

FIFTY-FIFTH DAY

Tuesday, April 24, 2007

The Senate of the Twenty-Fourth Legislature of the State of Hawai'i, Regular Session of 2007, convened at 11:44 o'clock a.m. with the Vice President in the Chair.

The Divine Blessing was invoked by Mr. Seaward B. Grant, Chaplain, State of Hawai'i, after which the Roll was called showing all Senators present with the exception of Senator English who was excused.

The Vice President announced that she had read and approved the Journal of the Fifty-Fourth Day.

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 782 to 788) were read by the Clerk and were disposed of as follows:

Gov. Msg. No. 782, letter dated April 23, 2007, transmitting a proposed conference draft amending S.B. No. 1381 to fund agreements in anticipation of union ratification by the members of Bargaining Unit 1, was placed on file.

Gov. Msg. No. 783, informing the Senate that on April 23, 2007, she signed into law Senate Bill No. 1459 as Act 32, entitled: "MAKING AN EMERGENCY APPROPRIATION TO THE DEPARTMENT OF HEALTH FOR EARLY INTERVENTION SERVICES," was placed on file.

Gov. Msg. No. 784, informing the Senate that on April 23, 2007, she signed into law Senate Bill No. 1444 as Act 33, entitled: "RELATING TO THE PURPOSE OF THE HAWAII YOUTH CORRECTIONAL FACILITY," was placed on file.

Gov. Msg. No. 785, informing the Senate that on April 23, 2007, she signed into law Senate Bill No. 1092 as Act 34, entitled: "RELATING TO EDUCATION," was placed on file.

Gov. Msg. No. 786, informing the Senate that on April 23, 2007, she signed into law House Bill No. 528 as Act 35, entitled: "RELATING TO MINORS," was placed on file.

Gov. Msg. No. 787, dated April 23, 2007, transmitting her statement of objections to Senate Bill No. 1956 which she has returned to the Senate without her approval and which reads as follows:

"EXECUTIVE CHAMBERS
HONOLULU

April 23, 2007

STATEMENT OF OBJECTIONS TO SENATE BILL NO.
1956

Honorable Members
Twenty-Fourth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 1956, entitled 'A Bill for an Act Relating to the Agreement Among the States to Elect the President by National Popular Vote.'

The purpose of this bill is to add a new chapter to the Hawaii Revised Statutes that will cause Hawaii to join an interstate compact or agreement among the member states to award their electoral votes to the national popular vote winner regardless of the popular vote winner in each member state.

Under this bill, Hawaii's four electoral votes would be awarded to the presidential slate that receives the most votes as determined by the national popular vote regardless of which candidates won the popular vote in Hawaii. Given the potential under the interstate compact that Hawaii's electoral votes would be awarded in a manner that may not reflect the will of the majority of the voters in Hawaii, I believe that this bill is not in the best interest of the citizens of the State of Hawaii.

For the foregoing reasons, I am returning Senate Bill No. 1956 without my approval.

Respectfully,

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii,"

was placed on file.

Gov. Msg. No. 788, advising the Senate of the withdrawal of the nomination of KELLY MICHELE NOELANI CASTELLANO to the Hawai'i Teacher Standards Board, under Gov. Msg. No. 712, dated March 30, 2007, was placed on file.

In compliance with Gov. Msg. No. 788, the nomination listed under Gov. Msg. No. 712 was returned.

HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 807 to 828) were read by the Clerk and were disposed of as follows:

Hse. Com. No. 807, returning S.C.R. No. 3, S.D. 1, which was adopted by the House of Representatives on April 23, 2007, was placed on file.

Hse. Com. No. 808, returning S.C.R. No. 30, which was adopted by the House of Representatives on April 23, 2007, was placed on file.

Hse. Com. No. 809, returning S.C.R. No. 32, which was adopted by the House of Representatives on April 23, 2007, was placed on file.

Hse. Com. No. 810, returning S.C.R. No. 33, which was adopted by the House of Representatives on April 23, 2007, was placed on file.

Hse. Com. No. 811, returning S.C.R. No. 57, S.D. 1, which was adopted by the House of Representatives on April 23, 2007, was placed on file.

Hse. Com. No. 812, returning S.C.R. No. 69, which was adopted by the House of Representatives on April 23, 2007, was placed on file.

Hse. Com. No. 813, returning S.C.R. No. 74, S.D. 1, which was adopted by the House of Representatives on April 23, 2007, was placed on file.

Hse. Com. No. 814, returning S.C.R. No. 79, which was adopted by the House of Representatives on April 23, 2007, was placed on file.

Hse. Com. No. 815, returning S.C.R. No. 138, which was adopted by the House of Representatives on April 23, 2007, was placed on file.

Hse. Com. No. 816, returning S.C.R. No. 166, which was adopted by the House of Representatives on April 23, 2007, was placed on file.

Hse. Com. No. 817, returning S.C.R. No. 198, which was adopted by the House of Representatives on April 23, 2007, was placed on file.

Hse. Com. No. 818, returning S.C.R. No. 202, which was adopted by the House of Representatives on April 23, 2007, was placed on file.

Hse. Com. No. 819, returning S.C.R. No. 217, which was adopted by the House of Representatives on April 23, 2007, was placed on file.

Hse. Com. No. 820, returning S.C.R. No. 39, which was adopted by the House of Representatives on April 23, 2007, in an amended form, was placed on file.

By unanimous consent, action on S.C.R. No. 39, H.D. 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING ENACTMENT OF THE FILIPINO AMERICAN VETERANS EQUITY ACT OF 2007, OR SIMILAR LEGISLATION THAT PROVIDES FEDERAL VETERANS BENEFITS AND SERVICES TO FILIPINO WORLD WAR II VETERANS," was deferred until Wednesday, April 25, 2007.

Hse. Com. No. 821, returning S.C.R. No. 41, which was adopted by the House of Representatives on April 23, 2007, in an amended form, was placed on file.

By unanimous consent, action on S.C.R. No. 41, H.D. 1, entitled: "SENATE CONCURRENT RESOLUTION STRONGLY OPPOSING THE FEE INCREASES PROPOSED BY THE UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES," was deferred until Wednesday, April 25, 2007.

Hse. Com. No. 822, returning S.C.R. No. 67, which was adopted by the House of Representatives on April 23, 2007, in an amended form, was placed on file.

By unanimous consent, action on S.C.R. No. 67, H.D. 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE P-20 COUNCIL AND THE UNIVERSITY OF HAWAII TO REPORT ON EARLY COLLEGE AWARENESS PROGRAMS FOR ELEMENTARY, MIDDLE AND HIGH SCHOOL STUDENTS," was deferred until Wednesday, April 25, 2007.

Hse. Com. No. 823, returning S.C.R. No. 73, S.D. 1, which was adopted by the House of Representatives on April 23, 2007, in an amended form, was placed on file.

By unanimous consent, action on S.C.R. No. 73, S.D. 1, H.D. 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THAT THE UNIVERSITY OF HAWAII SUBMIT A REPORT WITH INFORMATION REGARDING THE SALARIES OF UNIVERSITY OF HAWAII AT MANOA FACULTY AND ADMINISTRATORS," was deferred until Wednesday, April 25, 2007.

Hse. Com. No. 824, returning S.C.R. No. 98, S.D. 1, which was adopted by the House of Representatives on April 23, 2007, in an amended form, was placed on file.

By unanimous consent, action on S.C.R. No. 98, S.D. 1, H.D. 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING A SUNRISE REVIEW ON THE REGULATION OF PERSONS WHO APPREHEND BAIL FUGITIVES," was deferred until Wednesday, April 25, 2007.

Hse. Com. No. 825, returning S.C.R. No. 102, S.D. 1, which was adopted by the House of Representatives on April 23, 2007, in an amended form, was placed on file.

By unanimous consent, action on S.C.R. No. 102, S.D. 1, H.D. 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF AGRICULTURE TO STUDY LABELING REQUIREMENTS RELATING TO THE USE OF HAWAII-GROWN COFFEE NAMES AND STUDY THE EFFECTIVENESS OF THE ADMINISTRATIVE RULES RELATING TO INSPECTION, CERTIFICATION, AND AUDIT REQUIREMENTS FOR HAWAII-GROWN COFFEE," was deferred until Wednesday, April 25, 2007.

Hse. Com. No. 826, returning S.C.R. No. 115, S.D. 1, which was adopted by the House of Representatives on April 23, 2007, in an amended form, was placed on file.

By unanimous consent, action on S.C.R. No. 115, S.D. 1, H.D. 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF TAXATION TO REDRAFT THE CAPITAL GOODS EXCISE TAX CREDIT TO REMEDY OLD REFERENCES TO REPEALED LAW AND TO INCORPORATE THE CURRENT STATUS OF THE INTERNAL REVENUE CODE," was deferred until Wednesday, April 25, 2007.

Hse. Com. No. 827, returning S.C.R. No. 209, which was adopted by the House of Representatives on April 23, 2007, in an amended form, was placed on file.

By unanimous consent, action on S.C.R. No. 209, H.D. 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE AUDITOR TO STUDY THE SOCIAL AND FINANCIAL IMPACT OF MANDATORY HEALTH INSURANCE COVERAGE FOR USE OF THE LG1 INTELLIGENT MEDICAL VIGILANCE SYSTEM," was deferred until Wednesday, April 25, 2007.

Hse. Com. No. 828, returning S.C.R. No. 48, S.D. 1, which was adopted by the House of Representatives on April 23, 2007, in an amended form, was placed on file.

By unanimous consent, action on S.C.R. No. 48, S.D. 1, H.D. 2, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE AUDITOR TO CONDUCT A FINANCIAL AND PROGRAM AUDIT OF THE HAWAII DISABILITIES RIGHTS CENTER," was deferred until Wednesday, April 25, 2007.

CONFERENCE COMMITTEE REPORTS

Senator English, for the Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House to S.B. No. 1528, presented a report (Conf. Com. Rep. No. 4) recommending that S.B. No. 1528, H.D. 1, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15, of the Constitution of the State of Hawaii, action on Conf. Com. Rep. No. 4 and S.B. No. 1528, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TRAFFIC INFRACTIONS," was deferred for a period of 48 hours.

Senator Taniguchi, for the Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House to S.B. No. 1704, S.D. 1, presented a report (Conf. Com. Rep. No. 5) recommending that S.B. No. 1704, S.D. 1, H.D. 1, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15, of the Constitution of the State of Hawaii, action on Conf. Com. Rep. No. 5 and S.B. No. 1704, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CONDOMINIUMS," was deferred for a period of 48 hours.

Senator Baker, for the Committee on Conference on the disagreeing vote of the House to the amendments proposed by the Senate to H.B. No. 1379, H.D. 1, presented a report (Conf. Com. Rep. No. 51) recommending that H.B. No. 1379, H.D. 1, S.D. 1, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15, of the Constitution of the State of Hawaii, action on Conf. Com. Rep. No. 51 and H.B. No. 1379, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EMPLOYMENT SECURITY LAW," was deferred for a period of 48 hours.

STANDING COMMITTEE REPORTS

Senator Fukunaga, for the Committee on Economic Development and Taxation, presented a report (Stand. Com. Rep. No. 1898) recommending that the Senate advise and consent to the nominations to the Board of Directors of the Hawai'i Strategic Development Corporation of the following:

ROLAND VILORIA RESURRECCION, in accordance with Gov. Msg. No. 709;

ANNE L. SYLVESTER, in accordance with Gov. Msg. No. 710;

EDWARD H. W. YOUNG, in accordance with Gov. Msg. No. 711; and

GLENN S. YAMADA, in accordance with Gov. Msg. No. 721.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1898 and Gov. Msg. Nos. 709, 710, 711 and 721 was deferred until Wednesday, April 25, 2007.

Senator Hee, for the Committee on Judiciary and Labor, presented a report (Stand. Com. Rep. No. 1899) recommending that the Senate advise and consent to the nomination of RYAN S. USHIJIMA to the Board of Trustees of the Deferred Compensation Plan, in accordance with Gov. Msg. No. 317.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1899 and Gov. Msg. No. 317 was deferred until Wednesday, April 25, 2007.

Senator Hee, for the Committee on Judiciary and Labor, presented a report (Stand. Com. Rep. No. 1900) recommending that the Senate advise and consent to the nomination of BRYAN P. ANDAYA to the Civil Rights Commission, in accordance with Gov. Msg. No. 685.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1900 and Gov. Msg. No. 685 was deferred until Wednesday, April 25, 2007.

Senator Hee, for the Committee on Judiciary and Labor, presented a report (Stand. Com. Rep. No. 1901) recommending that the Senate advise and consent to the nomination of MARK G. VALENCIA to the Civil Rights Commission, in accordance with Gov. Msg. No. 686.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1901 and Gov. Msg. No. 686 was deferred until Wednesday, April 25, 2007.

Senator Hee, for the Committee on Judiciary and Labor, presented a report (Stand. Com. Rep. No. 1902) recommending that the Senate advise and consent to the nominations to the Commission on the Status of Women of the following:

WENDY M.F. LOH, in accordance with Gov. Msg. No. 664; and

ANNA M. MAYEDA, in accordance with Gov. Msg. No. 665.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1902 and Gov. Msg. Nos. 664 and 665 was deferred until Wednesday, April 25, 2007.

Senator Hee, for the Committee on Judiciary and Labor, presented a report (Stand. Com. Rep. No. 1903) recommending that the Senate advise and consent to the nomination of VICTORIA A. FRANCO to the Board of Registration of the Island of Oahu, in accordance with Gov. Msg. No. 707.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1903 and Gov. Msg. No. 707 was deferred until Wednesday, April 25, 2007.

Senator Hee, for the Committee on Judiciary and Labor, presented a report (Stand. Com. Rep. No. 1904) recommending that the Senate consent to the nomination of LLOYD VAN DE CAR to the office of Judge, District Court of the Third Circuit, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, and in accordance with Jud. Com. No. 3.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1904 and Jud. Com. No. 3 was deferred until Wednesday, April 25, 2007.

Senator Taniguchi, for the Committee on Commerce, Consumer Protection and Affordable Housing, presented a report (Stand. Com. Rep. No. 1905) recommending that the Senate advise and consent to the nomination of LAWRENCE M. REIFURTH as Director of the Department of Commerce and Consumer Affairs, in accordance with Gov. Msg. No. 672.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1905 and Gov. Msg. No. 672 was deferred until Wednesday, April 25, 2007.

Senator Ige, for the Committee on Health, presented a report (Stand. Com. Rep. No. 1906) recommending that the Senate advise and consent to the nomination of CHIYOME L. FUKINO, M.D., as Director of the Department of Health, in accordance with Gov. Msg. No. 273.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1906 and Gov. Msg. No. 273 was deferred until Wednesday, April 25, 2007.

Senators Fukunaga and Nishihara, for the Committee on Economic Development and Taxation and the Committee on Tourism and Government Operations, presented a joint report (Stand. Com. Rep. No. 1907) recommending that the Senate advise and consent to the nomination of THEODORE E. LIU as Director of the Department of Business, Economic Development and Tourism, in accordance with Gov. Msg. No. 269.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1907 and Gov. Msg. No. 269 was deferred until Wednesday, April 25, 2007.

Senator Chun Oakland, for the Committee on Human Services and Public Housing, presented a report (Stand. Com. Rep. No. 1908) recommending that the Senate advise and consent to the nominations to the Statewide Council on Independent Living of the following:

WAYNETTE KAM YAU CABRAL, in accordance with Gov. Msg. No. 354; and

DARA YUKIKO FUKUHARA, in accordance with Gov. Msg. No. 355.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1908 and Gov. Msg. Nos. 354 and 355 was deferred until Wednesday, April 25, 2007.

Senator Chun Oakland, for the Committee on Human Services and Public Housing, presented a report (Stand. Com. Rep. No. 1909) recommending that the Senate advise and consent to the nominations to the State Rehabilitation Council of the following:

LARRY GELLER, in accordance with Gov. Msg. No. 385;

JONATHAN J. CHUN, in accordance with Gov. Msg. No. 386;

KATIE KEIM, in accordance with Gov. Msg. No. 387;

HOWARD ALAN LESSER, in accordance with Gov. Msg. No. 388; and

JULIE KAY SMITH, in accordance with Gov. Msg. No. 389.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1909 and Gov. Msg. Nos. 385, 386, 387, 388 and 389 was deferred until Wednesday, April 25, 2007.

Senator Chun Oakland, for the Committee on Human Services and Public Housing, presented a report (Stand. Com. Rep. No. 1910) recommending that the Senate advise and consent to the nominations to the Board of Directors of the Hawai'i Public Housing Authority (PHA) of the following:

R. ERIC HO'OLULUKAMAKANI BEAVER ESQ., in accordance with Gov. Msg. No. 530;

CLARISSA PUANANI HOSINO, in accordance with Gov. Msg. No. 531; and

KAULANA H.R. PARK, in accordance with Gov. Msg. No. 706.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1910 and Gov. Msg. Nos. 530, 531 and 706 was deferred until Wednesday, April 25, 2007.

Senator Chun Oakland, for the Committee on Human Services and Public Housing, presented a report (Stand. Com. Rep. No. 1911) recommending that the Senate advise and consent to the nominations to the Commission on Fatherhood of the following:

BARRETT KEOKI AWAI, in accordance with Gov. Msg. No. 595;

BERNARD P. CARVALHO JR., in accordance with Gov. Msg. No. 596;

MICHAEL R. DIAS, in accordance with Gov. Msg. No. 597;

MYRNA B. MURDOCH, in accordance with Gov. Msg. No. 598;

MARIKA RIPKE PHD, in accordance with Gov. Msg. No. 599;

SYLVIA H. L. YUEN PHD, in accordance with Gov. Msg. No. 600;

BARRETT KEOKI AWAI, in accordance with Gov. Msg. No. 666;

MICHAEL R. DIAS, in accordance with Gov. Msg. No. 667; and

MYRNA B. MURDOCH, in accordance with Gov. Msg. No. 668.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1911 and Gov. Msg. Nos. 595, 596, 597, 598, 599, 600, 666, 667 and 668 was deferred until Wednesday, April 25, 2007.

Senator Chun Oakland, for the Committee on Human Services and Public Housing, presented a report (Stand. Com. Rep. No. 1912) recommending that the Senate advise and consent to the nominations to the Statewide Council on Independent Living of the following:

LILLIAN GONZALES BROWN, in accordance with Gov. Msg. No. 611;

BRIAN KESSLER, in accordance with Gov. Msg. No. 612;

SANDRA K. MEEHAN, in accordance with Gov. Msg. No. 613;

MARC ANTOINE MORTIMER, in accordance with Gov. Msg. No. 614;

LOUISE R. HORIO, in accordance with Gov. Msg. No. 700; and

NATHAN E. SAY, in accordance with Gov. Msg. No. 701.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1912 and Gov. Msg. Nos. 611, 612, 613, 614, 700 and 701 was deferred until Wednesday, April 25, 2007.

Senator Chun Oakland, for the Committee on Human Services and Public Housing, presented a report (Stand. Com. Rep. No. 1913) recommending that the Senate advise and consent to the nominations to the State Rehabilitation Council of the following:

PINA S. LEMUSU, in accordance with Gov. Msg. Nos. 654 and 655; and

DONALD THOMSON, in accordance with Gov. Msg. No. 656.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1913 and Gov. Msg. Nos. 654, 655 and 656 was deferred until Wednesday, April 25, 2007.

ORDER OF THE DAY

ADVISE AND CONSENT

Stand. Com. Rep. No. 1882 (Gov. Msg. Nos. 418 and 522):

Senator Kokubun moved that Stand. Com. Rep. No. 1882 be received and placed on file, seconded by Senator Tokuda and carried.

Senator Kokubun then moved that the Senate advise and consent to the nominations to the Island Burial Council, Island of Hawai'i of the following:

DUTCHIE K. SAFFREY, term to expire June 30, 2011 (Gov. Msg. No. 418); and

CYNTHIA S.H. NAZARA, term to expire June 30, 2011 (Gov. Msg. No. 522),

seconded by Senator Tokuda.

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

Ayes, 23. Noes, none. Excused, 2 (English, Trimble).

Stand. Com. Rep. No. 1883 (Gov. Msg. Nos. 420 and 523):

Senator Kokubun moved that Stand. Com. Rep. No. 1883 be received and placed on file, seconded by Senator Tokuda and carried.

Senator Kokubun then moved that the Senate advise and consent to the nominations to the Island Burial Council, Islands of Kaua'i and Ni'ihau of the following:

BARBARA JEAN SAY, term to expire June 30, 2011 (Gov. Msg. No. 420); and

LEIANA P. ROBINSON, term to expire June 30, 2011 (Gov. Msg. No. 523),

seconded by Senator Tokuda.

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

Ayes, 23. Noes, none. Excused, 2 (English, Trimble).

Stand. Com. Rep. No. 1884 (Gov. Msg. Nos. 422 and 473):

Senator Kokubun moved that Stand. Com. Rep. No. 1884 be received and placed on file, seconded by Senator Tokuda and carried.

Senator Kokubun then moved that the Senate advise and consent to the nominations to the Island Burial Council, Islands of Maui and Lanai of the following:

CLOTHILDA PUALANI PAOA, term to expire June 30, 2011 (Gov. Msg. No. 422); and

LYNNE HISAE TAKIGUCHI, term to expire June 30, 2011 (Gov. Msg. No. 473),

seconded by Senator Tokuda.

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

Ayes, 23. Noes, none. Excused, 2 (English, Trimble).

Stand. Com. Rep. No. 1885 (Gov. Msg. No. 702):

Senator Kokubun moved that Stand. Com. Rep. No. 1885 be received and placed on file, seconded by Senator Tokuda and carried.

Senator Kokubun then moved that the Senate advise and consent to the nomination of CY M. BRIDGES to the Island Burial Council, Island of Oahu, term to expire June 30, 2011, seconded by Senator Tokuda.

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

Ayes, 23. Noes, none. Excused, 2 (English, Trimble).

Stand. Com. Rep. No. 1886 (Gov. Msg. No. 572):

Senator Fukunaga moved that Stand. Com. Rep. No. 1886 be received and placed on file, seconded by Senator Espero and carried.

Senator Fukunaga then moved that the Senate advise and consent to the nomination of SANDRA AU FONG to the State Foundation on Culture and the Arts Commission, term to expire June 30, 2011, seconded by Senator Espero.

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

Ayes, 23. Noes, none. Excused, 2 (English, Trimble).

Stand. Com. Rep. No. 1887 (Gov. Msg. Nos. 616 and 617):

Senator Fukunaga moved that Stand. Com. Rep. No. 1887 be received and placed on file, seconded by Senator Espero and carried.

Senator Fukunaga then moved that the Senate advise and consent to the nominations to the King Kamehameha Celebration Commission of the following:

ELAINE NICKIE HINES, term to expire June 30, 2011 (Gov. Msg. No. 616); and

JENNIFER L. VIERNES, term to expire June 30, 2011 (Gov. Msg. No. 617),

seconded by Senator Espero.

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

Ayes, 23. Noes, none. Excused, 2 (English, Trimble).

Stand. Com. Rep. No. 1888 (Gov. Msg. No. 643):

Senator Fukunaga moved that Stand. Com. Rep. No. 1888 be received and placed on file, seconded by Senator Espero and carried.

Senator Fukunaga then moved that the Senate advise and consent to the nomination of JASON C.K. IKAIKA HAUANIO to the Board of Directors of the Natural Energy Laboratory of Hawai'i Authority, term to expire June 30, 2010, seconded by Senator Espero.

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

Ayes, 23. Noes, none. Excused, 2 (English, Trimble).

Stand. Com. Rep. No. 1889 (Gov. Msg. No. 658):

Senator Fukunaga moved that Stand. Com. Rep. No. 1889 be received and placed on file, seconded by Senator Espero and carried.

Senator Fukunaga then moved that the Senate advise and consent to the nomination of JOSE RICARDO DA SILVA DIOGO to the Board of Taxation Review, 4th Taxation District (Kaua'i), term to expire June 30, 2009, seconded by Senator Espero.

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

Ayes, 23. Noes, none. Excused, 2 (English, Trimble).

Stand. Com. Rep. No. 1896 (Gov. Msg. No. 267):

Senator Hee moved that Stand. Com. Rep. No. 1896 be received and placed on file, seconded by Senator Kokubun and carried.

Senator Hee then moved that the Senate advise and consent to the nomination of MARK J. BENNETT as Attorney General of the State of Hawai'i, term to expire December 6, 2010, seconded by Senator Kokubun.

Senator Hee rose in support of the nominee and said:

"Madam President, I rise in support of the confirmation of Mark J. Bennett as Hawaii Attorney General.

"One of the byproducts of having a Session move as quickly as we do, and in particular in this year, is that many people may not have had the opportunity to read the committee report, including some of the members of the committee.

"Madam President and members, I would like to read a short portion of the committee report regarding the confirmation of Mark J. Bennett:

'Upon review of the resume, written statement of the nominee, and testimony, your Committee finds that the nominee holds a B.A. degree in Political Science, summa cum laude, from Union College, and a J.D. degree, magna cum laude, from Cornell Law School. He was a partner at McCorryist Miho Miller Mukai MacKinnon, LLP, and previously served as Assistant United States District Attorney in Hawai'i and as Special Assistant Prosecuting Attorney, City and County of Honolulu. He was a law clerk to the Honorable Samuel P. King, Chief Judge, United States District Court, District of Hawai'i, and an Adjunct Professor of Law at the William S. Richardson School of Law. The

nominee has served as the Attorney General for the State of Hawai'i for the last four years.

'Your Committee received testimony in support of the nominee from United States District Court Judges Samuel King and David Ezra, United States Senator Daniel Akaka, United States Representative Neil Abercrombie, the Prosecutor's Office of Honolulu, Hawai'i, Maui, and Kaua'i, State of Hawai'i Organization of Police Officers, Hawai'i Government Employees Association, the United Public Workers, the Honolulu Police Department, the Hawai'i County Police Department, Maui County Police Department, The Hawai'i Family Forum, the Sex Abuse Treatment Center, the Hawai'i Medical Association, the Office of Hawaiian Affairs, the Native Hawaiian Bar Association, the Hawai'i State Bar Association, the State Department of Public Safety, the Department of Hawaiian Homes Lands, the Department of Transportation, the Department of Human Resources, the Department of Education, the Catholic Diocese of Honolulu, and approximately 140 individuals, most of whom are lawyers.

'Your Committee notes that the testimony in support of the nominee credited him with implementing Megan's Law, passed by the Legislature and the nominee's support and implementation of policies relating to sex offenders, sexual and spousal abusers and his governance of an office of over 700 employees. Furthermore, your Committee received numerous testimonies praising the nominee for his intellect and his ability to simplify complex legal cases quickly and act upon them immediately.'

"I also note, Madam President and members, unlike any other Attorney General that I'm aware of in the State of Hawai'i, this Attorney General has argued before the United States Supreme Court. Clearly, without question, he is a brilliant legal mind and is qualified on nearly every landscape that legal officers of the State preside upon.

"Madam President and members, I would like to make a few remarks with respect to the committee report, which I have read in part. It is my understanding and I acknowledge that the members of the Committee, because of the nature of how quickly we must act, could not and did not have the benefit of reading the committee report prior to the public hearing and that is the reason that I read verbatim the committee report during the discussion to confirm the nominee. Notwithstanding that, I understand that there are some who are concerned about the committee report regarding this nominee. Let me state at the outset that all of the issues articulated within the body of the report are issues that were raised at the Committee with one exception, and that is the appearance of impropriety regarding the employment of Mr. Bennett's spouse at the Office of the Attorney General.

"This is not a new issue and is one that was brought before the Senate four years ago. In the Committee's checking with the State's Ethics Commission, we were advised of the absence of a law governing nepotism, and we accept that as fact as lawmakers. We also accept as fact that there are some who find the relationship troubling. Any time taxpayers are paying for the services of government, they are entitled to an explanation, and the committee report properly comments on the absence of a law governing nepotism, thus allowing for the relationship to exist.

"Your committee report also properly notes that the spouse of the nominee predated the nominee's appointment four years ago as Attorney General. Your Committee does not disagree and further understands that she in fact is a fine attorney. It may have been easier to avoid this issue altogether, but to do so

may lead others to believe that the Committee is unaware that such a situation exists, that the Committee did not properly investigate the legality of the situation, and that the Committee condones such a relationship without first researching the public concern or without making comment. To the extent that the Attorney General or his spouse feel the concerns expressed are personal attacks on them, I offer a personal apology to them, both of them. I also offer a personal apology to any member of this august body who may feel similarly and have not had the benefit of understanding the Committee's research into the issue once a member of the public brought this to the Committee, not like the other issues in the report such as the arrearages in child support enforcement agency payments or matters relating to the Attorney General's role with substitute teachers.

"As we will find out later today and in the future, our work oftentimes is challenging and sometimes can become personal when confirmations of individuals held to the highest standards are evaluated by us as required by the State Constitution. Again, I offer a personal and public apology to the Attorney General and his wife if they believe the comments were meant as a personal criticism of them. They were not.

"Thank you, Madam President."

Senator Hanabusa rose in support of the nominee and stated:

"Madam President, I rise in support of G.M. No. 267.

"I'm standing, Madam President and my fellow colleagues, in a very unique situation having what some may believe to be abdicating the Chair's position to speak for this nominee, but I felt compelled that it was necessary for me to step down from the podium because this is a confirmation that when I came before you four years ago as the Chair of Judiciary and Hawaiian Affairs, I asked all of my colleagues to trust in my judgment, and the President Emeritus was one of those that I asked to trust. Now, four years later, I can stand before all of you, and say I didn't lead you astray. Four years ago we confirmed Attorney General Mark Bennett by a 25 to 0 vote, and it was not an easy 25 to 0 vote because we didn't know very much about Mark Bennett other than his reputation as an attorney. But now, we have the opportunity to reflect upon four years of his service as the Attorney General and to make that assessment. And that's exactly what I want you to do here.

"For those four years, I had the honor and the privilege of serving as your Judiciary and Hawaiian Affairs Chair, and let me just briefly go over what we have done. The Attorney General in that period of time did, of course, many major pieces of legislation with the Legislature because, as we all know, it is really the Legislature that enacts the laws. It is the Attorney General that's there for us to help us frame it so it withstands a veto or help us make sure that it's implemented so it's written correctly. This Attorney General tackled major pieces of legislation with us. You've heard about Megan's, which we had to do twice. We had *Rabago*, which was of course the constitutional amendment. And there was an interesting Supreme Court case called *Peseti*, which we may not talk about so much but which was very critical for victims because it gave a privileged communication to many that needed it – counselors and psychologists and those who aided abused victims.

"One of the most important pieces of legislation was the nuisance abatement unit. You see, when drug houses come up in an area, the people that are most affected are those who are living by those drug houses. It was the House that did the nuisance abatement unit, but it was the Attorney General and his office that began to enforce it because they knew the frustration that people had – their homes, their most valued asset – to have a drug house down the street, and they were

frustrated by the fact that the Prosecutor's Office didn't prosecute because they were developing a criminal case. But for those cases that could be expeditiously moved, the Attorney General's abatement unit did it. And I have received more comments from people who have been served by that Act than probably any other piece of legislation.

"We passed the enhanced sentencing law. Some call it 'three strikes,' but what many forgot was it is the function of a task force that we mandated and asked them to study, and it was the Attorney General that helped us formulate that law and we moved it forward.

"There was a new penal code chaired by Judge Alm which also went through. I've never seen such supportive testimony from everyone, including the Public Defender, on that piece of legislation. But I think the highlight for Mark Bennett was *Chevron vs. Lingle*. It was a position that I honestly believed that the Administration didn't necessarily agree with, but Attorney General Mark Bennett putting on his Attorney General hat saying that it was a piece of legislation from this Legislature and it was his obligation to go and defend it in the Supreme Court, irrespective of how he may personally have felt about it. And he did an exemplary job, because he was able not only to win that argument but to reverse precedent.

"But in that four-year time I am here to also share another part of Mark Bennett – Mark Bennett the person. And believe it or not, in those four years, I've come to learn a very important thing about him – he's really a rather funny guy – he really is. He may have a quirky sense about him – he has these funny hand movements – but he's really a funny guy. When I first came before you four years ago and asked for your support, one of the concerns I had deep inside was whether Mark Bennett could work with people. Because Mark Bennett the lawyer, no question – as a fellow attorney, no question. But Mark Bennett running the largest law firm in the State of Hawaii – is he really going to be able to work with people? I've got to tell you – he can. And for me, the barometer is my staff. My staff, they adore Mark Bennett. They think he's the funniest guy around. I don't think he's that funny, but they really do.

"Recently, both Mark and I were at the funeral services of a mutual friend that we share and his name is John Peyton, and some of us may remember him – he was the Director of Public Safety for a while. I was one of those who gave the eulogy and one of the things that I said there is very applicable to Mark. I said, 'Look at the spouse, because the spouse is the best indicator of who that person is.' And you know, Pat, Mark's wife, is exactly that. She is about as different from Mark as you can get. She's a wonderful person, a very thoughtful person. (Laughter.) Did that come out right? I think it did. She's really a very wonderful person and we've been able to get to know Pat in the process as well.

"But, I do want to say something, since this issue has come up, when I first met Mark and talked to him about why do you want to be the Attorney General. I don't know if people remember, there was a Susan Gochros from the Attorney General's Office who made an interesting statement that after 9/11, Mark wanted to do public service. We all thought he was a bit crazy, but he wanted to do public service. And when you really think about it, there is probably no public service best suited for him than being the Attorney General of the State of Hawaii. But when he came to see me, he said, 'You know, my wife is an Attorney General, she's had that position for about 20 years, and she loves her job. I will not do anything or take a position that in any way, any way, takes her away from that job that she loves.' We checked. There was no conflict of interest; there was no ethics. And I said, 'Mark, if you're willing to do this job, which I think after you take it you'll wonder why you

did it, then fine.’ So, the disclosure of Pat was well known to all of us, especially those of use who were part of that Judiciary Committee.

“I can’t stop speaking about Mark without mentioning another person – and that’s Joanie. Joanie is his right hand person who came with him, is his secretary in the Attorney General’s Office, was with him at the McCarriston firm, and I have never met anyone who has covered anyone’s backside the way Joanie does. Whenever she gets wind that for some reason voices somehow rose a bit high in our conversation, Joanie is there with my staff as I walk in the next day, smiling and saying, ‘Hi, Senator, is everything all right?’ And at that point I know I’ve lost already. Joanie’s taken care of him.

“There’s something that we must all know and we must all appreciate. One of the reasons why Mark’s confirmation is down today – and I don’t want the good Senator from Hawaii Kai to change his vote because of this – is because people on this side, our Democrat Congressional Delegation, have asked Mark to testify in favor of the Akaka Bill because he is that kind of an advocate, and we need to get him confirmed and off to Washington as quickly as we can so he can do that, on the condition that the good Senator from Hawaii Kai doesn’t change his vote.

“I’m honored, Madam President and my colleagues, to stand before you again and to ask that you confirm Mark Bennett. There are few lawyers who have the skill, the talent, and the ability that he has – no question. People describe him as one of the brightest, the most skilled, and the most competent Attorney General we will ever have. But I must admit, the question that I had for him four years ago, I still have for him today – which is, there’s something about his character that I’m missing, because I still don’t understand why he wants this job. He could be making probably five times the amount of money he makes as Attorney General; he would have less headaches, and he wouldn’t have to deal with everyone – because the one thing he has turned out to be is a very good administrator and someone who not only empowers challenges, but gets the best out of those who work for him.

“So, Madam President, colleagues, I ask that you vote to confirm Mark Bennett as the Attorney General of the State of Hawaii.”

Senator Gabbard rose to speak in support of the nominee as follows:

“Madam President, I rise in support of the confirmation of Mark Bennett as the Attorney General.

“I first met Mark many years ago and I was impressed with his dedication, his intelligence, his integrity, and also his tenacity. And as the previous two speakers have said, as Attorney General he’s been an important advocate for protecting our children. He’s been a leader in getting Megan’s law passed, mandating a minimum one-year sentence for electronic enticement of a child, and also making it easier for a jury to convict someone for sexually abusing a child. He’s also done good work for our Native Hawaiian community, and he’s helped clean our communities of drug houses.

“Mark has the support of labor, law enforcement, members of our Congressional Delegation, legal organizations, and many members of the public, including, and I hope some of them are present this morning, the Mama Bear Caucus. I met them at the committee hearing the other day and the Mama Bear Caucus is made up of moms who are – actually when they testified it brought tears to many of our eyes – who are just happy to have

Mark at the helm as the Attorney General because he’s doing a great job in protecting our kids.

“As far as the previous speaker’s remarks about Mr. Bennett’s sense of humor, as I sat through that six-hour committee meeting on Saturday, anybody that can smile when the Yankees are getting beaten badly by the Boston Red Socks, proves to me that he’s got a good sense of humor. So, I would ask my colleagues to join with me in supporting Mr. Bennett.

“Thank you, Madam President.”

Senator Kokubun rose to speak in favor of the nominee as follows:

“Madam President, I stand in support of G.M. No. 267.

“Madam President, I was lucky enough to serve as the Vice-Chair for the Committee on Judiciary and Labor and had the opportunity to sit through that confirmation hearing for Mark Bennett on Saturday. It was very inspirational to me to hear so many people coming forward and praising the work of the Attorney General. I think it can best be characterized by statements from an attorney in private practice who characterized Mark in three words—brains, heart, and guts. And what he meant by that, as he explained, is that Mark really has the intellect and his legal knowledge is far superior to many, maybe with the exception of one here in the chamber today. And certainly, his heart—he has great compassion for people and he wants to do the best for the people of Hawaii. And lastly, the courage that it takes to make tough decisions in the face of all kinds of different positions. And so, for me, this really forms his decision-making foundation, and I think this certainly engenders confidence from the public in terms of the actions that the Attorney General takes.

“I wanted to comment, and it’s been brought up here today, with respect to the committee report that was submitted asking this Body to advise and consent to this Governor’s Message. I want to just say it for the record that I am not in complete agreement with the committee report because the process was such that we didn’t really have the full opportunity to discuss that committee report prior to taking the vote at the committee level. I will say, though, that the only part that I’m really in true disagreement with is with respect to the section that reflects, I think, negatively on Mrs. Bennett. I do not know her. I know, though, that this was not part of the discussion at the hearing. I also know that this was previously addressed when he came before this Senate four years ago for confirmation. So, I want to just put on the record that with respect to that particular section, I am not in agreement.

“Lastly, I want to say that I think the most telling comment, or maybe it was my conclusion based on all the supporting testimony, was that Mark Bennett raises the play of everyone he comes in contact with. And for him being someone who is so interested in athletics, I think it really is a tremendous compliment because he makes everyone perform at a much higher standard. And I think for the people of Hawaii, this is an excellent person to have.

“I ask all my colleagues to support his nomination.”

Senator Hemmings rose in support of the nomination and said:

“Madam President, I rise to speak in favor of the nominee to G.M. No. 267, Mark J. Bennett for Attorney General of the State of Hawaii.

“Much to say, I, too, read the committee report and I first want to do something we do often on the Floor – separate the committee report from the committee. I also want to acknowledge gratefully the words of the Senate President and the words of the Water, Land, Agriculture and Hawaiian Affairs Committee Chairman on behalf of the nominee. Yes, I read this committee report. I would counsel the Attorney General, if I was a barrister, to plead not guilty because it really is an indictment in so many ways that are unfair to the process, to you the members of the Majority Party, to the public we serve, and most especially to the man we’re standing in judgment to today.

“It’s quite busy since yesterday receiving this on the Floor and researching these remarks today. There’s much that could be said and there’s much that has to be said because this report is part of the record of our institution – the Senate of the State of Hawaii – and it’s shameful, it’s shameful. And, unfortunately, the Chairman of the Water, Land, Agriculture Committee is exactly right. These reports are produced by the chairmen with little or almost no oversight of committee members. This committee report indicts the nominee for child support enforcement agency problems. I could read the long rebuttal to that that we’ve produced, but I will tell you that the State of Hawaii on population basis compared to other states is doing about average – a lot better than it ever was doing before this Attorney General took office. I could also tell you the committee report doesn’t tell you that the method the Feds use to calculate it is individual collections whether it be a penny or much more, so it is a skewed result.

“I can tell you that this committee report indicts the nominee for political campaign activities unfairly. Quite ironically, it cites a ballot initiative concerning retirement of judges, something the writer of the report was an advocate of. This is something that’s been done by previous Attorneys General, including Earl Anzai and others. I will not give you the details of the rebuttal to it, but I can tell you there’s nothing illegal, or improper, or unethical about it. The Attorney General can be an advocate just like the Chairman of the Committee has been.

“We’ve heard the apology regarding the Attorney General’s wife, appointed by George Ariyoshi in the Michael Lilly administration to be a Deputy Attorney General. A laudable career. There’s no place in this committee report for this. Madam President, you yourself pointed out four years ago that this Attorney General did the honorable and right thing, but you’d never know it if you read this committee report.

“This committee report says the *Kalima* case, Hawaiian Home Lands is problematic and would lead a naïve reader to believe that there is some incompetence and impropriety. If the Committee had asked the Attorney General during this hearing, it would have learned that the facts were the appeal was filed in late 2001 and the case was fully briefed by the Summer of 2002 – all before this Attorney General took office. This committee report doesn’t say it.

“I’m speaking in favor of the Attorney General, and like you, Madam President, I’m perplexed too. What a noble man to be subject to this and still stand there proudly and accept this job as the Attorney General of Hawaii. If for no other reason, we should have unanimous advise and consent on him today for agreeing to do a very hard job and doing it so well.

“Thank you, Madam President.”

Senator Nishihara rose and said:

“Madam President, I ask that the comments from the good Senator from Puna in referencing the part on the comment in

the committee report reflecting on Mrs. Bennett, also do not reflect my view, and I would like that so noted. Thank you.”

Senator Baker rose to support the nominee and said:

“Madam President, I’d like to add my voice in strong support of the confirmation of Mark Bennett to remain as our Attorney General.

“Madam President and colleagues, it’s been my privilege to serve in a couple of capacities as Committee Chair during my return to the Senate after the 2002 election, and I have had the opportunity to work with Attorney General Bennett on a number of issues, some of them directly affecting bills in this Chamber, some of them previous legislation that he was defending in various venues throughout our Nation, and I’ve always found him to be very forthright, very helpful. If I had a question – I’m not an attorney and sometimes I look at something and come to a different conclusion than somebody who is well steeped in the law – but he has never been condescending, never said, ‘That’s a frivolous question, why are you asking such a dumb thing?’ He’s always been very helpful and guided me, and if we needed an example of how to do something so that it passes constitutional muster so it might get by a governor’s veto, he’s been very free with his advice.

“He’s offered up deputies to follow-up in areas that were more appropriate for them to comment and assist the committee or the chair, and I appreciate that. I appreciate his willingness to work with us, to offer advice, to offer counsel, to be a sounding board, and to help us work through some very difficult issues, even some that might not be supported by the Governor. But, as Legislators we’re sort of his boss, too, since he functions as the Attorney General for the whole State. He’s executed his duties with good humor, as has been referenced, and with deep compassion for the work that we’re all about – the public service that we have all taken an oath to follow – and I appreciate his diligence, his good humor, and his assistance, and I just wanted to add that for the record and ask my colleagues to join me in voting to confirm Mark Bennett.

“Thank you.”

Senator Chun Oakland rose in favor of the nomination as follows:

“Madam President, I stand in strong support of G.M. No. 267.

“I was honored to serve on the Senate Judiciary and Hawaiian Affairs Committee with the Senate President, two years of which I served as Vice-Chair. Mark is very compassionate and has responded to community concerns just admirably, and I’m very proud that he lives in my district, and I’m very proud to call him my friend.

“Thank you very much.”

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

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

At this time, Senator Hee introduced Mr. Bennett and his family to the members of the Senate.

At 12:25 o’clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:35 o’clock p.m.

Stand. Com. Rep. No. 1897 (Gov. Msg. No. 276):

At this time, the Chair made the following observation:

“Members, pursuant to Senate Rule 37(5), the final question on appointments by the Governor which require the confirmation or consent of the Senate must be stated in the affirmative; therefore, those casting ‘Aye’ votes are voting to confirm, and those casting ‘No’ votes are voting to reject the nomination.

“The recommendation of the Committee on Water, Land, Agriculture and Hawaiian Affairs on Gov. Msg. No. 276 is that the Senate not advise and consent to the nomination of Peter Young as Chairperson of the Board of Land and Natural Resources. Therefore, the Chair will first entertain a motion to file Stand. Com. Rep. No. 1897, then we will move on to the final vote on this matter.”

Senator Ige moved that Stand. Com. Rep. No. 1897 be received and placed on file, seconded by Senator Whalen.

At 12:36 o’clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:37 o’clock p.m.

The motion was put by the Chair and carried, Stand. Com. Rep. No. 1897 was received and placed on file.

Pursuant to Senate Rule 37(5), Senator Slom then moved that the Senate advise and consent to the nomination of PETER T. YOUNG as Chairperson of the Board of Land and Natural Resources, term to expire December 31, 2010, seconded by Senator Whalen.

Senator Hanabusa rose for a conflict ruling as follows:

“Madam President, I’m asking for a ruling by the Chair pursuant to Rule 85, Conflicts of Interest, of the Senate Rules. Madam President, though I have checked this matter with the Ethics Commission and I have discussed it with members of both sides of the aisle, I believe that in the abundance of caution, I would like to ask the Chair’s ruling on this matter as well.

“There has been an issue raised – the fact that I have represented an entity called Pilaa 400, which is controlled, well not controlled, but the manager under the LLC provision is James Pflueger, and there is some belief that because Mr. Pflueger has a relationship to Pilaa that somehow it reflects on the Kaloko Dam issue which is what has been discussed before this Body. Based on that, and as I have stated earlier, I have already disclosed the Pilaa representation. It’s been over a period of years. It is presently pending in the Hawaii Supreme Court, and I am asking the Chair to make a rule on this conflict.”

At 12:39 o’clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:41 o’clock p.m.

The Chair made the following ruling:

“Upon consultation, the Chair rules no conflict.”

Senator Slom rose to support the nominee and stated:

“Madam President, I rise in strong support of the nominee, Peter Young.

“I think first of all we’d like to review a little bit about the Chairperson’s background. Mr. Young is a graduate of Hawaii Preparatory Academy. He received his Bachelor of Business Administration degree in real estate from the University of Hawaii at Manoa, and prior to his appointment as Chairperson of the Board of Land and Natural Resources, he was the Deputy Managing Director for the County of Hawaii. From his station in Kona, he assisted in the supervision of the administration functions of agencies, departments, and boards and commissions in Hawaii County, with particular emphasis on services in West Hawaii.

“He also has extensive professional experience in real estate services, including appraisal, market analysis, consulting, arbitration, land use planning, project management, and feasibility studies. Mr. Young has been active in a long list of professional and community organizations, including boards and commissions. Included are the Natural Energy Laboratory of Hawaii Authority; the American Red Cross, Hawaii State Chapter; the Hawaii Island United Way; the Hawaii Association of Realtors; the Ironman Triathlon; the Waimea Community Association – just to name a few.

“He’s also taught business courses at the University of Hawaii at Manoa as a lecturer and at Parker High School in science and business math, where he has also served as the boys’ and girls’ soccer coach and the boys’ baseball coach.

“Mr. Young was appointed as the Chairperson of the Board of Land and Natural Resources in 2003, and the Governor has nominated him for reappointment for another four years.

“Madam President, colleagues, let me offer a few brief remarks at this point and I’ll reserve other remarks for later on. First of all, what you see on the top of my desk right here, this stack of dead trees, represents only 85 percent of the confirmation hearing of Peter Young – unprecedented in time and quantity. What you don’t see here are subpoenaed statements and documents which were available to Senate members but are not included in this pile. Five days and nights we spent on the nominee. Well, that’s not quite accurate, because most of the time was behind closed doors talking to disgruntled former and current employees, and individuals who had been prior subjects of disciplinary action.

“I know that 20 of my colleagues, out of 25, were not in these hearings. I attended nearly every minute of the five days, listened to every person’s suggestions, comments, and criticisms. But for most of you, you got it secondhand or thirdhand at best. You were told what went on behind closed doors. You couldn’t have gotten it from the nominee because he was not permitted behind the closed doors and was not permitted to see the documents. You could not have gotten it from some of the administrators who support him, because likewise, they were not given the opportunity to testify. You certainly couldn’t have received any information directly from the Governor of the State of Hawaii, because she, too, was denied the opportunity to testify.

“Saying this, I will also say that being a part of this Committee, I do not find any premeditated intent by either the Chairman or members of the Committee. Since four out of the five voted against the nominee, I would say that I listened to their reasons and their concerns and I believe that they are sincere concerns. But what we have done in this process of confirmation this year, like no other time in the past, is, in my opinion, going far, far, far above and beyond what the Constitution requires and what our duties require –and that is to give an accurate, fair, and balanced evaluation and analysis of

the background, character, qualifications, and experience of the candidate.

“By the way, I want to thank the Committee and the Committee staff. This is the most rapid publication of a 14-page committee report that I’ve ever seen. It came out hours after the decision of the Committee yesterday. And further, since we’re running out of time in this Session, the confirmation process was put right on the fast track so that we had about 24 hours since yesterday until today for this process.

“There had been a lot of questions and criticism about how the Committee and how the Senate operates in terms of its advise and consent process. First of all, it is very important to all of us. It is a responsibility that we don’t share with anyone else – not the House, not the Executive Branch, not the Judiciary. It is the sole purview of the State Senate – the 25 of us. It is an awesome responsibility. To do a job fairly, we must concentrate on the candidate, we must listen to all persons who come before us, but at the end of the day, we must use our qualifications and our character and our experiences to weigh the evidence and weigh the information and come to the right decision.

“Now, some people got the wrong idea early on, I guess because this is the first year that subpoenas were issued – not once in a Committee, not twice in another Committee, but three times. The subpoenas were issued; the process was clear; it was transparent. Everyone knew that the Senate President was actually going to be the ultimate issuer of those subpoenas, and that’s the process, and that’s what happened.

“However, some people wanted to know why we were serving as an investigating committee. And some people remember that a number of us, including the Chairman of the Committee, the Senate President and myself, served on a genuine bipartisan House and Senate investigating committee a number of years ago. It was called the Felix Investigating Committee. And there we had powers through the Legislative Auditor to issue subpoenas. We had staff, and we did investigating. We did that only after there was a Senate/House joint resolution to establish this Body as an investigating committee. There was no resolution to establish this Committee – Water Land Agriculture and Hawaiian Affairs – as an investigating committee. And therefore, a lot of people were really concerned and upset with the manner in which some of the Committee hearing was conducted – in that subpoenaed witnesses went behind closed doors and yet the person who was the subject of the testimony was not allowed to hear or face his accusers. There was no time for actual rebuttal, and not everyone that wanted to speak got an opportunity to speak, but that, too, should have been taken into consideration by the Committee. And I’m asking you, because you will hear from those that oppose this nomination, I ask you today to weigh the thoughts and the ideas and the criticisms that are made so that in the end when we take our vote – and I would like to request a Roll Call vote at this time, Madam President – when we take that vote, you will know exactly what you’re voting for and what the consequences are.

“There were a lot of allegations made by different people, and they did create concerns. I had concerns. I voiced those concerns. I asked tough questions of the nominee. I was not always happy with the answers from the nominee, but those were the answers. And taken on balance, and looking at and giving respect for all of the individuals, organizations, diverse groups, three former leaders of this department who all testified in strong support of this candidate, this Senate cannot deny the reconfirmation of this nominee. The questions that came up, the issues that concern my committee colleagues and myself were issues that predated this nominee – issues that are the

subject of two separate investigations, one by the Attorney General who we just confirmed unanimously, one by the State Ethics Commission. These investigations were initiated and launched by the current Chairperson and nominee of this department. This Chairperson is not the subject of any investigation, any charges or anything else, and yet we have concerns about some of the things he may have done or not done that we may have liked to have done differently.

“The term ‘management style’ has come up during this Legislative Session time and time again, and nominees are now lectured on how they should talk to other people, other employees, union representatives, whoever, and what tone of voice they should have, and how they should look, and how they should carry themselves. I would suggest this might be important to several people, but it’s not the important consideration in the bottom line for running one of the most dysfunctional departments in the State of Hawaii.

“This Department of Land and Natural Resources – with its 11 divisions and nearly 900 employees and decades of destructive infighting – is resisting change, resisting improvement. And that’s what this battle really is all about – because the current Chairperson tried to bring change, tried, I think, naively to think that people did not have their own agendas and that they would get together, sing ‘kumbaya’ and work as a team. Well, guess what? They didn’t, and they’re not doing it now. And the investigations, which have nothing to do with the director but everything to do with some of these disparate employees, will continue much to the dismay of these employees that sought out this Legislative Committee, this Senate Committee, behind closed doors to vent and to attack not only the director, but also other individuals in management within the department.

“More than 55 union grievances have been filed. And that’s fine because there’s a process to adjudicate them, and that’s the way it should be. If an employee has a grievance, then let’s see it to the end. Most of them are still pending right now, as are the two investigations. They are pending.

“I said yesterday in Committee, there is no smoking gun. There is nothing linking this director to mismanagement, malfeasance in office, an inability to take care of the job, qualifications, or anything else. But we still have concerns, and concerns are fine. And all those that had the most concerns, they had ample opportunity to discuss those concerns and bring them about, but that was the side that we heard – one side. One side – their side. It may be true; it may be partially true, or it may be false, but there was no fairness shown to the nominee.

“And by the way, this nominee was put under oath to tell the truth. No other nominee in previous hearings, this year or in the past, was subjected to being put under oath. And several people that did testify did not testify under oath, but we did this to the nominee.

“It came up yesterday in the decision that the nominee, to be balanced, in fact had a few accomplishments. Let me read into the record a few of the accomplishments during the last four years of the administration of Peter Young: (1) the most important perhaps, the adoption of the Northwestern Hawaiian Refuge Rules – the most significant marine resource protection measure in the history of Hawaii; (2) establishment of the instream flow standards with community, government, and professional planners; (3) making state lands available to address many of Hawaii’s concerns – land for affordable housing, for new roads, schools, parks, and other community needs; the completion of a streamlined, multi-agency permit process to expedite small scale beach nourishment projects and a demonstration beach replacement project that we’re all

familiar with at Kuhio Beach in Waikiki; the establishment of the Mauka-Makai Watch Program patterned after the very successful national and local neighborhood watch program; seeking \$5 million in added funding for enforcement to provide adequate staffing, equipment, and technology tools for enforcement efforts statewide; the initiation of a new hotline, an enforcement hotline, 643-DLNR, an easy-to-remember single seven-digit statewide, toll-free number that's now part of a 24-hour live answering system; the implementation of the first major reconstruction of state parks facilities and restrooms in over 40 years – and aren't we ashamed of how our restrooms and parks have been, and there was a major increase in maintenance funding for the operations and maintenance of our state parks, well long overdue, but they were done on this watch; implementation of a park ranger program and developing partnerships with community groups in the protection of many of Hawaii's natural and cultural resources.

"This department, this director, made the fight against invasive species job-number-one priority within the department. He initiated an integrated multi-year program to prevent invasive species from entering Hawai'i, and there was response and control of invasive species that are already here, as well as him targeting research and outreach.

"This department recognized the decade-old, inconsistent and insufficient fee structure to support reasonable repairs of our small boat harbors, and he took a lot of heat for this but he stood by it. He made the decision after listening to all parties and he made the decision. Reasonable and consistent fees added \$1.5 million for needed maintenance, and the department continues to seek additional revenue sources.

"Under his watch, the nominee formed a special task force that completed the processing of the mail backlog in the Bureau of Conveyances, probably the most troubled single division of the 11 in this department. He also established the Bureau of Conveyances leadership meetings to work together and address ways to do an even better job. He conducted an extensive outreach program to develop a nomination criteria for the selection process of the very controversial Hawaiian Burial Councils. He provided a statewide training program to new and existing Burial Council members, addressing responsibilities of the Councils as well as meeting management. He formed the Architecture and Archaeology working groups to assist our Historic Preservation Division in addressing these important concerns. He also put emphasis on endangered species recovery and implemented a comprehensive wildlife conservation strategy.

"Watershed partnerships expansion is probably the best untold story of this troubled department because it is resource protection in Hawaii. Our watershed partnerships in this State are protecting approximately 1 million acres of mauka land, one quarter of the land area of this State. There's been a continuation of the protection of streams and marine resources. He's worked with fishers and other constituency groups to fulfill the common goal of making sure that the resources can be used, but that they are protected and available for our keiki in the future.

"And finally on this, a short list, this department and this director expanded our educational opportunities as DLNR can provide some of the best classrooms on educational and environmental education."

At this time, the audience in the gallery erupted with applause. The Chair then called for order in the Chamber.

Senator Slom continued:

"The nominee did not do everything, perhaps, that he should or that he could, but no one can fault him for his integrity, his passion, and his energy. These problems that existed before Peter Young and exist now, as I say, are really the result of a struggle between individuals, personalities, and various groups that seek to undermine the ability of this leader. One of the testifiers in opposition to the nominee said that, for example, the Bureau of Conveyances – and we keep coming back to that, because there is a major investigation of that department, that very, very troubled division – said that the sides that were chosen in that department, those employees represented, quote, 'the same as the Shiites and the Sunni.'

"If I were seeking to work somewhere, it would not be in that division or not be in that department. I couldn't handle it, quite frankly, and I can handle a lot. But Peter Young showed up every day. Peter Young was there. Peter Young has been here. Peter Young answered all the questions that were posed to him.

"And yes, there were serious allegations – and again I repeat, allegations – not affecting him directly but affecting him as the head of the department – involving mysterious checks, lack of cash management, and a rogue computer that had been put into the Bureau of Conveyances in 1998 by a private title company. And probably the threat and the concern for all of us on the Committee was the possibility that was raised that someone could interfere with and tap into our very, very important personal transfer title records within this department. It had tremendous negative impact as a possibility, as an allegation. To date, there is no proof that either this had happened, had come close to it happening, and again, when Peter Young was informed of these things, what did he do? He ceased the internal investigation and said, 'It must be conducted externally and independently' and called on the Attorney General, and that's where we are today.

"Probably the most troubling thing of all that took place in the five days and nights of this hearing was allowing the attorney for the Kaloko Dam owner to appear subpoenaed, that he requested, and under oath and then to have this attorney make a mockery of this Senate Committee and this Senate Body and this State to use us and abuse us to deflect attention away from his client who faces more serious charges in the days ahead.

"I have received a number of e-mails, as I know all of you have, and particularly the Majority Leader, because they came from the Island of Kauai and they were signed. They were signed by people like Teresa Tico, an attorney representing the victims, Amy Marvin and the victims themselves. And they cried out for justice and they could not understand why this Body would let William McCorriston come here and try to blame everyone else to deflect attention from his client who owns Kaloko Dam, and then, to rub salt into the wound, to refuse to answer questions under oath before this Committee! What were we thinking? Why did we allow this? We can talk about Ethics Commission rulings and decisions, but the public are pretty smart, and when they see something, and it doesn't look good, and it doesn't smell good, and they know it's not good, we should be listening more to the public!"

The audience responded with a disorderly ovation, and the Chair made the following announcement:

"I'm going to caution the audience to refrain from vocal expressions at this time, please. Thank you."

Senator Slom continued:

"Thank you, Madam President.

"I was here eight years ago when the confirmation of Margery Bronster came to the Senate Floor. The Margery Bronster confirmation, like the Peter Young confirmation, is not a partisan issue. It's not Republicans vs. Democrats, but it is an issue where people took their personal opinions, including me, because for two years, as most people know, I was publicly opposed to the reconfirmation of Margery Bronster. And why was I publicly opposed? Well, very few people wanted to listen to my reasons, and those that did, disregarded them anyway. But you know what? It was basically because of management style or lack of management – the fact that at that time the then Attorney General, in the opinion of many people including myself, was spending too much time on things like the Chevron case, the tobacco case, and not doing the responsibilities within every department. And how did we know that? Because every department came before different committees saying, 'Hey, the Attorney General's supposed to represent us but she's not, so will you give us the authority and the money to go outside and hire outside attorneys.' I felt very strongly about that, but it was not a philosophical or ideological or principled decision. It was my view of what this person was or was not doing, and I knew I could do a better job. I would have done things differently. But guess what, I heard from 900 people – constituents, non-constituents, Republicans, Democrats – and they said, 'We believe in this person. We believe this is the only person that can do the job.' And two days before the final hearing, I announced to everybody, 'Hey, I was convinced. I listened to my constituents and to the people outside. I'm going to vote for her. It's against my idea, but I'm listening to the public.'

"So what's happened nine years later, eight years later? We're not listening to the public. We're listening to a few people behind closed doors, primarily. We're listening to our fears about what could happen, what might happen, and all that, and yet we know that that nominee was on the job everyday. That nominee didn't turn people away. That nominee tackled some of the most difficult problems, and we got more difficult problems coming up in the years ahead.

"Many of my constituents and many of my colleagues are concerned about the vacancy rate in this department. And it is a concern, and it is a problem. Although I would say, after listening to all the people I listened to, thank God some of them left. (Laughter.) Vacancies are a problem in state government. This Senate this year has created vacancies in the Department of Public Safety that nobody's rushing forward to, created a vacancy in the Department of Labor and Industrial Relations and nobody's rushing forward to, and if you do the wrong thing and turn this man down today, you will create another vacancy in one of the largest departments, and who are you going to have to step in to take care of these mounting problems – current problems and new problems? And that's what we have to think about.

"But we've got to think about all these people. We've got to think about all these organizations, many of whom have told us four years ago they were totally opposed to the nominee. A year after that, they were calling with petitions for his firing or resignation. And now their telling us, 'Wait a minute, now we've seen what he's done. And while he doesn't do everything and he doesn't do all the things that we like and we don't agree with him on all things, he's the best man to do this. He's the only one that's going to tackle all of these issues and he's not going to back away from them.'

"And that is why we have to confirm Peter Young today – not because of our individual or collective concerns which have not been factually proven, and if they were, they do not point to the nominee, they point to employees within this troubled and dysfunctional department.

"So I would ask my colleagues, you've gotten all the material; you've gotten stacks probably almost as high as this; you've heard from these people; you've heard from these organizations. They still reserve the right to criticize or disagree. And if an investigation proves that in fact there was any real wrongdoing that goes up to the commander in chief of that department, then he should and will be dealt with, and I'll be the first one to take this Senate Floor and call for that. But absent that, I grew up old time with the idea that a person is innocent until proven guilty. And this individual has been proven guilty of nothing except dedication and the idea of trying to ride 11 horses at one time. My brother from another mother over there who's the cowboy, I think he can only ride four horses at one time. They're all from the apocalypse.

"We can have our concerns. We can continue to ask questions. We can have requirements and restrictions. But we must understand in the end, a manager, an executive must make those decisions and then we hold them accountable for those decisions. And that's what we have to do.

"And in sum, Madam President, I think it would be a big mistake if in fact we just follow like sheep, one way or the other. We need to exercise our independence. I don't think that some of my colleagues recognize the breadth and the depth of the distrust and concern about us in this Body and what we're doing. We say that we represent the people. The people have spoken loudly and clearly and specifically, and what they've said is they want Peter Young reconfirmed. Many of these questions and many of these problems were not asked four years ago at his nomination hearing. They weren't asked of the previous three or four or five past DLNR directors, and issues of his qualifications for certain specific titles within that department, again, were not asked and not questioned previously. So we are faced with the situation right now to make our final decision today and stand up for that decision.

"There may be some people that think that if the nominee is not confirmed, it will hurt the Governor of this State. . . I don't care about that. Some people might think that it might hurt Peter Young . . . I don't care about that. He's probably got a great career ahead as a baseball coach for young people if he has to. But what I do care about are the unintended consequences – the fact that we hurt the people; we hurt the public that relies upon us, that comes to hearings, that watches them on television, that sends in the emails, the faxes, the telephone calls, the messages, and talks to us in the corridor. We will hurt the Native Hawaiians that we say we want to protect. We will hurt the keiki that we say we want to protect. We will hurt the natural environment that we say we want to protect. Because who knows better? Us, from information behind closed doors, or the people that are on the front line every single day, and every single day hold this nominee and this department accountable?

"We have an opportunity to think for ourselves and to be independent today, and I'm urging you – all of my colleagues – do the right thing not based on second- or third-hand information, not based on allegations, not based on the testimony of some employees when the vast majority of employees support this manager. Do the right thing. Don't disgrace this Senate Body.

"Thank you, Madam President."

At 1:17 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 1:20 o'clock p.m.

At this time, the Chair made the following announcement:

“We are currently in Conference and there are Conference Committees that have conference times that need to be opened and postponed, so we will be allowing Chairmen, if your time comes up for your Committee, to please go ahead and convene your Conference, then postpone and come back so that we can take the vote.

“In the meantime, just to let the public know, we’d like to keep the audience applause down so we can proceed in a timely manner so that we can be sure that none of the bills that you also might be concerned about do not fall by the wayside. In trying to accommodate this, we will not take a vote if a member happens to be out of the Chamber. We will recess when that time comes, but we will continue on with the discussion at this time.

“So with that, is there any further discussion?”

Senator Kokubun rose to speak in opposition to the nominee and said:

“Madam President, I stand in opposition to the motion to advise and consent to Gov. Msg. No. 276.

“This is not an easy position to take, and I want to acknowledge the fact that there are many supporters for Peter Young. I also would like to acknowledge the fact that the good Senator from Hawaii Kai was paying attention during our committee hearings, and I want to thank him, actually, and all the members of our Committee because they were very diligent in terms of attending all the hearings, asking the good questions, and also wanting to ensure that however the process moved forward, it was done in a manner that would not disparage the Senate. I took all that advice to heart and hope that I accommodated all of their concerns with respect because it is not my goal here to make any kind of a mockery, if you will, of this process or of this Body. I have great respect for what we’re doing. I also have great respect for the responsibilities that we have to undertake as Senators here in our confirmation process.

“So along those lines, let me first again acknowledge and I want to thank, frankly, all the many, many people, individuals, organizations who have participated by testifying or who have communicated by e-mail, phone, fax, and in fact continue to communicate to this day with all Senators.

“Obviously, this has been an issue of high import to many, but I would like to, just for the record, state that as in any tough decision that we have to make, not all of that testimony is consistently in one direction. There is not necessarily unanimous support for Mr. Young in his position. Opposition does come from employees who feel that their concerns have not been addressed or who may feel that the department could be run in a more efficient and proficient manner. I’d also like to acknowledge that I take exception to the good Senator from Hawaii Kai when he made the comment ‘Thank God they left,’ in terms of the vacancies, because I think this is at the heart of this issue. Not only is it a matter of the protection of our resources, which I think we all agree on and there’s no doubt about that in my mind, but it’s the fact that how we accomplish that goal is really through the rank and file – the people who serve on the front lines of DLNR in carrying out the policies and the directions for that department. They need to be acknowledged. They need to be thanked, because they take their job seriously. I think to cast them aside with a comment as cavalier as ‘Thank God they left’ is disrespectful to them and the job that they try to do.

“I would also like to thank Peter, Mr. Young, his Deputy Bob Masuda, and all the other administrators and staff who

participated in our process for their patience. I know that it wasn’t an easy task to do. This was really, as the good Senator from Hawaii Kai indicated, kind of a unique situation for the Senate. Not only did we take an unprecedented five days, but we did incorporate the use of subpoenas and executive sessions, and I will get to that with further clarification.

“I also, though, want to specifically acknowledge and thank the witnesses who were subpoenaed, particularly the departmental staff, because they demonstrated their courage and willingness to express their concerns sometimes in the face of criticism. This was not an easy task for them, but I again acknowledge and thank them for their good work.

“Much has been said about the executive sessions which were conducted in a confidential manner, but I want to make clear again for the record, and I know that many of you understand this, but the reason for going into executive session was at the request of the Attorney General, and at the request of the executive director and legal counsel of the State Ethics Commission. With the ongoing investigations, it was their responsibility to protect people who may have been affected by the investigation, and they needed to protect the manner in which they were going about their investigation. The Committee respected that and acknowledged that it is an ongoing situation, and we would not want to jeopardize those investigations unless allowed to do so by the Attorney General and the Ethics Commission.

“I would agree that up to this point Mr. Young is not the target or the focus of the investigation, but we acknowledged the fact that they are occurring at this point in time during his tenure. Much has been said about previous problems of the department. I don’t have intimate knowledge of that but I will acknowledge that in fact there have been troubles with DLNR, probably because of the huge responsibilities that they have to bear. But the fact is that we are talking now about what occurred in the past four years, and that is the difference. Today – we have a track record to look at with respect to Mr. Young.

“While I’m on the topic of thanking people, I also do want to thank the Attorney General and the First Deputy to the Attorney General and also the Executive Director of the Ethics Commission for providing us with their assistance as we move forward in this confirmation hearing.

“Much has been said about the accomplishments, and I certainly do not want to detract from those at all. I think the Senator from Hawaii Kai indicated, particularly with respect to the Northwest Hawaiian Islands being designated as a Marine National Monument, it’s an unprecedented action which provides tremendous protection for a resource that we all consider important. He also brought up the issue about invasive species and certainly they’ve been the focus of legislative policy for a number of years. In fact the Hawaii Invasive Species Council was developed through legislative initiative. The Legacy Land Conservation Commission is also another very positive step that has moved forward for the State of Hawaii. And again, I think the Legislature felt good about working with the department and those in the environmental community about promoting that sort of very, very positive program for the future of Hawaii.

“But at the same time, there are other issues that also brought to bear some of the inconsistencies with respect to the leadership of DLNR during these past four years. Now, we have mentioned the fact that at Mr. Young’s initial confirmation hearing there was objection from some groups, and in fact I will acknowledge as well as agree with the good Senator from Hawaii Kai that two years after his confirmation many of these

organizations, including Native Hawaiian groups and environmental groups, were calling for his resignation. What I think that points out to me is that this really kind of represents the style of leadership that has been demonstrated by Mr. Young. In a way, it has been an experiment in on-the-job training. Things change only after a crisis develops, or only after a major issue is raised. Prior to the call for his resignation there was no change in the direction, so it would take something like calling directly for his resignation to force any kind of change. I will get back to this issue about on-the-job training as we move along.

“Given the fact that we did go through five days, there was lots of information – I will acknowledge that – but the conclusions that we reached were not just based on allegations. There were some very, very serious concerns raised, and they really led to the conclusion by the Committee that there was a lack of accountability on the part of Mr. Young. There was mismanagement on his part. And again, it goes back to this concept of ‘it takes a crisis to change management practices.’ This is troubling. That is not the way, in my opinion and I think in the opinion of the Committee, that this department should move forward.

“There were issues with workers, not just grievances as was mentioned earlier, but in fact prohibitive practice complaints that were filed with the Hawaii Labor Relations Board. These are serious allegations because they raise the fact that union contracts and the provisions of those contracts were not being adhered to. This is particularly with respect to reorganization, and there are a number of examples of that taking place.

“The other problematic areas that were important to consider was what was occurring at the Division of Boating and Ocean Recreation – the fact that the Boating Special Fund was being used to pay for the hiring of additional DOCARE officers or at least to fund those positions. It was revealed during that discussion that in fact there were no bodies in those vacancies, and so these funds were being taken from the Division of Boating and Ocean Recreation Special Fund and used for other purposes. Part of the result was that the division experienced a loss in federal grants because we could not account for the actual enforcement practices that were being conducted for those positions. And hence, grants from the United States Coast Guard Recreation Boating Safety Program have been held in abeyance until these concerns can be addressed. It’s no secret that the facilities for our small boat harbors are in dire need of help, and if you will talk to some of those users, there is much dissatisfaction with how this program is moving forward, or in fact, not moving at all.

“The other area that was of very, very grave concern for us had to do with the State Historic Preservation Division. This is the division that is charged with the responsibility of overseeing our precious historic and cultural resources, not just burial sites themselves or the Burial Councils, but also artifacts that may not necessarily be connected with burials. This division in particular has experienced tremendous vacancy rates. I think out of the 27 positions that are assigned to this division, there have been changes in 20 of them. Staff members have either moved laterally, moved to the private sector, or resigned. This does not speak well for employee morale, and if we go back to the premise that what makes the department successful is the dedication and commitment of staff, then this I think is a prime example of where this is not occurring.

“Much was made of the fact that in our confirmation hearing and the use of subpoenas, Mr. McCorrison was subpoenaed to appear before our Committee. Let me give you a little bit of background on why. That decision was mine after discussing my decision with the Senate President. The reason for this

decision is based on the legislation this year, as you all know, for the dam safety law which was based on the proposed legislation from Mr. Godbey, the Special Deputy Attorney General. When that legislation was heard by the Judiciary and Labor Committee, I was there as a committee member and heard Mr. McCorrison raise some issues. I will also say that on the record I thought he embellished that particular presentation.

“So, when realizing that the dam safety issue was so important for us to determine and get the facts on, I utilized the subpoena to have Mr. McCorrison come forward under oath, realizing that as an attorney, he holds, at least I hope he holds, himself to an even higher degree of integrity based on the fact that he’s under oath knowing full well that if he breached his responsibility to his client it could jeopardize his case. So the idea was to really bring forth as much information as we could about that issue. So, I will take full responsibility for that. I asked Mr. McCorrison, under oath, to come and provide information to the Committee, but I think it’s important information and we’ll get to that as well.

“Finally, I want to speak to the Bureau of Conveyances. This is a very, very troubling division, and not only is it the focus of both the criminal and the ethics investigations, but just receiving knowledge about the security or lack thereof that is provided for our data with respect to title is very, very disturbing. The Bureau of Conveyances is the repository for all of the title documents in the State of Hawaii – for land, for our homes. I can’t think of a single more important asset that the citizens of Hawaii have in terms of wanting to be sure that that asset is protected. The manner in which data is kept there, the fact that questions were raised, the fact that the Attorney General took action on his own – not at the request of the Committee, but on his own – after hearing information in the executive sessions, to take control of certain computers at the Bureau of Conveyances indicates to me that there is a serious concern about data security at the Bureau of Conveyances. While it is true that the investigation is ongoing, I think the fact that these kinds of steps were taken indicate that we should be concerned about the security of our data.

“Let me just conclude this portion of my thoughts by saying this – in my mind, there is not a smoking gun, if that’s what people are looking for. I don’t think there is a need for a smoking gun because while no single event or issue is enough on its own, taken altogether, all of these issues that have been raised are cause for grave concerns. We cannot simply sit and wait for the next crisis to bring about a change in management of that department.

“I will quote the good Senator from Hawaii Kai who said during our confirmation decision making yesterday that, ‘Perhaps the problem with Peter is that he was trusting others too much or that he was simply naïve in how he was going about expecting to make change.’ But even more telling for me was the response that Mr. Young had to the good Senator from Hawaii Kai, who asked a key question about accountability. I think all of us in these positions of decision making and responsibility ask ourselves the same question, so I would like to quote for you verbatim the question that was asked and the response from Mr. Young.

Question: ‘Would you acknowledge that ultimately the buck stops with the director?’

Response: ‘I firmly believe we each share responsibility. We are responsible to ourselves to do the best that we can, to be fair with others, to work our hardest, and to focus on the mission, the common mission. Ultimately, as the director, I mean, I’m the Chair, I’m the lightning rod for the department. I have trouble with the specific reference that

“the buck stops here.” In part, because it implies a micromanaging prospect. That means that the director is doing everything and because he feels responsible for it. I feel it’s appropriate to delegate. It’s appropriate to hold others responsible for their actions. As the director, though, I am not only the figurehead, but I am the leader. But “the buck stops here” context for me can be viewed and used by some as a copout.’

“It’s difficult for me to support someone who will not take responsibility for the actions of the department, albeit a very large, large responsibility. So, Madam President, it’s difficult and I cannot have four more years of this type of on-the-job-training. The department needs accountable leadership.

“Thank you very much.”

Senator Hemmings rose in favor of the nomination and stated:

“Madam President, I rise to speak in favor of Gov. Msg. No. 276, the re-nomination of Peter T. Young to head the Department of Land and Natural Resources.

“This can be one of this Senate’s better moments. We’ll know at the end of the Roll Call today. I’d like to suggest that this open and free debate on this nominee is healthy and we’re going to make an informed decision by what’s said today. But I’d like to further suggest that we’re also voting on the integrity of this Body and the integrity of the process.

“We’ve already heard much about Mr. Young and I’m sure the previous speaker’s conclusions will be adequately rebutted, but I’d like to talk about the process. Subpoenas. Interesting. Was this Body in the course of these hearings acting as a grand jury indicting the nominee, or was this Body acting in a fair and open manner to conduct a hearing to reach reasonable conclusions based on fact?

“A reporter I respect asked me just this morning, ‘Doesn’t the Senate have the right to conduct their hearings in the way they see fit?’ And I said, ‘They sure do, but that doesn’t necessarily make it fair and responsible.’

“Madam President, I suggested to you – when you want to talk about where the buck stops – to change the subpoena process, if indeed it is required that we need the testimony of someone, that the request should come as it does in Congress from the majority vote of the Committee who’s seeking the subpoena, not the ‘behind closed doors’ conclusions reached by you and the Committee Chair. In the course of reaching these conclusions on advice and consent, I’d like to ask now, why was Mr. McCorriston subpoenaed? I’ve heard two answers already. Maybe there’s more. One, that he asked to be subpoenaed, and just now the Committee Chairman said he asked him to be subpoenaed.

“Did the Committee Chairman tell us what Mr. McCorriston’s motives are? Was the Committee Chair and the Committee complicit in the process? I’d say what we’re doing today is voting on not only this nominee but on the integrity of this Body. On that one particular case, not only does the State of Hawaii have a huge liability, but we’re talking about playing politics with people’s lives. I don’t understand it. I just don’t understand it.

“Regarding the closed door hearings, because of the request of the Attorney General, that might be necessary to protect the Attorney General’s investigations, but in this case, was Peter Young given the opportunity to specifically address the issues

and specifically have the opportunity to rebut what was said behind closed doors in an effort to indict him? I don’t think so.

“Much has been said today regarding no smoking gun, low employee morale, mismanagement, long-standing problems, but it’s just a matter of opinion as to who’s responsible for it. A huge fishing expedition went on regarding the Bureau of Conveyances’ problems. Who asked that the Bureau of Conveyances be investigated? Mr. Young.

“So I’m hoping that when this is all said and done, that this will be a fine moment for the Senate, that we will vote on what is fair and just for the nominee, that we will vote in favor of what’s best for the immediate future of the Department of Land and Natural Resources for the land, the ocean, and this environment, that we also will vote for what’s best for the integrity of this Body because I would suggest to each of us that there’s much more at stake than this nominee. I would suggest that the public does know what’s going on, and the public has spoken pretty loud on this issue, and pretty clearly. I’m hoping that this good Body, after the continued open and free debate, will vote in favor of Peter Young’s re-nomination and also vote in favor of the integrity of this Body to do what’s right, fair, and ultimately what’s in the best interest of the people who sent us here to do their bidding.

“I urge my colleagues to vote in favor of Peter Young. It’s the right thing to do. Thank you Madam President.”

At this time, the Chair made the following observation:

“Members, for the record, we are voting on Gov. Msg. No. 276, and that is all we are voting on today. Thank you.”

Senator Tokuda rose to speak against the nomination as follows:

“Madam President, at this time I would like to rise in opposition to the reconfirmation of Peter Young to serve a second term as Director of the Department of Land and Natural Resources.

“Before I begin, I would sincerely like to thank Mr. Young for his service and to acknowledge the work that he has done on behalf of our natural and cultural resources. In particular, I would like to thank him for joining me and coming to the table in good faith efforts these last few months to finally reach a longstanding agreement over Kawaiui Marsh. No matter what is said today by myself or others, this is an accomplishment that he should be very proud of, and I would sincerely like to thank him for working with us to protect and preserve one of Hawaii’s finest ecological treasures.

“Like many others, like the good Senator from Hawaii Kai, I have spent an amazing amount of time going through testimony, documents, listening to hours of verbal testimony presented by hundreds of individuals from across the State during this confirmation process. And, as I was going through these documents and this testimony and I was reading through Mr. Young’s questionnaire that he provided to us, one phrase really stuck with me and has stayed with me through this entire process – ‘Hookuleana.’ Adopted by the Land Board in 2005 as their guiding principle of sorts, it means ‘to take responsibility.’ It challenges the department and its leadership to participate rather than ignore, to prevent rather than react, and to preserve rather than degrade. Like Mr. Young and the Department of Land and Natural Resources, we as the Senate also have a very important obligation and responsibility, and we should also adopt this principle as something that guides us through this process. In my deliberations, this was the principle, this was the

guide that I used when looking at the totality of Mr. Young's term.

"While there have been many significant accomplishments, as highlighted by the good Senator from Hawaii Kai, during Mr. Young's tenure, there have also been many indications that responsibility has not been taken by Mr. Young as Director of DLNR. Two years ago, as mentioned by the Chairperson of our Committee, as a result of controversy over Hokulia, the proposed abolishment of the Water Commission, and problems with Burial Councils, groups and community activists focused on the protection and preservation of our natural and cultural resources came together and called for Mr. Young to address their concerns in two months or resign.

"Seeing many of these groups that once called for his resignation, now coming forward to support him in his reconfirmation, I felt it incumbent upon myself to research exactly what those concerns were and if in fact they had made a complete turnaround so as to justify this new found support. Among those demands were calls to fill vacancies within the department's upper ranks, including deputy and administrator positions, and to adequately staff the department's enforcement, historic preservation, and burial site programs. They also came out very strong calling for an audit of the department as a result of questions raised about staff shortages, low morale, and backlogs in the re-interring of Hawaiian remains. It was a way for them to see clearly just how the department was being run under Mr. Young's leadership.

"Based on the information that was provided us during the hearing and through the State Auditor's many reports completed during the last four years, it is clear that these issues are still prevalent problems within the department and the audits themselves raise serious questions as to the management of DLNR under Director Young and the oversight of its divisions.

"In terms of vacancies, as I pointed out yesterday during our decision making process, in the top ranks of DLNR and amongst their frontline staff, DLNR still has a 13.9 percent vacancy rate. That's 116 vacant positions, more than one in 10 of every seat that should be filled, that should be there to protect our natural and cultural resources are empty. Even if a portion of these positions had been filled or could be filled, I can only imagine the amazing amount of work that they would do to protect and preserve our most precious resources.

"Since taking office in 2003, 11 out of 29 appointed positions and division managers who directly report and are supervised by Mr. Young have resigned, including four deputy directors. While Mr. Young has cited private sector competition and retirement as causes, testimony received and public statements made through the media in the past four years point to problems at the highest level of management within the department.

"Inadequately staffing the department's enforcement, historic preservation, and burial sites program, Mr. Young's appointment of the State Historic Preservation Division's Administrator and his ability to take responsibility for the current state of things within the division are questionable. Mr. Young himself recognizes the importance of this division. In his testimony he equated it to taking care of someone's relative. I agree with him. It is an extremely important responsibility that we all bear. And in the last two years, as noted by our Chairperson, SHPD has seen 20 individuals resign – in the last two years alone – and this is a small division of 27 employees. This serious problem in any of our departments should be taken seriously by any director. And to date, not even an exit interview has been conducted to try and get to the root of what

is nothing less than a mass exodus of employees in this very important division.

"Given the important work of SHPD, it was also incumbent upon Mr. Young to take responsibility to ensure that the administrator of this division had the background and experience necessary to lead this division. As the State Historic Preservation Officer, or SHPO, for Hawaii and given his own lack of personal qualifications as stated in HRS 6E-5, and also based upon federal standards requiring knowledge in the fields of archaeology, architecture, and history, it was essential for Mr. Young to enlist the services of a deputy SHPO and SHPD administrator that could not only motivate their professional staff to tackle the immense challenge, but understand the technical and culturally sensitive nature of the work that they do. Mr. Young made a conscious decision to forgo the professional background needed for SHPD, and instead chose to hire an administrator with a management background because these were issues raised in the audit this same individual conducted in 2002.

"While there have been reported 50 percent increases in completed investigations, I have very grave concerns over the increase in projects that were rushed through the process and were endangered or desecrated in the process. We've heard incidences of Ki'i Cave, the Wal-Mart site, Pua'a'a on the Big Island and many others over the course of our discussions and over the years. While Mr. Young meets with his SHPD administrator weekly, his ability to take responsibility to stem the flow of resignations, significant vacancy rates and concerns over the Division's ability to take responsibility for the protection of our most sacred sites over the past two years still remains questionable.

"I truly believe that our laws and our regulations are only as good as our ability to enforce them. That is why the DOCARE division is so critical to what the Department of Land and Natural Resources does. The use of DOCARE officers and how they have been paid has been called into question numerous times during our deliberations. Mr. Young has the responsibility as set forth in our Constitution to ensure that resources are used in a manner consistent with their conservation.

"As stated by our State Auditor just last year in her audit of DOCARE, Hawaii's natural and cultural resources will continue to deteriorate unless the DLNR and its DOCARE division aggressively address many of weaknesses noted in this report. During the one-year time period of the audit, almost 19 work years of effort expended performing missions only loosely controlled or connected with the division's primary mission were identified. This was time that was not spent protecting our 410,000 acres of coral reefs, our 11 marine life conservation districts, our 19 fishery management areas, our 9 fishery replenishment areas, our 2 wildlife sanctuaries, our 18 bottom fish restricted areas, and our 1.3 million acres of state lands, beaches, and coastal waters.

"I, too, care about our marine life, our endemic and endangered birds and species, and the preservation of our natural resources. I want to see our laws, and our regulations, and our policies enforced, and that is where DOCARE becomes essential.

"When Mr. Young himself states in his response to us in regards to coastal policy enforcement that his preference is to foster voluntary compliance, this concerns me – knowing that each day endangered birds are taken for their feathers, nets are laid and left there, fish is taken unscrupulously, and land is marked and scarred permanently, all the while our DOCARE officers are out conducting thousands, tens of thousands of

hours of missions only loosely connected to the mission of the department.

“As our Chairperson also mentioned, there were concerns about the ghost employees within DOBOR. One grave concern that I had was that through the progression of questioning between Senator Slom and then to the Chairperson, Mr. Young went from claiming that there were no ghost employees and in fact they were all filled, to they are partially filled with a few vacancies – and by the time he got to the center of the table – to telling the Committee that the \$250,000 in funds were used for equipment purchases. While this might be true, those \$250,000 could have been used to improve our small boat harbors and provide services to our boaters.

“Mr. Young has a fiduciary and management responsibility to ensure that all divisions within DLNR are able to function and to move the mission of the department forward. For a division like DOBOR, which is having difficulties making payroll or even buying janitorial supplies as a result of the reduced funds in their special fund, a number of serious concerns have been raised not only by the DOBOR staff but also the federal government.

“As mentioned by the Chairperson, the Coast Guard has ceased providing us with reimbursements through their reimbursable federal grants program since fiscal year 2005. It’s impossible for us to actually calculate how many dollars we’ve lost, but estimates are over a million dollars in reimbursable grants that could have gone towards our small boat harbors and our boating programs, and more importantly, to provide support for the people of Hawaii and those who enjoy water recreation.

“It’s not only the fact that they cannot adequately identify or account for law enforcement hours on the use of DOCARE positions for enforcement actions at the small boat harbors and on the waters, but the Coast Guard has also recently received information and stated in correspondences that they had with Mr. Young during 2006 that leads them to believe that there exists a possibility of misuse of federal funds provided for this program in the State of Hawaii. These questions raised by the Coast Guard as to the accounting for DOCARE services paid by DOBOR funds is not limited to the federal government. DOBOR and its leaders have been calling into question Mr. Young’s inability to take responsibility for adequately accounting for the \$1.5 million annually going to DOCARE payments from the Boating Special Fund, as well as assuming responsibility to provide much needed funds to improve our harbors and services to boaters by fairly increasing fees.

“The Legislature last year also asked for a report of how many hours were actually spent providing enforcement to our small harbors and on the water, to which Mr. Young pointed me to two sets of reports. One, I would have you note, is about 600-plus pages per month of timesheets, and in order for you to actually account for how much money or how much time was spent on the water, you would have to decode every handwritten, some typed, timesheets for every island, and then you would have to go and request the actual amount or salary for each individual.

“He also told me about the weekly reports that have started as of January 5, 2007, that are on the website for DLNR. On these, there are no listing of hours spent on the water or looking in enforcement areas. It is simply a tally of citations given for various divisions. This, I would argue, is not what the Legislature asked for when they wanted a proper accounting of exactly how much time DOCARE spent enforcing our laws and our regulations on our waterways and at our small boat harbors.

“While I do not want to go into detail too much over the Bureau of Conveyances, although it has already been brought up numerous times on this Floor, I do have concerns as a result of the discussions that we heard both in executive session, but mostly also outside of executive session when we were talking with Mr. Young. In my questioning of Mr. Young under oath, he stated very clearly that he had no involvement with the very large title company in Hawaii as Director of DLNR. Within five minutes shortly thereafter, I read to him notes from daily meetings held at the bureau that directly referenced Mr. Young specifically engaging in conversations and negotiations with the CEO of this company and discussing the possibility of a business relationship.

“Mr. Young then went on to contradict his earlier statement under oath and said that he had engaged in discussions with this individual. He had explored the possibility of bringing in the bureau’s largest private sector client into the inner workings of the department to handle and index documents received from the public and from other title companies. While Mr. Young may argue that other companies were approached, it should be noted that according to BOC notes, the other companies and the title association met with the BOC team and that negotiations with this one particular title company that dominates the business of the BOC was the direct responsibility of Mr. Young himself.

“While the agreement never materialized, we have a responsibility, actually, to look at the ethicality of his decision-making process. In government, we have a responsibility to support all companies – small companies, large companies, those in between – regardless of the percentage of the business that they may do with our departments or with this bureau in particular.

“Colleagues, these islands know all too well about land rightfully owned being taken away from them. The Bureau of Conveyances is the keeper of our titles, the witnesses to our ownership of property and of land. Through the BOC’s notes and reports from their fiscal division dated as early as last October, months before the actual investigation began, in reports from the Auditor’s Office and even news accounts of the Bureau, there’re enough statements, there’re enough signs, there’re enough things written on paper coming from internal sources, coming from external sources, coming from the public, that said something was wrong with the Bureau of Conveyances – the system is in jeopardy, security is compromised.

“To allow these things to continue, to not so much as take a second look at why undocumented donated computers – which I would argue while it was stated that it came from the 1990’s, a flat screen Dell, last I saw, was pretty recently introduced – and not only that, but technical support donated by individuals within our title community – one particular company within this community, the presence of personnel from this particular title company present in the bureau, and the lack of any contracts or agreements or records of payments for services or products provided – raised serious concerns for me as to the integrity of the system that is accountable for tracking all of our land transactions. It is responsible for ensuring that if you own land, it is rightfully yours.

“Yesterday, Senator Slom said, ‘Mr. Young, if he’s guilty of anything,’ and I’m quoting this again for the second time today, ‘if he’s guilty of anything, it is that he is too trusting of people and of being naïve.’ Mr. Young himself during his testimony said that, ‘I assume too much.’ Colleagues, this is one division, this is one department where being naïve and making assumptions could cost you something very valuable, and it could cost you your land.

“Like Mr. Young, we have a very important responsibility to take a look at the big picture – the total department and its functions – and his ability to move DLNR and its employees forward during good times and difficult years. While he has done good work as we have all stated, it is our job to hold any and every director accountable for their actions or inactions of their department. The Department of Land and Natural Resources holds in its hands our most sacred trust – our land, our oceans, our sacred and cultural resources. That is why choosing a steward for this department that has the ability to motivate not only the public but the people he leads is absolutely critical.

“Please know – to everyone here, to all that have testified, to everyone who’s called our offices or e-mailed – that I absolutely respect and I acknowledge every single voice, the hundreds of voices, maybe thousands at this point, who have called or written or come forward to offer support or to raise questions, and that I have taken every single one of them into account, and I take everyone very seriously. And it is through going over these documents and listening to these voices that I made my decision. That is why I would also ask you that while you will not and may not, some of you, agree with my decision, I would humbly ask that you respect the decision that I made, and I hope you know that the conclusion I came to only came about after giving serious and open-minded consideration to every viewpoint and to every voice.

“I was not here four years ago when this director came forward for confirmation. I wasn’t here two years ago when people started to raise questions about his ability to lead. But I’m here today, and I take my advise and consent responsibilities very seriously. This is the responsibility that I think we have – to ask all the questions, to leave no stone unturned, and to remember that this is not about a temperature check or looking at what percentage of the testimonies are for or against – it’s about taking the information that we have, it’s about looking at what’s best for not only the department, but our State, and making a sound decision. And as a result of what I have seen and what I have known, it is truly with great sadness that I cannot support the re-nomination of Director Young.

“Thank you, Madam Chair.”

Senator Trimble rose in favor of the nominee and stated:

“Madam Vice President, I rise to speak in favor of Peter Young, the integrity of the confirmation process, and what is good for the State of Hawai‘i.

“Colleagues, spectral evidence has not been allowed in a court of law in the United States or a colony thereof in more than 300 years. It seems strange that we would not hold ourselves to the same standard. But let me go on for a moment, if the confirmation process were about Peter Young, we would look at his accomplishments, we would look at what his constituents say. And if we did that, if we looked at it, we would say, ‘By golly, how in the heck did that guy accomplish so much with so little resources.’ And I think it is only fair, since we determine how much is appropriated along with the House, what he has had to work with. From the very first budget session he has asked for more money for the small boating program. It is unfair for some of us to stand up and criticize him when in fact we didn’t approve the request in the budget he made. In fact, we eliminated the second dam inspector position. Most of the things that we criticize Director Young for not doing could have been done if we had seen fit to give this department that we say is so important some more resources to accomplish its goals.

“If this Body were truly concerned about employee turnover as significant in determining good management practices from bad, we have to look no further than the Legislative Auditor’s Office. If you compare the numbers of employee turnover at the Legislative Auditor’s Office, you might be surprised that DLNR does not look so bad by direct comparison.

“You know, you can talk about the diversion of money from the small boating program to DOCARE – a practice that has been going on for more than 10 years, probably closer to 15 years – and you’ll probably find out in the committee report that when the small boating harbor was moved from the Department of Transportation to DLNR and the marine officers of the DOT were moved to DLNR, that an agreement was struck with full knowledge of the Legislature that money from the small boating program would go to fund enforcement positions. This is not new for members of the Senate. It was not new for me working for DBEDT. So I find it surprising that you are surprised.

“If you looked at the revenue of the small boating division, which you say you’re familiar with, I find it surprising that you don’t separate out revenue from places like the Prince Hotel. And if you did that and you compared the volume of that to what is going to DOCARE, maybe your criticism of Peter Young would be somewhat muted, because the transfers from the payments made by the owners of the small boats is not as significant as you would like people to believe. It is not a new practice. It’s one that Ways and Means staff has known about for over a decade. It is unfair and unjust for you to lay burdens like this at Peter Young’s feet.

“I’m deeply troubled by something that was brought up three times before, but let me go back to part of something that was referred to four or five times but nobody really got up and before his colleagues said what was actually in the committee report, where attorneys should be held to a higher standard than ordinary folk. It is relevant to this discussion as I will show. And I find it interesting that it was penned by the Chair of the Judiciary Committee, who in fact is not an attorney, because it might have some relevance to some people in this Chamber who are attorneys. So, whenever you see or hear the word ‘attorney,’ think Senator or Senate President. ‘Public confidence in law and lawyers must not be eroded by irresponsible and improper conduct of a lawyer. It has been noted in the past and continues to hold true today that when explicit ethical guidance does not exist, a lawyer should determine his conduct by acting in a manner that promotes public confidence in the integrity, efficacy and efficiency of the legal system and the legal profession. A consequent obligation of lawyers to maintain the highest standards of ethical conduct. Your Committee finds that a lawyer should strive to avoid not only professional impropriety, but as important, also the appearance of impropriety.’

“The reason why I bring this to our collective attention is that when Peter Young was put under oath, you know you might find that somebody is trying to figure out before he gives an answer to your question, why you’re fishing and what you intend to use it for. And when you authorize, or the Senate President authorized, the subpoena of somebody who probably would have been willing to come down and testify anyway because it allowed him to lay out his case and shift the blame to DLNR from his client, you kind of have to wonder what in the heck was going through their mind?

“You know, this truly troubles my constituents. They feel that the confirmation process was not a confirmation process but was akin to the use of spectral evidence just as they did in 1692 in Salem and they called it the ‘Salem witch hunts.’ It’s not about performance; it’s about levying blame. I think that is sad. I think the process has been misused. I think when you

look to confirm or not to confirm, employee morale is important; but in any department which is undergoing change, there will always be among a portion of that bureaucracy, resistance to change.

“The most important thing that we can look at in confirming Peter Young is his list of accomplishments. That is what the people expect. That is what the editorials in both daily newspapers refer to. How can we dismiss it? What is going through our minds?”

“We exist to serve the people that elected us to do what is best for Hawaii. And what is best for Hawaii – one has to consider the bottom line, regardless of the rhetoric – is what is the list of accomplishments? When you look at that, colleagues, I think you have to come to the conclusion that Peter Young does merit your vote.

“Thank you.”

Senator Fukunaga rose to speak in opposition as follows:

“Madam President, I rise to speak in opposition to Gov. Msg. No. 276.

“Others have spoken to various problems within various divisions. When I met with the candidate, I did let him know that I had concerns regarding some of the issues involving the department’s DOBOR division and said I was prepared to maintain an open mind during the Committee’s deliberations. We had extensive testimony and lengthy hearings. However, one thing that was truly shocking to me was some of the information that I learned as a result of some of the subpoenaed documents and the testimonies from subpoenaed employees of the department’s Bureau of Conveyances.

“My biggest concerns revolve around the installation, implementation, and development of the so-called new computer system that was really going to be designed to bring the bureau into the 21st century. What we learned during the discussions that we had with those witnesses is that, first, questions were raised last Fall indicating that the bureau’s database could be accessed remotely by unauthorized users. Second, if the bureau’s database contained any features which could thoroughly document and track all users and transactions, then the bureau’s own employees were unaware of such a feature. This is the kind of feature that most financial institutions and others who maintain large databases of information would find almost impossible to conceive of not having. It’s especially important when you consider the importance of accuracy and assuring that the State of Hawai‘i’s electronic records cannot be tampered with by any unauthorized users.

“Third, we found that computers belonging to private sector companies had been attached to the Bureau’s network, raising the question for me, ‘What purposes do these devices serve, and for whose benefit?’

“Based on information that we received in executive session (unlike what has been characterized as our not providing the nominee with an opportunity to respond to these questions), I did pose questions to the nominee asking whether or not he had responded to recommendations made in conjunction with an internal investigation that his own department had conducted in October 2006. I asked specifically whether or not the department had begun amending its administrative rules to ensure that proper rules were in place to govern the use of this database system. I asked whether or not the department had replaced the old fee schedule in place for use of its microfilm records accessed by individual private sector and individual

citizens prior to the installation of the new database. I also asked whether or not the department had executed written contracts with those who were authorized to use the new system. Finally, I asked whether or not the software vendor for this system had been asked to take a look at the system’s ability to provide data and image transfers and whether or not the programming services, that had been either donated or provided on a pro bono basis by an external private sector company, were in fact fulfilling the uses of the system that had originally been designed.

“Unfortunately, at that time, the nominee’s responses were less than satisfactory. He was unable to respond to those questions. Following that, the Chair of the WLA Committee submitted to the Department of Land and Natural Resources a request for documents that would otherwise respond to the questions that the nominee was unable to answer during the confirmation hearing. This was on Wednesday, April 18th. The department responded with a series of documents on Friday, April 20th. We reviewed the documents and found that many of the questions we had could not be answered by the documents provided. The Chair submitted a further request to the department for documents which would help us answer the questions that had been posed during the hearing. To date, no further documents have been received from the department.

“I think that this really raises a very troubling set of circumstances. When questions are posed, I would normally think that if there are answers that can be obtained from the production of documents, which anyone would assume – whether they are contracts, whether they are fee schedules, whether there are any other kind of administrative procedures – that these should be forthcoming immediately. Certainly, they would lay to rest many of my questions.

“What is troubling is the absence of any further information. At this point, when I look at the state’s responsibility to safeguard the sanctity and the security of electronic records that we are accountable for, which unlike the land, the water, or other kinds of natural resources that you can see in physical form, it seems to me that we owe a higher duty to be responsive in maintaining the security of those electronic records. And so, I would say in response to one of the prior speakers, we really should do the right thing and we should call for a proper accounting of the use of state assets for which the state is ultimately responsible.

“Having not received any information that I can otherwise base my decision upon, to come to a favorable conclusion, I must regretfully say that at this time I cannot support the nomination of the nominee for another term. Thank you.”

Senator Slom rose in rebuttal and stated:

“Madam President, a few brief rebuttal remarks.

“Colleagues, focus . . . focus . . . focus. You’ve heard from those that say they cannot and will not support the nominee, but what is it that you heard? You heard their concerns. You heard questions that were raised, assertions that have been made, allegations unproven, and questions. And yes, we all have questions and the longer we keep any individual here, the more questions we would have, if that was our objective.

“Couple of things that I have to respond to, though. First of all, I thank the Chairman and members of the Committee for quoting me so frequently. I just wish they’d quote me more accurately. For example, when I said about the vacancies that some of the people that left – and I said ‘some of the people,’ I think the record will show – it may be a good thing. And I’ll stand by that. But you know, when we’re talking about the rank

and file, who is the rank and file? Is the rank and file just those people that came to testify against the nominee or does the rank and file include the many hundreds of employees that support the nominee, many of whom were not allowed to speak. I would suggest that they're all the rank and file. And this idea of trying to divide people up, as we have seen in other bills, I don't think really serves a positive purpose.

"And by the way, I just wish that we would spend as much time on poorly drafted erroneous and questionable bills that we pass out of this Body because questions are raised, issues are presented, troubling, troubling ideas are brought before the Body, and then we usually vote, and it's 23 to 2 in favor. On a good day, it's 21 to 4. And then we find out a couple weeks later, or months later, oh my gosh, the bill was defective! What a surprise! So maybe when we're going through this process of how we're going to do things differently, let's apply it to legislation as well, because I think that's important.

"The management style of this nominee has been debated most of this whole time. And I, for one, said that may be a legitimate concern or something that we can talk about but should not be the basis for whether or not that individual is confirmed. I would say, and again my words were used to say that the director, possibly if he is guilty of anything, was naïveté and relying upon others. That's because, as he stated to us many times, he is not a micromanager. He believes in the integrity of other individuals and gives them an opportunity to take responsibility themselves and to do what needs to be done. What I suggested was maybe he should have paid a little bit more attention to those individuals he thought were going to join the team and really had the idea of improvement to this department at heart, rather than their own agenda.

"And so, I never said that there was no legitimate concern or differences with his management style, but overwhelmingly he has moved this department ahead, and no one has challenged the accomplishments that he's made. All they've said simply is, 'Well he should have done more,' and these unanswered problems for 20, 30 years, 'He should have solved them.' That's what they've said. Why didn't he do that? Why didn't he take care of the vacancies?

"If we want to look at vacancies in state government, to be fair maybe we should look at other departments in state government and see what the vacancies are there, and see what the problem with turnover is there, and see why people don't want to work when they have to go through a colostomy to be approved. For all the boards and commissions, we're really lucky that we get 400, 500 people to serve in these non-paid voluntary positions, because sometimes we talk not only about their character and their shortcomings, but we bring their families into it. Thank God we haven't brought their dogs into it, because that would be a real serious situation.

"The statement was made that as a criticism and as part of his management, that, quote, 'He fosters voluntary compliance,' unquote. My God! Fostering voluntary compliance! Oh, wait a minute! Wait a minute! Isn't that the whole basis of the Internal Revenue System? Voluntary compliance, but if you don't do it then they come after you? And if people didn't do what was supposed to be done and didn't follow the laws, Peter Young came after them. That shows by the administrative action and legal action that was taken. I would much rather have somebody there that believes in voluntary compliance than someone who is dictatorial and says, 'You will do this; you will do that.'

"And how about on-the-job-training? That was another criticism. Well, first of all, I guess there're several of us in this Body that haven't had any on-the-job-training – we haven't

learned anything, we haven't changed anything. Because what was the criticism? The criticism was that four years ago, a lot of these individuals and organizations, probably some of you sitting up in the gallery, did not trust, did not believe, did not want this guy. So the statement was made, 'Only because there was a threat, he changed.' Well, that may or may not be true. The bottom line and the most important thing is he changed! He responded! He listened! He did things! Is that worse than not changing and not doing anything and not being flexible? I think not.

"I would want someone, in any position, including the Governor of this State, to say to us, 'You know, I just learned something the other day. I went out to Waianae and I learned something there. I went to Maui and I thought I knew all the things, and I learned something there. I went to the Next Step Shelter and I learned something there. That's on-the-job-training. Why should that be a negative thing? As far as his responsibilities, though, he knew what they were and he did them. Our criticism is we just didn't like some of the things that he did and we didn't like the ways that he did them.

"So I see this negative opposition as grasping at straws – as looking for something. We couldn't find a smoking gun. Now we all agree on that. There is no smoking gun. He's not the subject of any investigation. We all agree on that. He initiated the investigations outside. We all agree on that.

"And one good thing that did come from our behind-the-scenes discussions and all, we all – all five of us – agree that there was not a sense of urgency at present in the investigation that was ongoing by the Attorney General's Office, but when the Attorney General himself came to that hearing and he heard about our concerns, particularly about security and computers, what did he do? He immediately . . . that was on a Friday when he came to see us, and by Saturday those computers were in the custody of the Attorney General's Office. He acted too. He listened to us as a Committee. That was a good thing that we did. We expressed a concern, there was immediate action taken. At no time did the director ever try to block, slowdown, change, or divert any investigation into his department. Quite the contrary – he called for it; he supported it; he still supports it.

"We're also in agreement that these investigations are ongoing, so we have nothing at this moment that has been defined or been proven except allegations and assertions, troubling questions, and other things that we think about in our mind.

"By the way, some people didn't like the answers that the nominee gave. And as I've said, I'd probably answer some of the things differently. He was under oath, so what he spoke was absolutely the truth. And he was given a standard that no other conferee has been given, before or since. But he was under oath. And there's been no evidence that what he said was not true. There was evidence that we would have liked, perhaps, documents in a different format, and that is true. But that's not a knock against the nominee, I don't think. I may be wrong.

"The good Senator from Waikiki talked about the funds in the boating special fund. And again, focus, and let's remember that the expenditure of those funds, first of all the creation of the special fund, came from this Body. The expenditure of those funds came from this Body. The things that were done, the budgets that were denied, the extra personnel sought, the money for enforcement was denied by this Body! He made the effort. One of the witnesses said, 'If he was so good, he would have achieved what he wanted to do.' Even the Governor doesn't achieve all the things she wants to do, and I think we all agree she's pretty effective.

"It takes three to tango – the Executive Branch, the Judicial Branch, and the Legislative Branch – and this year we're seeing a struggle for power. Are we all going to be co-equal? I don't think so, because the Legislative Branch is trying to take more power, make more decisions, and in so doing has done the very thing that we have criticized others – and that is micromanage. We want to get into each department. We want to get into each director. We want to tell them, 'Well, you should have done this, and you should have done that. And this is the kind of meeting you should have and this is what you should do for every employee, and anybody that complains about anything, you should take care of them.' That's what this is all about.

"And so at the end of all this discourse, and I don't know if there's anybody else going to stand up, but so far I ask, 'Where's the beef?' And I'm reminded of the old jazzy song, 'Is that all there is?' Because if that's all there is, folks, there is no reason for you to vote down this nominee. Have your concerns, have your displeasure with some of the decisions that were made or not made, as do his supporters, but do not disrespect these people that say, 'We want him. We believe in him.'

"And finally, again, Mr. McCorriston. I do not doubt my Chairman's explanation or his beliefs, but I will tell you this. One of the explanations was because this Body has been trying to pass good, stronger dam safety legislation. It was thought that Mr. McCorriston could add something to that discussion. That's like saying, when we talk about child molestation, let's bring in the attorney for the child molester because he can add something to the discussion, too. You mean to tell me there are no other attorneys in this state, there are no other people that we could have brought in to talk about dam safety? Only the one man who has a client who's up to his eyebrows and beyond in complicity, and who is trying to make this state pay for his client's mistakes and errors, and who will use, if you vote down this man today, will use that, sure as I'm standing here before you, to say, 'See, the director was incompetent, even the Senate says so.' And you will be handing something to this attorney and you will be taking something away from the victims on Kauai, and you will disrespect not only Native Hawaiians and children and environmentalists, but the victims on Kauai. That's what you'll do if you vote him down now because that's what it's come down to. Mr. McCorriston and his client have become major players and they should not have been. Shame on us! Shame on us! We should not have done it.

"Now, if after all this you still decide to vote 'no,' that's your conscience, that's your prerogative. I'll still joke with you tomorrow. I'll still sit next to you in Conference Committee. I won't think anymore ill . . . oh, but wait a minute – I do remember after the Margery Bronster incident, the next year, which was an election year like next year, seven Senators were defeated, three decided to pursue other careers and vocations. The public is watching. They are waiting.

"So yes, let's do the right thing. Thank you, Madam President."

Senator Sakamoto rose in opposition to the nominee and said:

"Madam President, I rise in opposition to the nominee.

"The previous speaker talked about focus. My primary focus will be on the dam safety issue, specifically the Kaloko Dam breach in 2006. I believe the people of this state want to sleep safely at night. I believe the people of this state – whether they live by a dam, a stream, an ocean, or any natural resource – want to sleep safely at night . . . people died. People don't want

insecurity. I believe people of this state in the past, today, and tomorrow, expect there to be proper inspections, proper classifications of dams, proper mitigation . . . people died. People have an expectation of state government. The Dam Safety Act of 1987 gives the Department of Land and Natural Resources the responsibility of inspecting dams. Obviously, this does not mean Peter Young himself has to walk out to every dam, or inspect every stream, inspect every burial site, inspect everything, but people do expect the leader of the Department of Land and Natural Resources to protect them when they sleep at night . . . and people died.

"This wasn't an old issue from 40 years ago, but it is an old issue and there's no question resources are part of the picture, and in no way am I absolving others of any culpability in what happened, but certainly the American Society of Civil Engineers in March 2001 did issue Hawaii a D grade for our state regulated dams and that continued. In December of 2001, the DLNR engineers sent a certified letter to Mr. Pflueger related to Kaloko Dam Reservoir, but that wasn't the first issue. Way back in 1984 there was a documented report relating to the Kaloko Dam issue. The department knew. The leader of the department either knew or should have known.

"People talk about the nominee's accomplishments. But this isn't about somebody standing in front of an orchestra, or behind an orchestra, or being in a parade and taking credit for the parades either before him or after him. This is about taking responsibility for parts of the parade that he either orchestrated or, perhaps in this case, failed to orchestrate.

"In March 2005, again the American Society of Civil Engineers issued a D grade for Hawaii's regulated dams. In October 2005, and thanks to our local media, they brought the issue before us. They presented the bigger picture – '22 structures in dire need of repairs.' They published big pictures and maps, a full page of them. No one should have ignored this. Certainly all of the people in affected areas were saying, 'Am I safe; does this affect me?' People died . . . people died.

"It's reported that the dam safety engineer said in October 2005, 'We have been very fortunate we haven't had any major dam failure here.' And who is responsible? Those in the department can all say, 'not me.' It's been also reported in the media, 'State got dam complaint three weeks before it burst.' And I'm not here to say if this is right or wrong, but if it is indeed right, apparently a Sierra Club conservation manager had reported a problem with the Kaloko Dam leaking . . . people died.

"People want to be safe. People expect our state government to assure their safety . . . people died.

"An expert in the Report of the Independent Civil Investigation (Vol.1, p. 160) that was commissioned says, 'In my opinion, it is likely that a visual inspection of Kaloko Dam and its appurtenant facilities by qualified persons would have identified the lack of a spillway in the reservoir. Furthermore, because of the limited etc., etc. The lack of funding' – yes, it's an issue – 'apparently had led to difficulties in management of the program and in implementation and enforcement of the program's requirements. But,' he concludes, 'Notwithstanding the above questions, in my opinion, a more aggressive program of dam inspections under HRS 179D that would have included regular dam safety inspections of Kaloko Dam, would probably have allowed for early identification of the potential failure of the dam and allowed correction of the deficiencies leading to such failure.'

"My focus – even with all of the other things people say, is there a smoking gun? – perhaps because I'm a civil engineer,

perhaps I'm more sensitive to these issues, but I believe the people of Hawaii feel like this indeed was a water cannon blast that created a canyon where it didn't have to be. This is not to say the state is culpable in itself, but that the state could have prevented this . . . people died.

"We need to do better and I believe, sadly, Mr. Young, who was our leader, perhaps not everything was in his control, didn't do everything he should have . . . people died."

Senator Ihara rose with reservations and said:

"Madam President, I rise to express my reservations on the nomination of Peter Young.

"Madam President, I want to explain the process I used in deciding how I would vote on this confirmation. My vote turns on the scope and totality of the information I used to base my vote. I've reviewed the public testimony submitted to the Water Land Committee written and oral. I have reviewed much of the video tape of the hearing, those five days. I've also read all the transcripts of executive session testimony taken under oath, and I've listened to the audio tape, which is the only source of testimony submitted in the executive session by the Ethics Commission investigator. I have also met with and have spent many hours discussing with several key subpoenaed and other key individuals who are privy to the situation at the Bureau of Conveyances.

"One approach we could use in deciding whether Mr. Young should be reconfirmed is a weighing or balancing approach which the Governor is suggesting – take all of Peter's accomplishments and all of his shortcomings and weigh all of this together to see whether in totality Mr. Young has done more good than bad. I believe, however, that there are certain management qualities and actions that must be considered outside of a balancing approach. For example, this might include failure to meet core requirements, core management standards fundamental to the job of the Director of the Department of Land and Natural Resources, such as managerial malfeasance or nonfeasance.

"There is also the matter of public vs. confidential information. I have made a clear distinction between information that is public – written or oral testimony submitted to the Senate Committee – and sworn testimony submitted in closed executive sessions, including written materials distributed there and subsequent conversations held on these closed door subjects.

"Before the confirmation hearing started, I decided to base my vote only on public information available to the public. I would allow the confidential, off-the-record information to inform me and provide valuable background information for viewing the confirmation process, but not be used to base my vote. This is not an easy thing to do. It's like being on a jury, having heard all the testimony and the judge says, 'Strike the following information and disregard it when making your decision.' It's not an easy thing to do, but approaching the confirmation process from the beginning with this public vs. confidential distinction has made it easier for me to separate those two kinds of information. I believe that choosing to exclude confidential information from my decision making is in part a public policy decision, but this to me is essentially a political decision – political in the large and publicly responsible sense.

"Madam President, I have long been concerned about the health of our system of politics and representative form of government. I believe our democracy is in jeopardy – in particular the disconnect between the public and their elected

representatives. I believe the public has too much distrust of their own government. I have sought to increase public transparency and accountability in government. I believe serious consequences can result if decisions are made based on secret information. Sometimes it is necessary, but I think it does get dangerous. It's most easily seen on the national level, where I often question executive decisions and why they are made, because many of those decisions are said to be in our best interests but are based on private information.

"Having chosen to use only public information in making my decision, I have decided that there is not enough public information that will allow me to vote to reject the nomination. I have weighed the significant accomplishments of Peter Young and his commitment to resolve remaining issues in the department. Balanced with these accomplishments are the significant shortcomings and his inability to resolve major ongoing problems that have hindered the progress in the department.

"Based on public information alone, it's a close call for me, and I have decided to reluctantly support Peter's nomination. On public information alone, I believe others can come to a different conclusion, and I will defend the reasonableness of a vote to reject. The truth of the matter, however, that there is much important information in possession of Senators that is not available to the public, this is confidential and off-the-record information. Much of this confidential information is sworn testimony given under oath as required by the Attorney General and the Ethics Commission to protect ongoing criminal and ethics investigations.

"Madam President, I could have chosen to include confidential information in my decision making, but I did not. However, based on all the information, including sworn confidential testimony and other off-the-record information, I could have decided that Peter Young should not be confirmed. The confidential information allows me to conclude that Peter Young has mismanaged certain areas of his department – in particular, the confidential information when added to the public information leads me to make conclusions regarding Peter's actions and non actions regarding the Bureau of Conveyances. I believe Peter Young is responsible for allowing improprieties and corruption to continue at the bureau. If all the confidential information was available to the public, I would surely vote to reject the confirmation of Peter Young. However, I have chosen to constrain the information I used for deciding my vote.

"Based solely on public information, I reluctantly support Peter Young's confirmation. Thank you, Madam President."

Senator Hooser rose to speak against the nomination and stated:

"Madam President, I rise in opposition to Gov. Msg. No. 276.

"Much has been said here today about this very serious discussion or decision we're making. People have talked about meetings behind closed doors, about disgruntled employees, about the impact of unions and labor, about smoking guns, and about investigations. Contrary to what the prior speaker said, the good Senator from Kaimuki, and the conclusions he came to, I've looked at the same information and decided to base my decision purely on public information, and I firmly believe like many of our friends here in the audience and the Floor here today that good people, people of high integrity, credible people can look at the same facts and information and come to different conclusions.

"I decided that I don't need a smoking gun. I don't need an investigation. I don't need to participate in the closed door hearings, though I respect the reason for them. I've spoken to no disgruntled employees, no unions have come lobbying me for my decision, and yet I've come to the conclusion that I cannot support the nomination of Peter Young to this position. And I've come to that conclusion as many people here earlier today said we should – that we should base our decision on our constituents and the residents in our state and our community. Leading up to this meeting today, I've spoken to many, many people, Mr. Young and others who've come by the office, like all of us, asking for support. My response has been consistent in that if my decision whether or not to support Mr. Young was to be based on the conduct of the Department of Land and Natural Resources and my community, I would be unable to do so.

"Kauai has been mentioned frequently in today's discussions, and I think if people look at the testimony that has come in – the hundreds, if not more, testimonies in support – you'll find the leaders in the community of Kauai, the environmental leaders, the people I work with and know and have been friends with for years, you'll find that generally speaking there is not the support that there might be in the rest of the state. And the reasons are many, but basically it comes down to the conduct of the department and Mr. Young, as the leader of the department, I hold him accountable for that conduct.

"Yes, there have been years and years and years of problems. Yes, perhaps the resources have not been sufficient to meet the needs. Nevertheless, Mr. Young has had four years, and still the department, in my opinion, in many ways is dysfunctional. As I experience personally on a weekly basis, I'm in contact as a result of complaints from constituents. I have a constituent who lives on the North Shore of Kauai who for years, without exaggeration, for years has been trying to get the department to enforce the certification of the shoreline laws as they're written, in my opinion, clearly in the law today. For years the department has resisted this and this person recently won a Supreme Court decision supporting her position, and still to this day the department does not follow the spirit and intent of that court decision, according to my friends and colleagues who are on the North Shore of Kauai.

"I got a call a few days ago from this person who said she recently got a letter signed by Mr. Young stating that she and a handful of residents did not qualify to appeal another shoreline certification decision. And that, in and of itself, is not unusual, but this letter took almost a year-and-a-half from the time the request was made for that decision to be made. And that's not a year-and-a-half to settle an appeal – that's a year-and-a-half to decide whether or not they had standing, if you would, to appeal.

"If you head around my island and you go to Hanalei Bay, you'll see surf schools that dominate the coastline. For at least two years, residents of the community and myself included have been asking the department to please do something about this illegal commercial use of our natural resources. The answers we get is, 'We're working on it, we're working on rules,' and in the meanwhile, these surf schools dominate the coastline and disrupt activity from others – local residents.

"Kaloko . . . the tragedy at Kaloko has been raised on numerous occasions here today, and it was alleged that Mr. McCorrison used this as an opportunity to deflect attention from his client, Mr. James Pflueger, and the responsibility that he may have in this situation toward the state. And as the Senator representing District 7, Kauai and Niihau, I'd like to say clearly that it is my clear opinion that the State of Hawaii,

the County of Kauai, and Mr. Pflueger share significantly in the responsibility for the tragedy at Kaloko and all should pay a price for the actions or inactions that they participated in which resulted in this tragedy.

"As I go around the island, we can talk about Waiakea Canal where boaters, recreational boaters, have to get out of their boats and push it across the sand because the state has been unable to clear the canal for the boats. Again, years of complaints, years of asking, and the funds for this have been made available but still the work does not get done.

"Kikiaola Boat Harbor and Kokee, and I had spoken to Mr. Young about this on many, many occasions. The Kokee master plan has dragged out for years, and years, and years – the controversy with the cabins. But really, in my opinion, the Kokee master plan is the tipping point in terms of the department and its action and inaction, and after speaking with Mr. Young directly and after many, many public hearings, meetings where hundreds of residents showed up, Mr. Young and the department did make efforts to respond and to meet community needs. And I was happy to see that, only to have the department drop the ball seemingly entirely after that point.

"To me, I don't need a smoking gun. I don't need an investigation. The other evidence, if you will, the other testimony I think is meaningful, but I look at it strictly from my perspective as the Senator representing District 7, and I suspect other rural communities who were dramatically affected by the Department of Land and Natural Resources that the response from the department is the same. I'm 100 percent convinced that the Department of Land and Natural Resources is not being managed properly, and Mr. Young is in charge. He's been in charge for four years. Four years ago we gave every nominee, every cabinet nominee from the Governor's Office, a pass to do their job. He has had four years to do it. Is it his fault? We can blame it on history, we can blame it on resources, we can blame it on the size of the department, but Mr. Young has been on the job for four years.

"This is a difficult decision – I like Peter Young. I don't doubt, whatsoever, that he works very, very hard. I have no doubts whatsoever that he cares deeply about our natural resources and about our community. And I have no doubt that he is doing his very best. But, in fact, that is not enough. Again, if I were to base my decision on my experience with the department in my community, I would be unable to support the nomination and that is why I'm speaking so today.

"Thank you."

Senator Kokubun rose in rebuttal as follows:

"Madam President, just a short rebuttal if I could.

"After hearing different pronouncements today, I want to really just assure everyone about some terms thrown around – 'Was this a grand jury indictment?' or 'Was this an investigative committee?' or even more provocative, 'Was this a witch hunt?' Let me assure all of you that the Committee did not conduct itself in this manner – not at all in this way. Again, the idea or the goal of the Committee was to conduct this in the most efficient and respectful manner possible, and I think we accomplished that. We disagree on some of the points and I think that's what this Body needs to resolve.

"Let me also say that with respect to the fact about the nominee testifying under oath, that was really a choice that was provided to him and he decided to go under oath, which I respect completely and I honor him for that because that was not something that he had to do.

"Many people have talked about weighing the facts and I completely agree. As a member of the Committee, we did have access to the executive sessions. It's very, very difficult for me to discount the information that was brought forward, particularly with respect to the investigations. And yes, they are not concluded, and yes, they will go on, but I think those were very troubling in the sense that it really opened a can of worms in the sense that this goes very, very far and wide with respect to our security of data.

"So, like all of you, I'm weighing the facts and I have come again to the conclusion that we must have a change at the Department of Land and Natural Resources for the betterment and the future of Hawaii. So, I ask that you not support the motion.

"Thank you, Madam President."

Senator Hemmings rose in rebuttal and said:

"Madam President, in conclusion I'd like to offer some points of rebuttal.

"It's been a long afternoon; it's been a good afternoon. We've all put our conscience on the table and we're going to make a decision soon.

"In regards to the assertion that the hearing process was not an indictment of sorts, well, the last time I looked at the Judicial Branch of government, indictments and grand juries are conducted behind closed doors, there is unilateral evidence gathering, and there is an inability of the proposed defendant, in this case the nominee, to defend himself. So, I would suggest to the previous speaker that everything he said is false, and the public is not going to be fooled. This process has been marred and it has not been a fair and just hearing process, but rather an indictment or sorts.

"The second point I think is incredibly interesting is that we gave the nominee a choice to be under oath or not. Was that a choice, Mr. Chairman? It's like saying, 'Well, we're going to let you tell the truth or tell a lie. How do you want to do it?' It wasn't much of a choice. I think the nominee did the thing he had to do under those circumstances, and if that fact indeed is true that you gave him a choice, that unto itself is unfair.

"Thank you, Madam President."

The Chair then announced:

"If there is no further discussion, we are going to recess to get the members who are not present and then we will resume taking the vote."

At 3:12 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 3:23 o'clock p.m.

The Chair then made the following observation:

"We have given all the members who want to be here adequate notice. We have paged the members who are not here and therefore we will begin. It's been a long afternoon, a long morning, and we will proceed.

"Members, an 'aye' vote is a vote to advise and consent to the nomination. A 'no' vote is a vote to reject the nomination. A Roll Call has been requested, so Madam Clerk will you call the roll."

The motion was put by the Chair and, Roll Call vote having been requested, failed to carry on the following showing of Ayes and Noes:

Ayes, 8. Ayes with Reservations, 1 (Ihara). Noes, 15 (Baker, Chun Oakland, Espero, Fukunaga, Hanabusa, Hee, Hooser, Ige, Kim, Kokubun, Nishihara, Sakamoto, Taniguchi, Tokuda, Tsutsui). Excused, 2 (English, Menor).

At 3:25 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 3:26 o'clock p.m., with the President in the Chair.

FINAL READING

S.B. No. 1947, S.D. 1, H.D. 1:

Senator Menor moved that S.B. No. 1947, S.D. 1, H.D. 1, having been read throughout, pass Final Reading, seconded by Senator Baker.

Senator Slom rose in opposition to the measure and said:

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

"While I understand this is an administration bill, I am still opposed to it. We have some very serious problems with this beverage deposit tax bill and the way it's being run – the fact that the state profits from it; the state has over \$25 million in excess revenues right now. People still are complaining that they're not getting their money back as we promised them, five cents per container; instead, the recyclers are weighing the containers and giving the consumers far less.

"The administration has hired additional people, has run up the expenses on this bill. We should have abandoned this bill and support real recycling, and force the City and County of Honolulu and the Mayor of Honolulu to institute curbside recycling as soon as possible without any additional penalties or charges.

"So, based on all of this information, Madam President, I cannot support this so-called emergency appropriation for an expansion of this tax. 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. 1947, S.D. 1, and S.B. No. 1947, S.D. 1, H.D. 1, entitled: "A BILL FOR AN ACT MAKING AN EMERGENCY APPROPRIATION FOR THE DEPOSIT BEVERAGE CONTAINER PROGRAM," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, 1 (Slom). Excused, 3 (Bunda, English, Nishihara).

At 3:28 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 3:30 o'clock p.m.

RECONSIDERATION OF ACTIONS TAKEN

S.B. No. 55, S.D. 1 (H.D. 2):

Senator Taniguchi moved that the Senate reconsider its action taken on April 10, 2007, in disagreeing to the

amendments proposed by the House to S.B. No. 55, S.D. 1, seconded by Senator Ige and carried.

Senator Taniguchi moved that the Senate agree to the amendments proposed by the House to S.B. No. 55, S.D. 1, seconded by Senator Ige.

Senator Taniguchi noted:

“Madam President, the House just changed a delayed effective date to ‘upon approval,’ so we’re okay with that.”

The motion was put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 55, S.D. 1, and S.B. No. 55, S.D. 1, H.D. 2, entitled: “A BILL FOR AN ACT RELATING TO DENTISTRY,” was placed on the calendar for Final Reading on Wednesday, April 25, 2007.

S.B. No. 840 (H.D. 1):

Senator Kokubun moved that the Senate reconsider its action taken on April 12, 2007, in disagreeing to the amendments proposed by the House to S.B. No. 840, seconded by Senator Tokuda and carried.

Senator Kokubun moved that the Senate agree to the amendments proposed by the House to S.B. No. 840, seconded by Senator Tokuda.

Senator Kokubun noted:

“Madam President, we are in agreement with the intended purpose for the bill. There were just some semantic differences and so we feel that this is appropriate. 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. 840, and S.B. No. 840, H.D. 1, entitled: “A BILL FOR AN ACT RELATING TO KIKALA-KEOKEA,” was placed on the calendar for Final Reading on Wednesday, April 25, 2007.

S.B. No. 1283, S.D. 2 (H.D. 2):

Senator Ige moved that the Senate reconsider its action taken on April 12, 2007, in disagreeing to the amendments proposed by the House to S.B. No. 1283, S.D. 2, seconded by Senator Sakamoto 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. 1283, S.D. 2, on the following showing of Ayes and Noes:

Ayes, 3 (Ige, Sakamoto, Baker). Noes, none. Excused, 1 (Whalen).

Senator Ige moved that the Senate agree to the amendments proposed by the House to S.B. No. 1283, S.D. 2, seconded by Senator Sakamoto.

Senator Ige noted:

“Madam President, the House made many technical nonsubstantive amendments. In addition, they did add a reporting requirement that would require the Department of Health and the University of Hawaii to report back on the status of the funds, and we agreed that this would be a good thing to add to the measure.”

The motion was put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 1283, S.D. 2, and S.B. No. 1283, S.D. 2, H.D. 2, entitled: “A BILL FOR AN ACT RELATING TO THE HAWAII TOBACCO SETTLEMENT SPECIAL FUND,” was placed on the calendar for Final Reading on Wednesday, April 25, 2007.

S.B. No. 1457, S.D. 2 (H.D. 2):

Senator Ige moved that the Senate reconsider its action taken on April 12, 2007, in disagreeing to the amendments proposed by the House to S.B. No. 1457, S.D. 2, seconded by Senator Baker 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. 1457, S.D. 2, on the following showing of Ayes and Noes:

Ayes, 3 (Ige, Baker, Chun Oakland). Noes, none. Excused, 1 (Whalen).

Senator Ige moved that the Senate agree to the amendments proposed by the House to S.B. No. 1457, S.D. 2, seconded by Senator Baker.

Senator Ige noted:

“Madam President, the only discrepancy in the two versions of the bill was the amount to be appropriated for the Developmental Disabilities Division, and upon further review, we agreed with the House amount.”

The motion was put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 1457, S.D. 2, and S.B. No. 1457, S.D. 2, H.D. 2, entitled: “A BILL FOR AN ACT MAKING AN EMERGENCY APPROPRIATION FOR THE DEVELOPMENTAL DISABILITIES DIVISION OF THE DEPARTMENT OF HEALTH,” was placed on the calendar for Final Reading on Wednesday, April 25, 2007.

Senator Sakamoto, Chair of the Committee on Education, requested that the joint referral of H.C.R. No. 89 to the Committee on Education and the Committee on Human Services and Public Housing; and the joint referral of H.C.R. No. 315 to the Committee on Education and the Committee on Transportation and International Affairs be waived.

Senator Sakamoto noted:

“The first measure, H.C.R. No. 89, relates to a master planning study at Leahi, and although the Senate made some amendments to our version, we feel the House version encompasses what we need.

“H.C.R. No. 315, expressing support for international education, passed unamended in the Senate as well as the House, so we would propose that it’s what we’ve agreed to in the past.”

The Chair then granted the waiver.

By unanimous consent, the following concurrent resolutions were placed on the calendar for Adoption on Wednesday, April 25, 2007:

H.C.R. No. 89, entitled: “HOUSE CONCURRENT RESOLUTION URGING THE UNIVERSITY OF HAWAII TO EXTEND ITS CURRENT LAND LEASE WITH

LEAHI HOSPITAL TO FACILITATE THE EFFECTIVE
PLANNING, DEVELOPMENT, AND
IMPLEMENTATION OF A CAMPUS-WIDE MASTER
PLAN FOR LONG-TERM HEALTH CARE SERVICES”;
and

H.C.R. No. 315, entitled: “HOUSE CONCURRENT
RESOLUTION EXPRESSING SUPPORT FOR
INTERNATIONAL EDUCATION.”

ADJOURNMENT

At 3:38 o'clock p.m., on motion by Senator Ige, seconded by
Senator Gabbard and carried, the Senate adjourned until 11:30
o'clock a.m., Wednesday, April 25, 2007.