  
13 The State also presented evidence of the current administration's priorities, e.g., addressing a  
14 backlog of \$613 million in repair and maintenance for public school classrooms and repair and  
15 maintenance of University of Hawaii facilities.  
16

17 ***B. City and County of Honolulu***

18 The City and County of Honolulu (herein "Honolulu") presented evidence through its  
19 Director of Budget and Fiscal Services Ivan Lui-Kwan that it has no present ability to fund the  
20

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21 <sup>17</sup> The Hawaii Constitution also mandates that growth in government spending be limited to a  
22 level supportable by the economy.

23 <sup>18</sup> The Employer has emphasized that even the Union's ability to pay expert (Gerald Bachecki)  
24 has acknowledged that the State has been operating at a deficit in six of the eight last fiscal years, for a  
25 total of \$361 million in deficits on a GAPP basis. However, as explained by the Union's expert, the  
26 long-term liabilities portion of the offset against current unrestricted assets can give a false impression  
27 as to the true health of the State's unrestricted financial status.

28 <sup>19</sup> The State will also have to make retirement contributions of \$333 million in FY 2004 and  
\$408 million in FY 2005, as well as expected increases in health benefit contributions from \$300  
million in FY 2004 to \$330 million in FY 2005.

1 Union's wage proposal for a 4% increase in each year of the proposed two-year contract. No  
2 evidence was presented regarding the ability, or lack thereof, of Honolulu to fund any other  
3 economic package. Emphasizing that Honolulu's charter requires a balanced budget, Director  
4 Lui-Kwan testified that the "bare bones" budget for the fiscal year ending June 30, 2004 leaves  
5 no room for an approximately \$7.3 million salary increase during FY 2004 and approximately  
6 \$16 million salary increase during FY 2005. Lui Kwan informed the panel that Honolulu, in  
7 order to balance the FY 04 budget, had to cut all vacant but funded positions (totaling 33  
8 million), close two Satellite City Halls and one Mobile Satellite City Hall, finance equipment  
9 purchases with short term general obligation bonds, refinance 8 million in debt service, and use  
10 47.8 million in unreserved fund balances from the sewer fund and the solid waste fund, i.e., a  
11 non-recurring source of revenue. Lui Kwan also opined that escalating pension and health  
12 fund contributions are another barrier to implementing the Union's economic proposals, i.e.,  
13 for FY 2005, he is projecting an increase in retirement contributions of \$13.1 million and an  
14 increase in health fund contributions of \$10.3 million. Lui Kwan is forecasting decreases in  
15 revenues from the Transient Accommodations Tax (TAT), the public utility and franchise tax,  
16 federal grants and interest income. He is also projecting a shortfall of 87.3 million *without the*  
17 *proposed increases from bargaining units 2, 3, 4 and 13.* Thus, Lui-Kwan opined that the  
18 only way that the Union's final economic offer could be funded would be to resort to layoffs,  
19 i.e., totaling approximately 657 employees, or approximately 16% of the non-public safety  
20 work force.<sup>20</sup>

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25 <sup>20</sup> Lui Kwan testified that as a result of the Unit 11 (firefighters) award, Honolulu was forced to  
26 use funds from a provisional account (accrued vacations and salary adjustments) to pay firefighter pay  
27 increases. He further testified that as a result of the Unit 12 (SHOPO) award, Honolulu was forced to  
28 increase the motor vehicle tax to generate an additional \$19 million over two years to fund two of the  
four years of SHOPO pay increases. Both the Unit 11 and Unit 12 awards have been fully funded.

1            *C. County of Maui*

2            The Comprehensive Annual Financial Report (CAFR) for the fiscal year ended June 30,  
3 2002 reflects that, as of the close of the fiscal year, the County of Maui's governmental funds  
4 reported combined ending fund balances of \$81.7 million, an increase of \$6.1 million in  
5 comparison with the prior year. Approximately 33 percent (33%) of this total amount, or  
6 \$26.7 million, was available for spending at the government's discretion per the CAFR.<sup>21</sup>  
7  
8 Deficits which have occurred in Maui's General Fund in the last two fiscal years are directly  
9 related to transfers that have been made to the capital projects fund, i.e., an unreserved fund  
10 balance in the capital projects fund of \$9.5 million. Maui leads all other counties in 2003  
11 visitor growth, i.e., visitor arrivals were up 7% during the first half of 2003, and total air seats  
12 were up by 15% despite declines in visitor arrivals on Oahu, the Big Island and Kauai. The  
13 County of Maui has conceded that it has the financial ability to fund the Union's wage  
14 proposals but requests that the panel fashion its award based on the collective *and* individual  
15 financial conditions of all jurisdictions who comprise the Employer.  
16

17            *D. The County of Kauai*

18            Michael Tresler, Director of Finance, testified that the total unreserved undesignated  
19 fund balance as of June 30, 2003 was \$9, 816, 103. Tresler testified that approximately \$6  
20 million of that amount has been used to balance the fiscal year 2004 budget and another \$.5  
21 million has been designated by legislation. Therefore, as of January 9, 2004, Kauai has a net  
22 unreserved undesignated fund balance in the amount of 3.285 million. Tresler opined that an  
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24

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26            <sup>21</sup> At the end of FY 2002, the unreserved fund balance for the general fund was \$8.2 million, or  
27 7.2% of total general fund expenditures. The CAFR for the fiscal year ended June 30, 2002 notes that  
28 First Hawaiian Bank in its *Economic Forecast* has reported that Maui County was even more insulated  
than other parts of the State from the 2001 recession and the economic fallout associated with 9-11.

1 increase in retirement contributions of approximately \$1.7 million, as well as firefighter raises,  
2 will exhaust a large portion of the remaining fund balance. He further opined that, with  
3 expected increases in mandated costs and a decrease in real property tax revenue (due to  
4 legislation giving a tax break to low income property owners), the remaining ending funding  
5 balance will be a negative. Thus, Kauai argues that it cannot afford the proposed wage  
6 increases as set forth in the Union's last and final offer. Tresler also expressed concern that a  
7 growing movement on Kauai for a rollback of real property values to 1998, i.e., similar to  
8 California's Proposition 13, will, if enacted, further deplete Kauai's resources.

9  
10 *E. County of Hawaii*

11 Mayor Harry Kim presented an overview of Hawaii's financial situation to the panel.  
12 While the County of Hawaii has struggled in the past few years with budget shortages, on  
13 September 18, 2003, Mayor Kim notified all departments and agencies that they would be  
14 allowed to submit budget estimates to maintain current levels of service, thus allowing for  
15 inflationary increases of uncontrollable cost items to be included in the budget. As with other  
16 jurisdictions, the trend in the Employee Retirement System (ERS) requirements is a major  
17 budgetary concern to the County of Hawaii.  
18

19  
20 *F. Hawaii Health Services Corporation (HHSC)*

21 Edward Chu, HHSC's Corporate Controller, testified that HHSC was established by  
22 the Hawaii state legislature in 1996 to operate twelve (12) hospitals on five islands.<sup>22</sup> A  
23 thirteen-member board appointed by the governor oversees HHSC's operations. HHSC is the  
24 fourth largest public hospital system in the nation with an FY 03-04 budget of over \$335  
25

26  
27 <sup>22</sup> These functions were formerly performed by the Division of Community Hospitals,  
28 Department of Health.



1 million. HHSC accepts all patients regardless of financial situation. Since 1998 and continuing  
2 through 2002, HHSC has been operating at a loss due in large part to the decline in  
3 government reimbursement for programs such as Medicare and Medicaid. Thus, HHSC  
4 depends on general fund appropriations to be able to continue to deliver mandated levels of  
5 service. HHSC was required to request an emergency appropriation of approximately \$20  
6 million to cover increases in employee retirement costs. Chu testified that in the event that any  
7 economic improvements are ordered as part of the panel's award, HHSC will have to seek a  
8 state appropriation.  
9

## 10 **II. The Claim of Inability to Pay/the Union's Position**

11 Gerald Bachecki, a certified public accountant for more than thirty (30) years, has been  
12 performing analyses of the financial condition of public employers to determine the availability  
13 of funds to pay wage and benefit increases since the early seventies. Bachecki principally relies  
14 on the CAFRs because these are the audited financial statements of the entity that are certified  
15 to present fairly the financial condition of the employer at a particular point in time.<sup>23</sup> Using  
16 the CAFRs and other materials, e.g., budgetary analyses and reports by bonding agencies,  
17 Bachecki separately analyzed the financial condition of each jurisdiction and rendered an  
18 opinion regarding ability to pay.  
19  
20

### 21 *A. State of Hawaii*

22 Using State Budget Analyst Gordon Chang's worksheet, Bachecki determined the cost  
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24

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25 <sup>23</sup> Bachecki noted that the budgetary analyses presented by the Employer in this proceeding are  
26 prepared on a cash basis or modified cash basis and that his analysis, performed in accordance with  
27 GASB 34, provides a truer picture of how revenues are budgeted and expended. The Employer  
28 criticizes Bachecki's methodology because it relies principally on historical data whereas, from the  
Employer's perspective, a budget analysis is more forward looking.

1 of the Union's wage proposal for both years to be \$119, 388, 316.<sup>24</sup> Under new GASB 34  
2 reporting requirements, there has been a decrease in net assets during the year ending June 30,  
3 2003 when compared to the previous fiscal year, i.e., a decline attributable to depreciation  
4 allowances which are now offset against historical costs. However, the unrestricted net assets  
5 were \$972 million at the end of FY 2002, i.e., an increase of \$13 million from the previous  
6 year. Moreover, while tax revenues declined in FY 2002 from the prior fiscal year (after 9-11),  
7 revenues rebounded in FY 2003 by \$135 million, i.e., nearly 4% over the previous fiscal year,  
8 and total tax collections increased by approximately \$209 million, an increase of 5.9% over the  
9 previous fiscal year. Bachecki further noted that the Council on Revenues reported a 4.4%  
10 increase in General Fund revenue for FY 2003 (actual) and has estimated growth rates of 5.2%  
11 in FY 2004 and 7.9% in FY 2005. This is consistent with the projections of the Department of  
12 Business Economic Development and Tourism (DBEDT), as contained in its quarterly forecast  
13 dated December 18, 2003, that estimates of income and employment growth were being  
14 revised upwards. The Council on Revenues is also forecasting tax revenue growth for the  
15 years 2005 through 2010 which will exceed 5.2%. The State's General Fund maintains a  
16 strong asset to liability ratio and unreserved fund balance well in excess of the 5% benchmark  
17 for both revenues and expenditures.<sup>25</sup> Special revenue funds, and the two major enterprise  
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24 <sup>24</sup> This includes the cost of the Union's final offer wage proposal to HHSC, the Judiciary, and  
25 the University of Hawaii. Most of this cost would be absorbed by the General Fund; however, some  
26 wages are paid by special funds, federal funds, and other smaller funds.

27 <sup>25</sup> As of June 30, 2003 (based on unaudited data), the unreserved fund balance as a percentage  
28 of revenues was 8.51% and was 8.78% of expenditures. This ratio does not include the unrestricted  
fund balance of approximately \$53 million contained in the Emergency Budget Reserve Fund, i.e., the  
Rainy Day Fund.

1 funds (airports and harbors) are healthy.<sup>26</sup> After reviewing the financial condition of the State,  
2 Moody's Investor Services gave the State an Aa3 rating and both Standard & Poors and Fitch  
3 gave the State an AA- rating.<sup>27</sup> Based on all of the information he reviewed, Bachecki opined  
4 that the State of Hawaii has the ability to fund the Union's wage proposals for employees in  
5 bargaining units 2, 3, 4, 6, 8 and 13.  
6

7 *B. Honolulu*

8 Using State Budget Analyst Gordon Chang's worksheet, Bachecki determined the cost  
9 of the Union's wage proposal for both years to be approximately \$21.4 million. As with the  
10 State of Hawaii, net assets decreased in FY 2002 from the previous fiscal year; however,  
11 Bachecki explained that this calculation is misleading because it includes long term liabilities  
12 (which are generally not paid out of current resources). Bachecki also noted Honolulu's  
13 history of conservative budgeting, i.e., forecasting expenditures which exceed actual final  
14 budgeted expenditures. These favorable expenditure variances offset the negative effects of  
15 unfavorable revenue variances. Until FY 2003, Honolulu failed to maintain property tax  
16 revenues by raising rates to offset the decline in property values; however, the rise in assessed  
17 property values in 2003 will increase property tax revenues for FY 2003 by approximately \$20  
18 million. Recent changes in tax rates, i.e., 2.7% increase for single family homes, 15% increase  
19 for commercial property, and 4.5% decrease for condominiums, is expected to increase  
20 property tax revenues by another \$23 million. Although Honolulu has, on the average, had an  
21 unreserved fund balance of less than 5% over the past eleven years, this has not negatively  
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25 <sup>26</sup> The Union makes the point that not only are these special funds able to pay salary increases  
26 to employees whose wages are paid in whole or in part by these funds, but that the unrestricted fund  
27 balances in these funds can be used for other purposes, thus "freeing up" other available assets.

28 <sup>27</sup> All of these ratings are the second highest investment grade ratings of the respective agencies.

1 impacted Honolulu's bond ratings, i.e., Honolulu has maintained its AA bond rating from  
2 three agencies (Fitch, Standard & Poors and Moody's).<sup>28</sup> The Special Reserve Funds are  
3 healthy and have reimbursed the General Fund for general and administrative expenses, debt  
4 service, and other transfers. Several of the Special Revenue Funds are the funding source for  
5 wages. The Department of Water, a component unit of Honolulu, has significant resources  
6 and is another funding source for wages. Increases in bus fares are also expected to generate  
7 additional revenues of more than \$1 million annually. Based on his review of the financial  
8 data, Bachecki concluded that Honolulu has the ability to pay the increases being proposed by  
9 the Union for employees in Bargaining Units 2, 3, 4, and 13.  
10

11 *C. County of Maui*

12 Using the Employer's cost accounting, Bachecki determined the cost of the Union's  
13 proposal for the life of the two-year contract to be approximately \$5.5 million. Although the  
14 County of Maui is not claiming inability to pay the proposed wage increases, Bachecki noted  
15 that the Budget Ordinance for FY 2004 reflects that \$2 million has been allocated for collective  
16 bargaining increases. Bachecki performed his analysis prior to learning that Maui would not  
17 raise the ability to pay issue. He observed that while net assets had increased from \$509,071  
18 to \$572,852 from FY 2002 to FY 2003, the ratio of assets to liabilities had decreased from  
19 5.15 in 2001-2002 to 3.84 in 2002-2003. During this same period of time, the unreserved  
20 general fund balance also decreased from \$8,200,000 to \$4,457,000 and the ratios between  
21 unreserved fund balances to revenues (and to expenditures) declined to 3.29% and 3.63%  
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27 <sup>28</sup> This is the second highest investment rating given by the three agencies.  
28

1 respectively, i.e., below the 5% benchmark.<sup>29</sup>

2 *D. County of Hawaii*

3 Using the Employer's cost accounting, the cost of the Union's wage proposals for the  
4 two-year contract is approximately \$5 million. In his report and in his testimony before the  
5 panel, Bachecki noted that the County of Hawaii, as of the fiscal year ended June 30, 2002,  
6 had unrestricted net assets of approximately \$55.8 million. For each fiscal year since 1996,  
7 the County of Hawaii has had net positive variances in revenue and expenditures. While the  
8 County of Hawaii has had net positive variances in revenue and expenditures. While the  
9 County of Hawaii had a GAPP deficit in FY 2001 and FY 2002, for the fiscal year 2003,  
10 unaudited data reflects an approximately \$6.2 million surplus largely attributable to increases in  
11 assessed values of property. In the fiscal year ending June 30, 2002, County of Hawaii's ratio  
12 of unreserved general fund balances to revenues and to expenditures declined to 2.63% and to  
13 2.52% respectively; however, unaudited data from the fiscal year ending June 30, 2003 shows  
14 substantial increases to 5.61% and 5.8% respectively. Moody's has given the County of  
15 Hawaii an A2 rating, i.e., its third highest investment grade rating. Based on his review of the  
16 financial data, Bachecki opined that the County of Hawaii has the ability to fund the wage  
17 increases being proposed in Bargaining Units 2, 3, 4, and 13.  
18  
19

20 *E. County of Kauai*

21 Using the Employer's cost accounting, the cost of the Union's wage proposal for the  
22 two year contract is approximately \$3 million. Like the County of Hawaii, the County of  
23 Kauai has experienced positive net variances in expenditures and revenues on a consistent  
24

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25 <sup>29</sup> Bachecki is of the view that, in general, public employers should maintain an unreserved  
26 fund balance in excess of 5% of prior year expenditures. In his testimony before the panel, Bachecki  
27 noted that the deficits in Maui's general fund for the last couple of years are directly related to the  
28 transfers that have been made to the capital projects as previously discussed at page 11.

1 basis. Unlike Honolulu, the County of Kauai increased its tax rates when assessed values were  
2 declining after Hurricane Iniki in an effort to maintain "revenue neutrality." Excluding long  
3 term debt, the County of Kauai has unrestricted net assets in the amount of \$32.6 million. The  
4 unreserved fund balance of the General Fund as of 2003 (unaudited) is \$11.9 million.  
5 Comparison of the fund balances to general fund revenues and expenditures since 1996 vary  
6 from a low of 13.10% to a high of 24.29% (with percentages mostly in the 20s for the last  
7 three or four years). Special revenue funds and the capital projects fund are sufficiently funded  
8 so that they will not be a drain on the General Fund balance. The County of Kauai has  
9 received the third highest investment grade bond rating, i.e., an "A" rating from Fitch and  
10 Standard & Poors and an "A1" rating from Moody's. Based on his review of the financial  
11 data, Bachecki opined that the County of Kauai has the ability to fund the Union's proposed  
12 wage increases in Bargaining Units 2, 3, 4, and 13.  
13

#### 15 F. University of Hawaii

16 The University of Hawaii, a component of the State of Hawaii, has maintained strong  
17 cash and investments over the period covered by Bachecki's report.<sup>30</sup> As of June 30, 2003, the  
18 University's total cash and investments were \$476.9 million of which \$166 million was  
19 unrestricted. Unrestricted net assets as of June 30, 2003 totaled \$220.8 million. State  
20 appropriations to the University of Hawaii have increased dramatically in recent years.  
21 Although the State's General Fund is the main source of funding for any proposed wage  
22 increases to Unit 8 employees,<sup>31</sup> Bachecki opined that to the extent that funding for Unit 8  
23

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25 <sup>30</sup> The Employer presented no specific evidence regarding the financial condition of the  
26 University of Hawaii.

27 <sup>31</sup> Gordon Chang's cost analysis reflects that any increases to Unit 8 employees would be  
28 funded out of the State's General Fund, as well as by "special funds, federal funds and other funds."

1 wage increases may be obtained from University of Hawaii funds, the University of Hawaii is  
2 able to fund the Union's proposed increases.

3 ***G. Hawaii Health Services Corporation (HHSC)***

4 No one disputes that HHSC, a component of the State of Hawaii, has been operating at  
5 a deficit since its inception.<sup>32</sup> Thus, HHSC will essentially be relying on the state to pay for  
6 collective bargaining increases. In his testimony before the panel, Bachecki opined that the  
7 State's financial condition is such that it can afford to fund the requested wage increases  
8 for employees of HHSC in Bargaining Units 2, 3, 4, and 13.

10 **III. The Panel's Determination of the Ability to Pay Issue**

11 After examining all of the evidence and arguments of the parties, the panel must  
12 conclude that the Employer failed to meet its burden of establishing an inability to pay. Here,  
13 the State's Budget and Finance Director has projected that even if the Employer's proposal is  
14 accepted, it will lead to negative ending fund balances in the State's General Fund. In offering  
15 this opinion, the Employer detracts from its credibility by implying that the Employer's last and  
16 final offer is *not* a reasonable position. Moreover, the Employer's case for inability to pay is  
17 based on conservative budgeting and future spending priorities, as opposed to the Employer's  
18 *audited* financial condition. On the other hand, the Union has presented a case based on *actual*  
19 revenue and expenditure patterns as demonstrated by the audited financial statements of each  
20 jurisdiction. In the opinion of the panel, the CAFRs of each jurisdiction provide more  
21 persuasive evidence of the financial condition of each separate jurisdiction than the budgetary  
22 documents presented by the Employer. While the panel recognizes the constitutional and  
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26 \_\_\_\_\_  
27 <sup>32</sup> HHSC did report a profit in the fiscal year ended June 30, 2000 after a \$28.3 million  
28 appropriation from the General Fund.

1 statutory obligations of the Employer with regard to budgeting, the panel is not persuaded that  
2 the Union's proposal will preclude compliance with constitutional or statutory mandates. In  
3 sum, the Employer, in focusing its case on spending priorities, has not presented a convincing  
4 argument to the panel. Nor has the Employer rebutted the Union's evidence, i.e., that the  
5 CAFRs, when considered in tandem with the Union's last and final offer, establish an ability to  
6 pay on the part of each jurisdiction.  
7

#### 8 **IV. The Issue of Duration**

9 Both parties are proposing a two-year agreement effective July 1, 2003 to June 30,  
10 2005. However, the Union additionally proposes that: 1) Written notice to amend, modify or  
11 terminate the agreement be given no later than March 15, 2004 (for BU 2 and BU 3) and no  
12 later than May 15, 2004 (for BUs 4, 6, 8 and 13); and 2) After such written notice is given, the  
13 parties be required to exchange their specific written proposals, if any, no later than April 15,  
14 2004 (for BU 2 and BU 3) and June 14, 2004 (for BUs 4, 6, 8 and 13). Neither party  
15 presented any testimonial evidence concerning this issue.  
16

17 In the case of Bargaining Units 2 and 3, the proposal for a written notification date of  
18 March 15, 2004 would precede the date of issuance of the panel's decision. The proposed  
19 deadlines for written notice to amend and for exchange of written proposals, as proposed for  
20 Bargaining Units 4, 6, 8 and 13, are more realistic, i.e., May 15, 2004. The panel is convinced  
21 that the proposed schedule will be of mutual benefit to the parties in facilitating an exchange of  
22 written proposals with sufficient time to prepare for negotiations. Thus, as set forth in the  
23 panel's award, the agreement shall be renewed in accordance with applicable statutes unless  
24 written notice to amend is given by May 15, 2004 with written proposals to be exchanged by  
25  
26  
27  
28



1 June 14, 2004.<sup>33</sup>

2 **V. Comparison of Wages, Hours and Conditions of Employment**

3 HRS § 89-11 (f)(6) requires comparisons with both other state and county employees  
4 and with other persons performing similar services. Consistent with the determinations of  
5 other panels who have considered this issue, the panel does not accept the Employer's  
6 interpretation of the statutory language, i.e., that any comparisons of compensation should be  
7 limited to public and private employees in the State of Hawaii, because the plain language of  
8 the statute does not impose this geographical limitation.  
9

10 **A. The Union's Comparability Expert**

11 The Union's comparability expert Michael Messina, a Senior Labor Economist in the  
12 AFSCME Department of Research and Collective Bargaining Services, has extensive  
13 experience in conducting wage surveys to be used in interest arbitration proceedings in Hawaii  
14 and the mainland. He began his investigation by looking at how much the salaries of  
15 representative classes within all bargaining units had increased since July 1, 1993. He then  
16 compared the salaries of employees in the Pacific Rim states, i.e., large metropolitan cities in  
17 the western states of Alaska, California, Oregon and Washington and large west coast  
18 counties, to see where Hawaii falls in the salary hierarchy. Factoring in the high cost of living  
19 in Hawaii, he found that, during the period from October of 1992 to March 2002, Hawaii had  
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23 <sup>33</sup> The parties' exchanged proposals regarding duration across all six units are as follows:

24 BU 02 - Article 54 (Employer and Union Proposals)  
25 BU 03 - Article 56 (Employer and Union Proposals)  
26 BU 04 - Article 56 (Employer and Union Proposals)  
27 BU 06 - Article 33 (Employer and Union Proposals)  
28 BU 08 - Article 42 (Employer and Union Proposals)  
BU 13 - Article 53 (Employer and Union Proposals)

1 slipped from #21 to #37 in the hierarchy. He also conducted wage surveys in which he  
2 matched the job duties of representative classes from each unit (BU 2, 3, 4, 6, 8, and 13) with  
3 comparable positions in other jurisdictions. Messina selected his comparators because they  
4 were "contiguous" to Hawaii and because there is a history, dating back to 1990, of using  
5 these same jurisdictions in bargaining and arbitration. Written job descriptions were used to  
6 make a match but, if there was any question based on the job description, personnel directors  
7 were contacted to determine whether or not a position was comparable. In Bargaining Units  
8 2, 3, 4, 6, 8, and 13, Messina typically found that Hawaiian job titles were lagging well behind  
9 their counterparts on the mainland.<sup>34</sup>

11 The Employer claims that Messina improperly compared the Hawaii labor market with  
12 the labor market of west coast states, i.e., there was no evidence that the jurisdictions herein  
13 were recruiting employees from the mainland except in rare cases. The Employer was also  
14 critical of Messina for failing to compare the populations and tax bases of the purported  
15 comparable jurisdictions, the size of their school districts, whether schools were operated  
16 locally by counties or state-wide as in Hawaii, and for failing to consider other U.S. island  
17 jurisdictions such as Guam, Puerto Rico and the Virgin Islands. The Employer also challenges  
18 Messina's comparisons because he did not determine the wages paid to private sector workers  
19 in Hawaii, i.e., to evaluate to what extent the Employer is competing with private employers  
20 for the local labor force.

23 ///

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25  
26 <sup>34</sup> Due to the large number of classifications involved in six different bargaining units, it was  
27 impossible for Messina to match every job. Similarly, it would not be possible for the panel to  
28 summarize or quantify Messina's findings. Suffice it to say that the discrepancies noted by Messina in  
many cases far outweigh the "catch-up" which would be achieved by the Union's final offer.

1           ***B. The Employer's Comparability Expert***

2           The Employer offered the testimony of Personnel Management Specialist Joy Inouye of  
3 the Classification and Compensation Division of the Department of Human Resources  
4 Development. Inouye conducts wage studies to determine the competitiveness of the State's  
5 wages against the relevant labor market. She also makes "shortage category designations"  
6 where departments are having difficulty recruiting or retaining employees. Like Messina,  
7 Inouye also has substantial experience conducting compensation analyses for previous interest  
8 arbitrations for the State of Hawaii, including the recent arbitrations involving HGEA  
9 Bargaining Unit 9 and United Public Workers Union Bargaining Unit 10. In addition to doing  
10 her own surveys, Inouye uses wage surveys from the Hawaii Employer's Council. Inouye  
11 rejected the use of mainland data because competition is primarily within the state due, in large  
12 part, to residency requirements for public employment.<sup>35</sup> Inouye's wage survey reflects that, in  
13 general, wages of public sector employees are competitive with the private sector. She opined  
14 that the preferred method of adjusting salaries is not an across-the-board increase tied to other  
15 public sector raises but rather a more focused effort to adjust salaries, e.g., the shortage  
16 category designations.<sup>36</sup>

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20           **VI. Cost of Living**

21           Personnel Management Specialist Inouye also presented evidence that in the past ten  
22 years, employee salaries have increased more than the cost of living in Honolulu. Specifically,  
23

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24           <sup>35</sup> Inouye presented data that for Units 2 and 4, there have been no non-resident hires within the  
25 past two years; for Unit 3, there were only four (4) non-resident hires out of a total of approximately  
26 13, 122 employees, and for Unit 13, there were only 30 non-resident hires out of a total of 7230  
employees.

27           <sup>36</sup> The panel's determination of the wage comparison factor will be discussed at part VIII of the  
28 panel's decision.

1 her data reflects:

- 2 • that Bargaining Unit 2 salaries have increased 7.4% more than the cost of living
- 3 • that Bargaining Unit 3 salaries have increased 12.8% more than the cost of living
- 4 • that Bargaining Unit 4 salaries have increased 12.7% more than the cost of living
- 5 • that Bargaining Unit 8 salaries have increased 6.4% more than the cost of living
- 6 • that Bargaining Unit 13 salaries have increased 11.2% more than the cost of living

7 On the other hand, the Union's comparability expert (Messina) presented cost of living  
8 indices as follows:

9	STATE	CITY	COST OF LIVING INDEX
10	Hawaii	Honolulu	161.6
11	California	San Francisco	162.0
12	California	Los Angeles	135.6
13	California	San Diego	130.9
14	California	San Jose	129.3
15	California	Long Beach	125.5
16	Alaska	Anchorage	119.7
17	Washington	Seattle	118.4
18	Oregon	Portland	113.7
19	Oregon	Eugene	106.1

20 Messina also documented cost of living allowances for federal employees working in Hawaii:  
21 City and County of Honolulu (25.00%); County of Hawaii (16.50%); County of Kauai  
22 (23.25%) and County of Maui (23.75%).<sup>37</sup> As previously discussed, Messina also presented  
23 U.S. Census Bureau data showing that during the period from October of 1992 to March of  
24 2002, Hawaii's average monthly payroll for full time government workers (when compared to  
25 the other 49 states) fell from #21 to #37 in the hierarchy.<sup>38</sup>

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27 <sup>37</sup> The Union's economic expert Sumner La Croix, Ph.D. testified that Honolulu consumer price  
28 inflation is expected to be at 2.0% in 2004 and at 2.0% in 2005.

<sup>38</sup> The panel will apply this statutory factor (cost of living) at part VIII of this decision.

1 **VII. Present and Future General Economic Condition of the Employer**

2 Sumner La Croix, Ph.D., the Chair of the Department of Economics, University of  
3 Hawaii was called as a witness by the Union. La Croix performed an analysis of the Hawaii  
4 economy for use in this proceeding. In his report to the panel, La Croix opined that Hawaii  
5 has shown strong economic growth during the last six months of 2003. He attributes this  
6 positive trend to a resurgence of mainland visitors from post 9-11 lows, the persistence of low  
7 interest rates contributing to growth in the construction and finance industries, and to growth  
8 in other Hawaii service industries. Moreover, he relates his optimistic outlook on Hawaii's  
9 economy to expected improvements in economic growth in the United States, Japanese and  
10 California economies. Based on the recent appreciation of the yen and the Federal Reserve  
11 Board's continuation of a low interest policy, Dr. La Croix is forecasting an increase in real  
12 personal income in Hawaii at a slightly higher rate than the DBEDT forecasts: 3.6% in 2004  
13 and 3.1% in 2005. The Employer did not present an economics expert.<sup>39</sup>

16 **VIII. The Panel's Determination of the Salary and Step Issues**

17 HRS 89-11 (f) requires the arbitration panel, in reaching its decision, to give weight to  
18 the statutory factors and to include in its written report or decision an explanation of how the  
19 factors were taken into account. However, the panel is precluded from predicating the  
20 Employer's ability to fund cost items on the premise that the Employer may increase or impose  
21 new taxes, fees, or charges, or develop other sources of revenue. Having reviewed all of the  
22 evidence and arguments of the parties and after due consideration of the statutory factors, the  
23 panel has determined that neither party's final offer position is an appropriate resolution of  
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26 \_\_\_\_\_  
27 <sup>39</sup> The panel will apply this statutory factor (general economic condition) in its determination of  
28 the salary and step issues at part VIII of this decision.

1 the impasse. Rather, the panel, as authorized by HRS 89-11, will order an economic package  
2 which represents a compromise between Employer and HGEA final offer positions.

3 In fashioning its award, the panel has accepted the Employer's primary concept that no  
4 economic improvements of any kind, including step movements, will be granted for the first  
5 fiscal year of the contract. Likewise, the panel has accepted the Union's concept of step  
6 movements; however, the step movements will be deferred until the second fiscal year of the  
7 contract. In addition to the deferred step movements, the panel has also determined that a 5%  
8 across the board wage increase effective January 1, 2005 will fairly compensate employees  
9 without compromising the ability of the State, or any other jurisdiction, to accomplish its  
10 mission.<sup>40</sup> The panel is aware that this back loaded wage increase will not be warmly received  
11 by either party to this arbitration proceeding but, in light of the statutory factors, it represents  
12 a reasonable compromise.  
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15 In reaching this conclusion, the panel begins with the observation that each party, in  
16 presenting wage data pertaining to employees performing similar services, has selected data  
17 which is supportive of its own position. Moreover, the inevitable selection of certain  
18 classifications for comparison purposes in such heterogeneous bargaining units makes it  
19 extremely difficult to analyze the true impact of wage comparisons across six different  
20 bargaining units with a myriad of classifications. While each party may have endeavored to  
21 select the most populated classifications for comparison with mainland jurisdictions (Messina)  
22 or with Hawaii's private sector (Inouye), a question still arises as to whether these  
23 comparisons would be the same with regard to other classifications in the same bargaining unit.  
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27 <sup>40</sup> According to Gordon Chang, the panel's award results in a 4.77% out of pocket cost and a  
28 7.84% increase to base as to included employees.

1 Indeed, the insurmountable challenges faced by the panel in interpreting the real significance of  
2 wage comparisons made by Messina and Inouye have caused the panel to shift its attention  
3 away from both parties' wage comparisons and to look more closely at the wages of other  
4 public employees in Hawaii.

5           As a threshold matter, the panel is in complete agreement with the Employer's position  
6 that, in the post 9-11 era, "first responders" should be given special recognition for their  
7 important contribution to the public safety. However, the panel cannot agree that the  
8 discrepancy between public safety raises and non-public safety raises should be of the  
9 magnitude proposed by the Employer, i.e., more than a 9% differential. In the panel's  
10 judgment, such a huge differential would unduly trivialize the significant contributions of  
11 employees working in the HGEA units. Such an enormous differential would only be justified  
12 if the financial circumstances of the Employer had deteriorated sharply during the past year. In  
13 fact, the evidence is to the contrary.

14           The record establishes to the panel's satisfaction that overall the Hawaii economy is  
15 experiencing sustained growth. The Union's economic expert presented an optimistic view of  
16 Hawaii's present and future economic condition and no contrary evidence was presented by  
17 the Employer. Deferring any economic improvements until the second year of the contract,  
18 and deferring the across the board wage increase until the mid-point of the second year of the  
19 contract, is a reasonable approach given the economic indicators which all point to increased  
20 revenues in fiscal years 2004 and 2005. For all of these reasons, the panel has concluded that  
21 the present and future economic condition of the State and the counties clearly justifies the  
22 panel's award of a modest increase.

23           Turning to the cost of living, the panel notes that evidence presented by the  
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1 parties can be harmonized. While the Union emphasizes that the cost of living has always been  
2 high in Hawaii and remains so, the Employer emphasizes that in the past decade, wage  
3 increases have outpaced the rise in the cost of living. These positions are not irreconcilable. In  
4 any event, the panel is persuaded that expected consumer price inflation in 2004 of 2% and of  
5 an additional 2% in 2005 (per the unrebutted testimony of Dr. LaCroix), provides additional  
6 support for the panel's award of a 5% increase at the midpoint of the second fiscal year of the  
7 contracts, as well as for the award of step increases.

9         The record as a whole establishes that the purpose of the step movement proposals is  
10 to recognize years of service. To reward the contributions of long-term employees, the Union  
11 has proposed two longevity steps in Bargaining Unit 2 ( 1.5% at 10 years of service and  
12 another 1.5% at 15 years of service), two step movements (one in each year of the contract) in  
13 Units 6 and 8 ( effective 7/1/03 and 7/1/04) and the continuation of the existing step  
14 movement plans in Units 2, 3, 4, and 13. Other than its overall presentation regarding the  
15 financial condition of each of the jurisdictions, the Employer did not present specific evidence  
16 to justify its position, i.e., that existing step movement plans should be eliminated and that no  
17 new step movements should be granted. While the 5% across the board increase will be  
18 received by unit member without regard to longevity, step movements recognize experience  
19 and growth on the job, help to promote employee morale, and contribute to work force  
20 stability. Thus, the panel determines that the award of step increases, in lieu of other economic  
21 improvements, is in the best interests of both parties.

#### 24 **IX. The Interests and Welfare of the Public**

25         In enacting Hawaii's public bargaining law, the legislature included a "Statement of  
26 findings and policy" (HRS 89-1) which provides in pertinent part:  
27



1 Where public employees have been granted the right to share in the decision-making  
2 process affecting wages and working conditions, they have become more responsive  
3 and better able to exchange ideas and information on operations with their  
4 administrators. **Accordingly, the government is more effective.** The legislature  
5 further finds that the enactment of positive legislation establishing guidelines for public  
6 employment relations is **the best way to harness and direct the energies of public  
7 employees eager to have a voice in determining their conditions of work; to  
8 provide a rational method for dealing with disputes and work stoppages; and to  
9 maintain a favorable political and social environment** (emphasis supplied).

7 The panel's award effectuates the legislature's intent and purpose in enacting the law and,  
8 therefore, promotes the interests and welfare of the public by contributing to more effective  
9 government and continuation of necessary services.

10 In its closing brief, the Employer argues that the Union's wage proposals do not  
11 consider the interests and welfare of the public. Specifically, the Employer argues that the  
12 Union's proposal, if accepted by the panel, inexorably leads the State towards a negative  
13 ending fund balance in its General Fund and triple-digit negative fund balances thereafter. The  
14 Employer goes so far as to state: "It would be a pyrrhic victory for the Union to get what it  
15 wants now, only to suffer layoffs and a California-like disaster soon." Obviously, a California-  
16 like budgetary crisis would not serve the interests and welfare of the public; however, for  
17 reasons already explained, the Employer has failed to establish that the Union's proposal, or  
18 much less the panel's award, would bring about layoffs, or any similar negative consequences.

21 Bargaining unit employees covered by the panel's award are employed in every facet of  
22 governmental operations and provide services to the general public, thereby affecting the lives  
23 and well being of individuals, families and businesses throughout the state of Hawaii. In the  
24 opinion of the panel, recognizing these employees for their contributions through issuance of  
25 a fair and reasonable arbitration award serves the best interests and welfare of the public.

27 ///

1 **X. Compensation Adjustments**

2 The Employer has proposed modifications to Article 14 in Bargaining Units 2, 3, 4  
3 and 13 as follows:

4 BU 2, 3, 4, and 13: Paragraph A, 4-The Employer is proposing to clarify days that  
5 are counted towards a leave of absence without pay.

6 BU 2, 3, and 4: Paragraph P-The Employer proposes to generically identify the  
7 various chief personnel or human resources executives, rather  
8 than list the respective titles of those positions.

9 BU 13: Paragraph P, 1-The Employer is proposing to correct the  
10 misspelled word "ths" to read "this."  
11 Paragraph Q (same as paragraph P for BU2, 3, and 4).

12 BU 3 and 4: Paragraph H, 5-The Employer is proposing to require that  
13 whenever a BU 3 or 4 employee accepts a temporary assignment  
14 to an excluded managerial position, the employee's  
15 compensation shall be adjusted in accordance with the provisions  
16 applicable to Excluded Managerial employees.

17 The Union proposes only one change to Article 14 in BU 2 as follows:

18 BU 2: Paragraph O- The Union is proposing to provide the procedure  
19 to effectuate the longevity movement plan as being proposed by  
20 the Union in its Article 51, Salaries proposal.

21 Here the Employer did not provide testimony or documents in support of its proposal  
22 for Bargaining Units 2, 3, 4, and 13. Consequently, the Employer's proposal to amend  
23 paragraph A, 4 for BU 2, 3, 4, and 13 and paragraph H, 5 for BU 3 and 4 are denied.

24 However, the panel will grant the following Employer's proposals on compensation  
25 adjustments effective July 1, 2004 which are changes in form rather than substance:

26 BU 2, 3, & 4 Paragraph P-Delete phrase "director of personnel services,  
27 director of civil service, or the administrative director of the  
28 courts" and replace it with the phrase "chief personnel or human  
resources executive"

BU 13 Paragraph P, 1-Delete the misspelled word "ths" and replace it

1 with "this"

2 Paragraph Q-Delete the phrase "director of personnel services,  
3 director of civil service, or the administrative director of the  
4 courts" and replace it with the phrase "chief personnel or human  
5 resources executive."

6 In light of the panel's award of the longevity step in BU 2, the BU 2 Compensation  
7 Adjustment article shall be amended by the parties to effectuate such award as reflected in the  
8 Union's BU 2 compensation proposal and as supported by testimony at arbitration.

9 **XI. The Vacation and Sick Leave Issue in Bargaining Units 2, 3, 4 and 13**

10 For Bargaining Units 2, 3, 4 and 13, the Employer has affirmatively proposed  
11 two new provisions which would permanently establish a two-tier formula for accrual of sick  
12 leave and vacation. The language of the proposal is similar to the terms of existing side letters  
13 entitled "memoranda of agreement" which were entered into by the Union and the Employer  
14 in June of 2002.<sup>41</sup> The Employer contends that if the panel does not accept its proposal, the  
15 language of the memoranda of agreement will carry over into the successor agreement (as an  
16 unmodified term of the predecessor agreement).<sup>42</sup> On the other hand, the Union has made no  
17 proposal in reliance on its position that the *temporary* provisions of the memoranda of  
18 agreement will expire on June 30, 2004, thus returning the parties to the contract language  
19 which pre-existed adoption of the two-tier program.<sup>43</sup>

20 \_\_\_\_\_  
21  
22 <sup>41</sup> For each of the affected bargaining units the proposals are as follows:  
23 Bargaining Unit 2: Article 35 (Vacation Leave) and Article 36 (Sick Leave);  
24 Bargaining Unit 3: Article 35 (Vacation Leave) and Article 36 (Sick Leave);  
25 Bargaining Unit 4: Article 35 (Vacation Leave) and Article 36 (Sick Leave);  
26 Bargaining Unit 13: Article 36 (Vacation Leave) and Article 37 (Sick Leave).

27 <sup>42</sup> The Employer claims to have made the proposal to clarify the status quo and insists that the  
28 proposal was not necessary in order to retain the two-tier system.

<sup>43</sup> Pursuant to a recent arbitration award, the two-tier program was implemented in Unit 9  
pursuant to a separate memorandum of agreement.

1           *A. History of the Two-Tier Program-the Employer's Perspective*

2           The Employer presented the testimony of Henry Kanda, the HHSC Personnel Program  
3 Administrator for the last six (6) years, who formerly worked for the Office of Collective  
4 Bargaining for almost twenty (20) years. Kanda testified that prior to 2001, the HGEA units  
5 (Units 2, 3, 4, 9 and 13) had vacation and sick leave provisions in their contracts which  
6 provided for twenty-one (21) days of vacation per year and (21) days of sick leave per year  
7 effective the first year of employment. On July 2, 2001, *after the 2000 arbitration award had*  
8 *already issued but before it was funded by the legislature,* the Employer<sup>44</sup> and the Union  
9 entered into a memorandum of agreement which confirmed their agreement to negotiate a new  
10 vacation and sick leave accrual program *once the 2000 award was funded.* After the award  
11 was funded by the legislature, the parties then agreed to a two-tier program which reduced the  
12 vacation and sick leave accruals for employees hired after July 2, 2001, placing them on a  
13 graduated scale of vacation and sick leave benefit accruals.<sup>45</sup> Kanda testified that it was his  
14 understanding that the provisions of the memoranda of agreement, unless modified by mutual  
15 agreement, would be carried over into subsequent contracts.  
16

17  
18           By looking at how many employees are enrolled in the new benefit structure in the  
19 affected units, Kanda estimated that the cost to the Employer would be approximately \$7  
20 million in lost productivity during the first year and approximately \$8.9 million in lost  
21 productivity during the second year, i.e., representing the cost of employing individuals who  
22

23  
24           <sup>44</sup> As previously noted, the State of Hawaii, the HHSC, the Judiciary, Honolulu, and the  
25 Counties of Hawaii, Maui, and Kauai employ members of bargaining units 2, 3, 4, and 13.

26           <sup>45</sup> Under the two-tiered program, new employees earn twelve (12) days of vacation during the  
27 first year of employment and the number of vacation days increases with service so that after twenty  
28 (20) years of service, employees can earn 24 vacation days.

1 are not performing their duties while using vacation and sick days (which would be recouped if  
2 the Union's position is accepted, i.e., eliminating the two-tier program). The Employer's  
3 costing did not attempt to capture any out of pocket costs associated with hiring replacements  
4 or paying overtime.

5 *B. History of the Two Tier Program-the Union Perspective*

6 The Union's Executive Director Russell Okata testified that after his initial exhilaration  
7 at receiving a favorable arbitration award in 2000, he learned that then governor Ben  
8 Cayetano was taking the position that he would not recommend funding the award.  
9 Consequently, the Union was faced with the specter of court litigation, including a thorny issue  
10 as to whether the court or the legislature has jurisdiction and whether or not retroactive pay  
11 could be funded. During a meeting with Governor Cayetano during the spring of 2001,  
12 Governor Cayetano told Okata that United Public Workers (Units 1 and 10) had agreed with  
13 him to alter their vacation and sick leave. According to Okata, Governor Cayetano then told  
14 him that if HGEA would agree to this modified vacation and sick leave plan, he (Cayetano)  
15 would be willing to go to the legislature to fund the agreement. Okata asked Cayetano, "what  
16 about the other units?" to which Cayetano replied, "I'll take care of them" and "I will treat you  
17 (HGEA) fairly." So Okata went to his membership and told them that an agreement to  
18 negotiate a new vacation and sick leave program was necessary in order to get the contract  
19 funded and that Governor Cayetano had assured Okata that all public employees would be  
20 treated equally. The legislature acted to fund the 2000 arbitration award before the close of  
21 the legislative session, and, shortly thereafter, various memoranda of agreement (modifying the  
22 vacation and sick leave to a two-tier program) were signed by the HGEA and representatives  
23 of the various jurisdictions on a unit by unit basis. Okata further testified that, contrary to  
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1 Governor Cayetano's representations, there was never any discussion with other units, e.g.,  
2 Unit 11 or Unit 12, about the two-tier program.

3 Evidence was produced by the Employer that the State proposed the reduced vacation  
4 and sick leave schedule in Unit 12 but was unable to secure the votes (from other jurisdictions)  
5 for the proposal to go across the table.<sup>46</sup> With regard to Unit 11, a proposal was passed  
6 across but it was withdrawn prior to the arbitration hearing. No persuasive evidence that the  
7 Employer sought to introduce the two-tiered program into other bargaining units was  
8 presented. A reasonable inference to be drawn from Okata's testimony is that it was his  
9 understanding that bringing the two-tiered program to all units (and not just the HGEA units)  
10 was a condition precedent to making it a *permanent* provision of the HGEA contracts.

#### 12 **XII. The Panel's Determination of the Vacation and Sick Leave Issue**

13  
14 In its final offer, the Employer proposes new language regarding vacation and sick  
15 leave accrual without regard to the existing side letters. Indeed, the final offer states on its  
16 face that each of the existing articles (referring to Articles 35 and 36 in BU 2, 3, and 4 and  
17 Articles 36 and 37 in BU 13) is deleted in its entirety and is to be replaced with proposed  
18 language. The final offer does *not* state that the Employer seeks to replace the language in the  
19 memoranda of agreement with its proposed new article. All of the documentary evidence,  
20 including the Employer's final offer, corroborates Okata's testimony that the memoranda of  
21 agreement were temporary and that, as such, they would not be carried over into the new  
22 agreements.

23  
24 In reaching this conclusions, the panel notes that the memoranda of agreement either  
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26  
27 <sup>46</sup> By the express terms of HRS 89-6 (d) (2), the Governor has four votes while each of the  
28 mayors has one vote.

1 do not explicitly provide a duration or, in some cases, state that the agreement shall have the  
2 same expiration date as does the 1999/2003 agreement. The absence of clarifying language,  
3 together with the expiration date which appears in some of the memoranda, lends additional  
4 support to the panel's conclusion that the parties did not intend a permanent agreement *at least*  
5 *not until such time as the new vacation and sick leave program was introduced in all*  
6 *bargaining units*. The paucity of evidence demonstrating that the Employer advocated for the  
7 two-tiered program in other units is consistent with the panel's interpretation, i.e., that the  
8 two-tier program never became permanent. Finally, the fact that the two-tier system was  
9 recently bargained in Unit 9 also supports the Union's interpretation, i.e., that the memoranda  
10 of agreement did not permanently establish a two-tier system.

11  
12 For all of these reasons, the panel concludes that it must consider the Employer's  
13 proposal to be a request for a change in the vacation and sick leave accrual program as  
14 described in the existing contracts without reference to the soon to expire side letters. Based  
15 on the record evidence, the Employer has not met its burden of demonstrating that its proposal  
16 should be accepted. In the first place, the Employer has not demonstrated to the satisfaction of  
17 the panel the true costs of the vacation and sick leave programs described in the existing  
18 contracts. Nor has the Employer demonstrated that the two-tier program has improved  
19 efficiency, cut overtime costs, or reduced the use of sick leave and/or vacation days, or that the  
20 vacation and sick provisions of the existing agreements will adversely impact its operations.  
21 For all of these reasons, the panel must conclude that the Employer's proposals for a change in  
22 Articles 35 and 36 (BU 2, 3, and 4) and Articles 36 and 37 (BU 13) are denied. The two-tier  
23 program will continue up to the extension date of June 30, 2004, and effective July 1, 2004,  
24 employees shall be covered by the vacation and sick leave provisions which are contained in  
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1 the 1999/2003 agreements.

2 **XIII. The Employer's Overtime Proposals**

3 Under the existing agreements covering Bargaining Units 2, 3, 4, and 13, there is no  
4 limitation on the number of compensatory time off (CTO) credits that an employee may  
5 accumulate, except under the Fair Labor Standards Act. Hence, the Employer is proposing in  
6 new paragraphs H and I<sup>47</sup> that a maximum CTO credit accrual be set at 160 hours and a  
7 procedure be established to reduce amounts in excess of the maximum accrual.  
8

9 Evidence was presented by both parties regarding Bargaining Unit 3 negotiations. This  
10 evidence established that during negotiations, the Union made a counterproposal #1 which  
11 contained, among other things, a 160-hour cap on CTO earnings. In response to this  
12 counterproposal, the Employer submitted additional language which the Union then rejected.  
13 After the Union rejected the proposed additional language, the Employer "accepted" the  
14 counterproposal #1. At the next negotiating session, the Union withdrew counterproposal #1.  
15

16 The Employer presented evidence that a survey (which was not introduced) reflects that  
17 "some employees among the various bargaining units had an average of approximately 250  
18 hours of comp. time hours" and that when these employees separate from service they will be  
19 compensated for their compensatory time off credits at their current rate of compensation, thus  
20 creating a liability for the employer. This was the only testimony offered by the Employer in  
21 support of its proposed cap on the number of compensatory time off credits which an  
22 employee may accumulate. This evidence is not the quality or quantity of evidence which  
23 would support the granting of the Employer's proposals. Therefore, the Employer proposals  
24  
25

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26 <sup>47</sup> The Employer is proposing modifications to the following articles: BU 02 – Article 23;  
27 BU 03 – Article 23; BU 04 – Article 23; and BU 13-Article 25.



1 to modify the Overtime articles for Bargaining Units 2, 3, 4, and 13 are denied and the existing  
2 Overtime articles shall be continued in the successor contracts without modification.

3 **XIV. Working Condition Differential**

4 This issue involves proposals by both parties to amend the following articles:

5 **BU 02 – Article 31 (Employer and Union Proposals)**

6 **BU 03 – Article 31 (Employer and Union Proposals)**

7 **BU 13 – Article 44 (Employer and Union Proposals)**

8 Specifically, the Employer is proposing the following modifications to existing language:

9 Paragraph A - Grant the differential to all employees working at the Hawaii  
10 State Hospital who have contact with certain patients. Current provisions only  
11 mention employees in a specific ward of the hospital that no longer exist.

12 Paragraph B-Clarify the provisions pertaining to employees of other hospitals  
13 who will also receive the differential when working with certain patients.

14 Paragraph F – Change the “director of personnel services” to the “Employer”  
15 because the director of personnel services no longer exercises jurisdiction over  
16 employees in the various hospitals throughout the state except for the Hawaii  
17 State Hospital.

18 With regard to Bargaining Units 2 and 3, the Union is proposing essentially the same  
19 language as the Employer (as set forth above), except that it is proposing to increase the  
20 amount of the differential from 40 cents to 50 cents per hour for employees covered by  
21 paragraphs A and B. In paragraph D which covers employees assigned to correctional  
22 facilities, the Union is proposing to increase the amount of the differential from 30 cents to 50  
23 cents per hour.

24 In Bargaining Unit 13, the Union is proposing:

25 In paragraphs A and B, the Union is proposing that the amount of the  
26 differential remain at 50 cents per hour. However, in paragraph A, the Union is  
27 proposing to expand coverage by **including employees who must visit the  
28 patient care units at Hawaii State Hospital in carrying out their assigned  
duties and responsibilities.**

1 In paragraph D which covers employees assigned to correctional facilities, the  
2 Union is proposing to **include those employees who must visit such**  
3 **correctional facilities** in the course of carrying out their duties and  
responsibilities and to keep the amount of the differential at 50 cents per hour.

4 In paragraph F, the Union is proposing that the 50 cents per hour **differential**  
5 **be extended to social workers in Child Protective Services.**

6 In paragraph G, the Union is proposing that the 50 cents per hour **differential**  
7 **be extended to employees who are assigned to community mental health**  
8 **settings.**

8 Preliminarily, the panel notes that the only difference between the proposals being made by the  
9 parties in Bargaining Units 2 and 3 is in the amount of the working condition differential. The  
10 Employer is proposing that the amount remain the same; whereas, the Union is proposing  
11 increases of 40 cents to 50 cents in Paragraphs A and B and 30 cents to fifty cents in Paragraph  
12 D. The Union through direct testimony has requested an increase in the differential to 50 cents  
13 per hour for BU 02 and 03 employees based on comparison with the BU 09 and 13 contracts  
14 which currently have a working condition differential at 50 cents per hour for employees  
15 assigned to (1) certain units at the Hawaii State Hospital and (2) correction facilities. The  
16 panel has determined that an increase in the amount of the differential is justified because  
17 Bargaining Unit 2 and Bargaining Unit 3 employees are exposed to similar "unusual and unique  
18 working conditions" as those employees in Bargaining Unit 9 and 13 when assigned to the  
19 same work environment, and the working condition differential is already established at 50  
20 cents per hour for the Bargaining Unit 9 and 13 employees. As more fully set forth in the  
21 award, the requested increase in differential will be granted, as well as the Employer's proposed  
22 changes to Paragraph F.<sup>48</sup>

26 <sup>48</sup> The change in paragraph F is necessary to clarify that the director of personnel services no  
27 longer exercises jurisdiction over employees in the various hospitals throughout the state except for the  
28 Hawaii State Hospital.

1 With regard to the Union's proposals regarding Unit 13, no evidence was offered to  
 2 sufficiently explain the justification for extending the working condition differential to  
 3 employees who must visit patient care units at Hawaii State Hospital, to employees who must  
 4 visit correctional facilities, to social workers in Child Protective Services, or to employees who  
 5 are assigned to community mental health settings. Therefore, the panel will deny these  
 6 proposals.  
 7

#### 8 **XV. The Parties' Travel Proposals**

9 The parties have made the following travel proposals in five out of the six bargaining  
 10 units as follows:

- 11 BU 02- Article 41 (Employer and Union Proposals)
- 12 BU 03- Article 44 (Employer and Union Proposals)
- 13 BU 04 - Article 44 (Employer and Union Proposals)
- 14 BU 06 - Article 24 (Union Proposal)
- 14 BU 13 - Article 45 (Employer and Union Proposals)

15 Specifically, the Employer is proposing the following:<sup>49</sup>

- 16 Paragraph B, 2-Clarify how the \$20 per day allowance is to be calculated
- 17 Paragraph B, 3- This is a new paragraph to give the Employer the option of utilizing  
 18 non-commercial lodging for its employees whenever such non-commercial lodging is  
 18 available.
- 19 Non-substantive editorial changes are made throughout this article.

20 On the other hand, the Union is proposing that:

- 21 Paragraph D, 2 - Change the starting time in computing the amount of per diem from  
 22 30 minutes to 90 minutes before the scheduled flight departure time.
- 23 Paragraph G - Mandatory advanced per diem for all official travel is being proposed in  
 24 lieu of "whenever possible." Also, an employee shall be reimbursed for excess lodging  
 25 expenses within 30 days after filing a request rather than "as soon as possible."
- 25 Paragraph H - Increase the mileage allowance from 37 cents per mile to 50 cents per  
 25 mile for employees who are authorized to use their private vehicles to carry out their  
 25 duties and responsibilities.

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27 <sup>49</sup> The Employer made proposals in only four out of six bargaining units (2, 3, 4, and 13) and  
 28 made no proposal in Bargaining Unit 6.

1 The Union proposal is an agreement with some but not all of the "non-substantive  
2 editorial changes" proposed by the Employer  
3 BU 06- Paragraph I, 1- The Union withdrew its proposal to include "motorcycles"  
4 as part of the definition of "vehicles" during the arbitration hearing since the Employer  
5 indicated that motorcycles are covered by the Department of Accounting and General  
6 Services travel rules for mileage reimbursement at one-half (½) the rate for automobiles.

7 At the hearing, the Employer presented testimony to the effect that its proposal was to clarify  
8 language. However, the proposal for a modification of B, 3, as discussed above, is a substantive  
9 change from sleeping in tents or cabins (under paragraph B, 2) to the use of non-commercial  
10 lodging.

11 The panel will accept the Employer's reasonable proposal for a change in this  
12 language. However, the panel is not persuaded by the testimony offered to support the Union's  
13 proposals. In referring to the increase in time allowed for the purpose of calculating per diem,  
14 the Union focused on airline requirements and recommendations on passenger check-in times.  
15 No testimony was offered as to what additional travel expenses would be incurred to justify any  
16 additional per diem allowance. While the Employer offered in its post-hearing brief a proposal  
17 to increase the starting time in computing per diem from 30 to 60 minutes, it did so with the  
18 proviso that the "per diem clock" starts to run at the start of the sixty minute time period. No  
19 explanation was given as to the effect of this proposal.

20 With regard to the mileage reimbursement allowance, the Union's proposal for 50 cents  
21 per mile is rejected based on the fact that the Employer would be required to add the excess  
22 over the IRS mileage reimbursement rate of \$.375 (thirty-seven and a half cents) to employee  
23 income for tax purposes. Considering the fact that the existing mileage rate has not been  
24 changed for many years, the panel deems it appropriate to change the mileage allowance rate  
25 to 37.5 cents per mile. As more fully set forth in the Award, Articles 41 (BU 2), 44 (BU 3),  
26  
27  
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1 Article 44 (BU 4), Article 26 (BU 6) and Article 45 (BU 13) will be modified to conform to the  
2 panel's decision.

3 **XVI. Other Leaves of Absence**

4 The Employer has proposed to incorporate a separate supplemental agreement into the  
5 following Other Leaves of Absence Articles found in Article 42 (BU 2), Article 40 (BU 3),  
6 Article 40 (BU 4) and Article 41 (BU 13). However, the Employer did not present any  
7 compelling testimonial or documentary evidence to justify inclusion of certain provisions  
8 contained in the supplemental memorandum into the Other Leaves of Absence Articles. As set  
9 forth in the Award, these proposals are denied.  
10

11 Based on the foregoing findings and conclusions, the following award is made:

12 **AWARD**

13 All articles and provisions of the 1999-2003 collective bargaining agreements (as set  
14 forth in Joint Exhibits "2" through "7") not herein revised (including Vacation and Sick  
15 Articles) and all provisions already agreed to by the parties shall be incorporated into the  
16 successor agreement. The parties shall adopt the following revised contract language which  
17 shall replace only those articles or sections affected:  
18

- 19
- 20 1. The Duration articles for Bargaining Units 2, 3, 4, 6, 8 and 13 shall be amended to  
21 include the following:
    - 22 a) The agreement shall become effective as of July 1, 2003 and shall remain in effect  
23 to and including June 30, 2005.
    - 24 b) The agreement shall be renewed in accordance with statutes unless either party  
25 gives written notice to the other party of its desire to amend, modify, or terminate  
26 the agreement, and such written notice is given no later than May 15, 2004.
    - 27 c) After such written notice is given, the parties shall exchange their specific written  
28 proposals, if any, no later than June 14, 2004.

1 d) Negotiations for a new agreement shall commence on a mutually agreeable date  
 2 following the exchange of written proposals, as applicable.

3 2. The Salary articles for Bargaining Units 2, 3, 4, 6, 8, and 13 shall be amended to reflect:

4 **BU 02:** **Article 51 – Salaries**

5 **Effective Date** **Salary Award**

6 7/1/03 Continue the step movement plan but defer the step movements due  
 7 in the first fiscal year until 7/1/04. As a result of such deferral, there  
 8 shall be no retroactive adjustment and no loss of service time credit  
 by affected employees.

9 7/1/04 Employees who were eligible for step movement during the first  
 10 fiscal year shall be placed on Step B on this date. Delete Step A and  
 designate Step B as Step A.

11 Establish the two-step longevity plan as proposed by the Union and  
 12 place employees who have the required years of service as of 6/30/04  
 13 on the appropriate longevity step. Amend Article 14-Compensation  
 Adjustments, as appropriate, to effectuate the longevity step plan.

14 Employees who are eligible for a longevity step movement during the  
 15 second fiscal year shall be placed on the appropriate step on their  
 16 eligibility date.

17 1-1-05 Increase the rates on the salary schedule by 5.0%

18 **BU 03:** **Article 53-Salaries**

19 **BU 04:** **Article 53-Salaries**

20 **BU 13:** **Article 50-Salaries**

21 **Effective Date** **Salary Award**

22 7/1/03 Continue the step movement plan but defer the step movements due  
 23 in the first fiscal year until 7/1/04. As a result of such deferral, there  
 24 shall be no retroactive adjustment and no loss of service time credit  
 by affected employees.

25 7/1/04 Employees who were eligible for step movement during the first  
 26 fiscal year shall be placed on their appropriate step on this date.

27 Employees who are eligible for step movement during the second

28

1 fiscal year shall be placed on the appropriate step on their eligibility  
2 date.

3 1/1/05 Increase the rates on the salary schedule by 5.0%

4 **BU 06:** **Article 30 - Salaries**

5 Effective Date Salary Award

6 7/1/04 Employees move two steps without exceeding the maximum step.

7 1/1/05 Increase the rates on the salary schedule by 5%  
8 Employees move one step without exceeding the maximum step.

9 **BU 08:** **Article 39 - Salaries**

10 Effective Date Salary Award

11 7/1/04 Employees move one step without exceeding maximum step.

12 1/1/05 Increase the rates on the salary schedule by 5%  
13 Employees move one step without exceeding the maximum step.

14  
15 3. The Compensation Adjustments articles for BU 2, 3, 4 and 13 shall be amended in  
16 accordance with the panel's decision. The BU 2 Compensation Adjustment article shall be  
17 amended by the parties to effectuate such award as shown in the Union's BU 2 compensation  
adjustment proposal.

18 4. The Employer's proposals for a change in Articles 35 and 36 (BU 2, 3, and 4) and Articles  
19 36 and 37 (BU 13) are denied. The two-tier program shall continue up to the extension date of  
20 June 30, 2004, and, effective July 1, 2004, employees shall be covered by the vacation and sick  
leave provisions as contained in the 1999/2003 agreements.

21 5. The Employer proposals to modify the Overtime articles for Bargaining Units 2, 3, 4, and 13  
22 are denied and the existing Overtime articles shall be continued in the successor contracts  
without modification.

23 6. Article 31 (Working Condition Differential) in Bargaining Units 2 and 3 shall be amended  
24 effective July 1, 2004 as follows:

25 Paragraph A-Grant the differential to all employees working at the Hawaii  
26 State Hospital who have contact with certain patients as proposed by the Employer and the  
27 Union but increase the amount of the differential to 50 cents per hours as proposed by the  
Union; and amend paragraph C as appropriate.

28

1 Paragraph B- Grant the differential to employees of the Hawaii Health Systems Corporation  
2 Corporation as proposed by the Employer and the Union but increase the amount of the  
3 differential to fifty cents per hour as proposed by the Union; and amend paragraph C as  
4 appropriate.

4 Paragraph D- Increase the amount of the differential to 50 cents per hour for employees  
5 assigned to correctional facilities as proposed by the Union and amend paragraph E  
6 as appropriate.

6 Paragraph F- As proposed by the Employer, change the "director of personnel services" to  
7 the "Employer."

8 Article 44 (Working Condition Differential) in Bargaining Unit 13 shall be amended  
9 effective July 1, 2004 as follows:

10 Paragraph A- Grant the differential to all employees working at the Hawaii State Hospital  
11 who have contact with certain patients as proposed by the Employer and the Union; and  
12 amend paragraph C as appropriate.

12 Paragraph B- Grant the differential to employees of the Hawaii Health Systems Corporation  
13 as proposed by the Employer and the HGEA; and amend paragraph C as appropriate.

14 Paragraph F- As proposed by the Employer, change the "director of personnel services"  
15 to the "Employer."

16 7. Effective July 1, 2004, all of the proposals made by the Employer to the Travel Articles in  
17 BU 2, 3, 4, and 13 are granted. (Employer made no travel proposal in BU 6).

18 The Union's proposal in paragraph D, 2 of the Travel articles (BU 2, 3, 4, 6, and 13) to  
19 change the starting time in computing the amount of per diem before the scheduled flight time  
20 is denied.

20 The Union's proposals in paragraph G of the Travel articles (BU 2, 3, 4, 6, and 13) to  
21 require advance payment of per diem and reimbursement for excess lodging expenses within 30  
22 days are denied.

22 The Union's proposal in paragraph H of the Travel articles (BU 2, 3, 4, 6, and 13) to  
23 increase the mileage from 37 cents to 50 cents is denied. Effective July 1, 2004, the mileage  
24 allowance (BU 2, 3, 4, 6, and 13) is increased to 37.5 cents per mile.

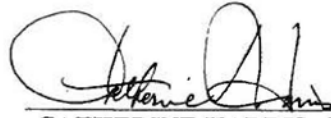
25 8. The Employer proposals for Article 42 (BU 2), Article 40 (BU 3 and 4)), and Article 41  
26 (BU 13) are denied, and the existing articles on Other Leaves of Absence for BUs 2, 3, 4 and  
27 13 shall be continued without modification.

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March 26, 2004



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**CATHERINE HARRIS**, Chairperson

March 26, 2004

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**LAWRENCE ISHIMI**  
Union Panelmember

March 26, 2004

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**MICHAEL BEN**  
Employer Panelmember

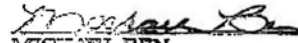
March 26, 2004

  
CATHERINE HARRIS, Chairperson

March 26, 2004

  
LAWRENCE ISHIMI  
Union Panel Member

March 26, 2004

  
MICHAEL BEN  
Employer Panel Member