

SCRep. 426-70 Judiciary on H. B. No. 1666-70

The purpose of this bill, essentially, is to amend chapter 443, Hawaii Revised Statutes, by replacing the functions of the attorney general as commissioner of the collection agencies and the present collection agencies advisory board, with a five-member collection agency board within the department of regulatory agencies, which will serve a regulatory, rather than advisory function.

Briefly, the following are the proposed amendments which **H. B. No. 1666-70, H. D. 1**, would cause to the present law:

Section 1: Sec. 443-1(a) is amended so that the definition of the word "board" will mean a collection agency board and not an advisory board.

Section 2: Sec. 443-2 is amended to place the board in the department of regulatory agencies. The five members on the proposed board shall all be appointed by the governor, consisting of two licensees and three non-licensees, in accordance with the present legislative intent to provide for broader public participation on regulatory boards and commissions by non-industry members. This, however, constitutes an amendment to **H. B. 1666-70**, which, in its original form, provided that the consumer protector shall be one of the five members of the board *ex officio*. Your Committee on Housing and Consumer Protection in **Stand. Com. Rep. No. 104-70**, with which your Committee on Judiciary is in accord on this point, stated that "[s]ince the consumer protector has investigatory and prosecutorial authority in the area of unfair or deceptive practices, your Committee finds that his membership on the board would be undesirable," so that he should retain an independent status. Thus, the bill provides, instead, that the fifth member shall be a non-licensee, thereby structuring the board so that its majority is not comprised of members of the collections industry and meeting the frequently voiced criticism that regulatory bodies too often are made up principally of members of the industry being regulated.

Section 3: Sec. 443-4 is amended to conform with other state boards with regard to organization, record keeping, meetings, quorum, vacancy, etc. This section also provides that members of the board shall not receive compensation for their services, except for reimbursements for traveling expenses incurred in the performance of their duties.

Section 4: Sec. 443-4 is amended to spell out the expressed powers and duties of the board. These include: (a) granting licenses to collection agencies, (b) denying, suspending, or revoking licenses or levying of fines, (c) making, amending and repealing of reasonable and necessary rules and regulations, and (d) enforcing chapter 443 and its rules and regulations. The provision for levying of fines is a further amendment recommended by your Committee on Housing and Consumer Protection, with which your Committee on Judiciary, because the same increases the flexibility of sanctions which the board may impose for violations of chapter 443, is in accord.

Section 5: Section 443-5, providing that necessary expenses of the board shall be paid by the state comptroller, is repealed as the board is placed within the department of regulatory agencies.

Section 6: Section 443-6 is amended to create a position of executive secretary for handling the board's administrative duties in lieu of the present commissioner of collection agencies.

Section 7: Section 443-7(5) is amended by adding that in case of a corporation, no license shall be issued unless one of its officers or directors has resided in the State for more than one year prior to the date of application. This provision, which is intended to place corporations on parity with individual or partnership applicants as to whom there is presently a residency requirement, was further amended by your Committee on Judiciary to include the resident manager or superintendent of corporations upon whom service of process may be made in the manner provided in section 416-131. Without this extension, the collections service of at least one established business (Dunn & Bradstreet, Inc., which

has no officer or director residing in Hawaii, but a resident manager) would be discontinued for non-compliance. Your Committee believes that this further amendment will not detract from the principal purpose of the residency requirement of keeping out “fly by night” operators.

On that subject, your Committee, not unmindful of recent judicial attention given to the question of residency requirements since the case of *Shapiro v. Thompson*, 394 U.S. 618 (1969), feels compelled to comment with regard thereto. Since that case involved a substantially different factual situation and legal issues (statutes denying welfare assistance to residents of less than one year) your Committee does not believe its result is applicable directly to the provision upon which it has undertaken to deliberate, and dictum therein would tend strongly to indicate that it does not. The Court said:

“We imply no view of the validity of . . . residence requirements determining eligibility to vote, eligibility for tuition-free education, to obtain a license to practice a profession, to hunt or to fish, and so forth. Such requirements may promote compelling state interests on the one hand or, on the other, may not be penalties upon the exercise of the constitutional right of interstate travel.” 394 U.S. at 638, n. 21. (Emphasis added).

Your Committee believes that it is obvious the residency requirement is intended to serve more of a purpose “than to chill the assertion of constitutional rights [i.e., interstate travel] by penalizing those who choose to exercise them,” *United States v. Jackson*, 390 U.S. 570, 581 (1968); and because collection agencies serve an essentially fiduciary function of receiving funds on behalf of the creditors they represent, themselves residents of the State or authorized to engage in the doing of business in the State, your Committee is satisfied that the prescribed residency requirement as a condition precedent to licensing serves to discourage those transients who might otherwise exercise less than honorable purposes from behind a veil of propriety afforded by one of the State’s corporate creatures, which is, therefore,

“necessary to promote a **compelling** governmental interest. . . .” *Shapiro v. Thompson*, *supra* at 634. (Emphasis supplied.)

Section 8: Section 443-10(b) is amended to provide that application hearings shall be conducted pursuant to the Administrative Procedure Act.

Section 9: Section 443-15 is amended to distinguish between “new” and “amended” licenses upon change of business name or removal to a new location, in which case the board shall issue an “amended” license conforming to the facts.

Section 10: Section 443-20 is amended by deleting the sentence, “Any statement relative to the financial affairs of any applicant for a license shall not be revealed by the commissioner to any other members of the collection agency advisory board.” This portion of the present statute will be rendered inapplicable by virtue of the collection agency board’s power to grant or deny licenses, the hearing upon which must be conducted pursuant to the Administrative Procedure Act.

Section 11: Section 443-21 is amended to allow the board to investigate complaints against a licensee, a function which under the present statute is performed by the commissioner of collection agencies, i.e., the attorney general.

Section 12: Section 443-23 is amended to eliminate collection fee and attorney’s fee or commission; provided, however, attorney’s fee or commission may be collected only after filing of suit. This portion of the bill is intended to reform the common practice of assessing multiplicitious charges against debtors under the “justification” of offsetting collection costs, in addition to the charging interest, even before suit is filed. All attorney’s fees and commissions collected by a licensee after suit is filed must be remitted to the attorney.

Section 13: Section 443-26 is amended to provide that all court actions for denial, suspension, or revocation of a license or levy of a fine shall be in accordance with

the Administrative Procedure Act. If the board determines that any licensee is guilty of a violation of any of the provisions of this chapter, his license may be suspended or revoked or a fine levied, provided that three members of the board concur in such determination. If the board determines that any applicant is not qualified to receive a license, a license shall not be granted, provided that four members of the board concur in such determination. This latter provision represents an amendment recommended by your Committee on Housing and Consumer Protection, with which your Committee on Judiciary is in accord. Your Committee on Housing and Consumer Protection further amended the bill to delete provision for a trial de novo in the circuit court on appeal from a decision of the board and substituted therefor a provision for appeal based on the record before the board with which your Committee on Judiciary is not in accord. Your Committee on Housing and Consumer Protection made this amendment because "[it] conforms to the provision for appeal from decisions of the board to the circuit court to accepted procedure for court review of decisions of regulatory boards and commissions." However, the Administrative Procedure Act prescribes the manner for judicial review of contested cases, section 91-14(a) of which provides, in relevant part, that "nothing in this section shall be determined to prevent resort to other means of review, redress, relief, or trial de novo, including the right to trial by jury, provided by law." The question of whether the act's provision for appeal from a preliminary ruling overrides provisions of a specific statute governing administrative agencies was raised but not decided by the Supreme Court of Hawaii in *Solarana dba Aiea Electronics vs. Industrial Electronics, Inc.* 50 Haw. 22 (1967). Your Committee on Judiciary, therefore, is constrained to limit whatever rights are available to aggrieved parties under the Administrative Procedure Act, and therefore further amended the bill deleting the amendment which would have limited such appeals to be conducted by the court without jury and confined to the record.

Section 14: The first two sentences of section 443-27 are amended to provide that

the board appoint a conservator in case of insolvency and allows the licensee to request a hearing if he disagrees with that determination by the board.

Section 15: Section 443-30 is amended by substituting the term "board" for that of "commissioner of the collection agencies", referring to by whom, when monies are collected, they shall be forwarded to the director of finance for deposit in the general fund.

Your Committee noted that although the immediately aforementioned amendment was made to conform the board's new identity to the title and status accorded it by the reform proposed by **H. B. No. 1666-70**, several other sections throughout chapter 443 to which substantive changes were not effected remain unaffected and therefore contain references to "collection agency advisory board", "commissioner of the collection agencies", or "commissioner". Your Committee, therefore, added a new section to the bill providing that the term "board" be substituted throughout.

Your Committee is in accord with the intent and purpose of **H. B. No. 1666-70**, **H. D. 1**, as amended in the form attached hereto as **H. B. No. 1666-70**, **H. D. 2**, and recommends that it be referred to your Committee on Finance for further consideration.

Signed by all members of the Committee.

SCRep. 427-70 Judiciary on H. B. No. 2046-70

The purpose of this bill is to expand the Department of Health's rule-making power to include such as are necessary to prohibit or control excessive noise.

Your Committee on Public Health, Youth and General Welfare, to which this bill was originally referred, converted the short form thereof and amended the title of the bill from: "A BILL FOR AN ACT RELATING TO CONTROL OF NOISE POLLUTION".

Under this bill, the Department of

Health would make such rules and regulations, including standards of excessive noise for different areas of the State, as are necessary to prohibit or control excessive noise caused by any person. The Department may also organize a county advisory excessive noise control association which would study excessive noise problems of the county and advise the Department of Health regarding these problems. The Department of Health may institute a civil action for injunctive relief to prevent any violation of the provisions of this bill. Any person guilty of making any excessive noise would be guilty of a misdemeanor.

Your Committee on Judiciary conducted an exhaustive hearing upon the subject matter hereof pursuant to its consideration of **H. B. No. 1681-70**, in consequence of which it is satisfied that legislation relating to the control of noise is not necessary — it is absolutely necessary.

Not only is excessive noise an annoyance, it is a detriment to health. Testimonies were received from “experts” upon the subject, from the University of Hawaii, the Department of Health, the American Industrial Hygiene Association, and members of the Mayor’s Committee on Noise Control. Your Committee also heard from businessmen, community leaders, and concerned citizens. It is evident that excessive noise is a matter of grave concern. It constitutes an imposition upon people at work and at their leisure; it interrupts the learning process in schools; and because its effects are cumulative depending upon a combination of sound levels and time exposure, it can cause a permanent loss of a part of one’s hearing where the exposure is at levels in the range to which we have become more or less accustomed to as ambient.

The principal objection to **H. B. No. 1681-70**, which your Committee on Judiciary considered, was that it provides for specific decibel levels, the exceeding of which, during certain periods of the day and for prescribed periods of duration, would constitute a violation of its provisions. Most of the “expert” testimonies indicated that such matters should prop-

erly be the subject of rules and regulations promulgated by an agency created for the purpose of prescribing, implementing and enforcing the same. **H. B. No. 2046-70**, as hereinabove stated, does just that.

Your Committee amended the bill by providing that the rules and regulations to be prescribed shall, in addition to including standards for different areas of the State, include standards related to the various sources of noise. It is anticipated that the resultant product will be on the order of the rules and regulations promulgated by the Department of Labor’s Division of Industrial Safety which has compiled a general safety code with supplemental chapters relating to boiler and pressure vessels, elevators, escalators, etc. Likewise, with regard to the subject legislation, it is anticipated that the Department of Health will prescribe a general code supplemented by separate chapters relating to the various sources of noise, including, but not limited to, aircraft, industrial, vehicular, and residential standards.

Your Committee is in accord with the intent and purpose of **H. B. No. 2046-70, H. D. 1**, as amended in the form attached hereto as **H. B. No. 2046-70, H. D. 2**, and recommends its referral to your Committee on Finance for further consideration.

Signed by all members of the Committee except Representative Shigemura.

SCRep. 428-70 Judiciary on H. B. No. 1810-70

The purpose of this Act, principally, is to constitute the chief justice as the appointing authority for referees of the Family Court, rather than the senior judge of said court as under the present law.

Your Interim Committee to Improve the Structure and Operation of the Judicial Branch, in **Spec. Com. Rep. No. 5**, considered this “an anomaly within the present judicial structure” because the chief justice is, under the constitution, the administrative head of the courts, and designates, assigns or appoints virtually every other significant position in the judiciary, except family court referees. The judiciary con-

siders referees as “adjudicating officers” who, although they work “under” the senior judge, are not subordinate to him; therefore, they should not be appointed by him to serve at his pleasure, but rather by and at the pleasure of the chief justice.

The bill also limits the appointment of referees to licensed attorneys, deleting reference to “such other suitable persons trained in the law”, and proposes to fix the salary of a referee at ninety per cent (90%) of the salary paid a full-time magistrate, in place of the present system of compensation which provides for annual increments pursuant to Chapter 77 (relating to compensation of positions for the classification plan set forth therein). This scheme is said by the administrative director of courts to represent the “present equity” after most recent salary adjustments for the judiciary following the last session of the legislature.

Your Committee is in accord with the intent and purpose of **H. B. No. 1810-70** and recommends that it pass second reading and that it thereafter be referred by your Committee on Finance for further consideration.

Signed by all members of the Committee.

SCRep. 429-70 Harbors, Airports and Transportation on H. B. No. 1452-70

The purpose of this bill is to eliminate registration of fishing vessels with the Department of Land and Natural Resources and to require payment of registration fees under the boating laws to the Department of Transportation. To accomplish this objective certain sections of Chapter 189, Hawaii Revised Statutes, are repealed, and Section 267-12, Hawaii Revised Statutes, is amended.

Under Chapter 189, Hawaii Revised Statutes, the Department of Land and Natural Resources presently issues permits authorizing the use of certain vessels for commercial fishing and collecting fees for said registrations. Chapter 267 Hawaii Revised Statutes requires certain vessels, including those used for commercial fish-

ing to be registered with the Department of Transportation, although no registration fees are assessed against such vessels.

The bill would not only eliminate the current inconvenience of registering a fishing vessel with two state agencies but also will be less expensive for the owners. The Department of Land and Natural Resources' fee for issuing a permit is 25c for each foot of vessel length. Therefore, it currently cost \$3.75 to obtain a permit from the Department of Land and Natural Resources for a 15-foot boat. Under this bill it would cost only \$1.00 for a 15-foot boat to obtain a Certificate of Number from the Department of Transportation. The savings would result in registering all size commercial fishing vessels.

Your Committee is in accord with the intent and purpose of **H. B. No. 1452-70, H. D. 1**, and recommends that it be referred to your Committee on Finance.

Signed by all members of the Committee.

SCRep. 430-70 Select Committee of Oahu Representatives on H. B. No. 2013-70

The purpose of this bill is to provide an appropriation for the planning, engineering and construction of suitable facilities, including restrooms and stands for the viewing of aquatic sports at Anuenue Island in the general area of Sea Plane Runway 4-32.

Your Committee finds that the Sand Island — Keehi Lagoon area is already a center for power boat racing, water skiing and the aquatic sports. The only marine stadium on Oahu, The Waikiki Natatorium, is to be razed in the near future to provide more park area. A new facility on Sand Island will meet the need for a suitable replacement.

Your Committee is in accord with the intent and purpose of **H. B. No. 2013-70** and recommends its passage on second reading and that it be referred to your Committee on Finance.

Signed by all members of the Committee except Representative Loo.

SCRep. 431-70 Select Committee of Oahu Representatives on **H. B. No. 1909-70**

The purpose of this bill is to provide for payment by the State to the County of monies received by district courts for traffic violation "waivers". The bill applies only to counties whose populations exceed 100,000. Traffic violation "waivers" are distinguished from fines and bail forfeitures in that they do not involve court action, but rather concern the payment of traffic tickets, either personally or by mail. Under present law all funds from these sources are paid over by the district courts to the State director of finance. This bill requires the State director of finance to pay over all funds derived from traffic violation waivers annually to the county director of finance. The payment is deemed to be a realization of the county general fund.

Your Committee finds that the payment required by this bill is equitable since the county pays the costs of issuing traffic citations and collecting payments therefor.

Your Committee is in accord with the intent and purpose of **H. B. No. 1909-70** and recommends its passage on second reading and that it be referred to your Committee on Finance.

Signed by all members of the Committee except Representatives Alcon, Loo and Oshiro.

SCRep. 432-70 Select Committee of Oahu Representatives on **H. B. No. 1759-70**

The purpose of this bill is to provide an appropriation for planning and construction of a flood control system and a permanent bank on Kalihi Stream from Lunalilo Freeway to Nimitz Highway.

Your Committee finds that floods caused by the overflow of Kalihi Stream from King Street to Nimitz Highway have caused an estimated \$378,000 in damage since 1960. A request for flood control assistance for Kalihi Stream was made to

the U.S. Army Corps of Engineers in 1966. A 1967 report of the Corps of Engineers indicated that a flood control system could be constructed at an estimated cost of \$2.7 million. The State requested a further federal flood control study in 1968, and such study was authorized in that year, but the study has not been carried out for lack of funds.

Your Committee finds that the health and safety of the people of the Kalihi-Palama area requires an expedited flood control project funded by the State. The current estimate of the cost of this project is \$3.4 million. Your Committee has left the appropriation blank, for consideration by your Committee on Finance.

Your Committee is in accord with the intent and purpose of **H. B. No. 1759-70** and recommends its passage on second reading and that it be referred to your Committee on Finance.

Signed by all members of the Committee except Representative Loo.

SCRep. 433-70 Public Institutions and Social Services on **H. B. No. 1944-70**

The purpose of **H. B. 1944-70**, as amended herein, is to provide for the establishment and composition of a classification committee for Hawaii State correctional facilities. The committee shall classify inmates with respect to their assignment to the various programs and facilities within the correctional system.

Your Committee finds that modern rehabilitative policies can be best implemented in Hawaii through the establishment of a classification committee composed of all of the various specialists concerned with the rehabilitation and reintegration of prisoners. The committee established by this bill will consist of a parole officer, a probation officer, a vocational counselor, the superintendent of prisons, a representative of Hoomana School, and a member of the mental health team for courts and corrections of the Mental Health Division of the Department of Health. Further, an inmate's counselor at

the correctional facility is to be a member of the committee for purposes of classifying that inmate. All of these people can and should be included in making determinations toward the rehabilitation of prisoners. Further, since the designated persons are best equipped to assist the prisoners involved, their determination should not be subject to review by any higher authority.

Your Committee has amended the bill in the following respects:

1. The title has been amended to read as follows: "A BILL FOR AN ACT RELATING TO A CLASSIFICATION COMMITTEE FOR HAWAII STATE CORRECTIONAL FACILITIES." As originally drafted, the bill might be construed as applying only to the Hawaii State Prison. However, each prisoner should be dealt with within the broad framework of prison and satellite facilities available. Thus, a committee dealing only with one facility would be completely ineffectual. Section 1 of the bill has likewise been amended to insure that the committee's authority shall extend to prisoners throughout Hawaii's correctional system.

2. Section 1 of the bill has been amended to include within the composition of the committee a vocational counselor, a representative of Hoomana School and the counselor handling the particular case. Your Committee finds that these individuals should be included if all involved in the correctional process are to participate in the classification process.

3. Section 1 of the bill has been amended to provide that a member of the mental health team shall serve on the committee rather than the entire team. Your Committee finds that inclusion of the entire team on the committee would be cumbersome and unmanageable.

4. The bill has also been amended to provide that the determinations of the committee are to be final. Your Committee finds that the classifications of the experts in this field should not be subject to review.

Your Committee is in accord with the

intent and purpose of **H. B. No. 1944-70**, as amended herein, and recommends its passage on second reading and its referral to your Committee on Judiciary in the form attached hereto as **H. B. No. 1944-70, H. D. 1.**

Signed by all members of the Committee.

SCRep. 434-70 Public Institutions and Social Services on **H. B. No. 2138-70**

The purpose of **H. B. 2138-70** is to appropriate the sum of \$1,227,215 for economic assistance to indigents and medical indigents.

Act 154, Session Laws of Hawaii, 1969, appropriated a designated sum to provide payments to indigents and medical indigents for medical services and financial assistance. That Act funded the Department of Social Service's Economic Assistance Program for the fiscal year beginning July 1, 1969 and ending June 30, 1970. Your Committee finds that the amount appropriated by Act 154 is insufficient to carry out the purposes of the Economic Assistance Program for the entire year. The Department is attempting to operate within the amount appropriated but is experiencing case loads and patient loads in excess of estimates arrived at prior to the adoption of Act 154. Further, higher costs for patient care are being experienced. If a breakdown in services is to be avoided, additional monies must be appropriated.

Your Committee is in accord with the intent and purpose of **House Bill 2138-70** and recommends its passage on second reading and its referral to your Committee on Finance.

Signed by all members of the Committee.

SCRep. 435-70 Higher Education on **H. R. No. 58**

The purpose of this resolution is to request the University of Hawaii to employ a full-time plant pathologist to aid the macadamia nut industry in solving the

problem of Bortrytis Blossom Fungus and other related matters. This will result in the University's taking sole responsibility for a program which, during the past two years, has been a joint effort between the University of Hawaii and the macadamia nut industry, with the University contributing two-thirds and the industry one-third of the budget for the project, in order that the industry might concentrate its limited resources in other areas of critical need.

The macadamia nut industry in Hawaii, like many other segments of the agricultural industry, faces a variety of problems which require the development of expertise and allocation of industry funds to resolve. The industry is currently expending considerable sums to finance research in the development of a mechanical harvesting device, to determine new ways to use the product as well as retard or prevent spoilage, and to examine different species of macadamia nuts to determine which has the strongest root stock.

Your Committee certainly understands how these and other necessary commitments can deplete the cash reserves of the macadamia nut industry. Your Committee also understands the urgent need which the industry has for a full-time plant pathologist to deal with the problem of Bortrytis Blossom Fungus. The need for this fungus research program to continue after the projected expiration date of June 1970, has been clearly demonstrated by the industry. Likewise, the shortage of industry funds, caused by the critical need of the macadamia nut industry to allocate funds heavily on other types of research, has been clearly demonstrated. Your Committee is in sympathy with the needs of the macadamia nut industry.

Your Committee is in sympathy with the needs of the macadamia nut industry, and it is likewise cognizant of the needs and limitations of the University of Hawaii. Your Committee has amended this resolution to achieve an equitable balance between the two, by proposing that the program be continued past the expiration date of June, 1970, with some financial support forthcoming from the industry for

fiscal year 1970-1971, but the University of Hawaii should incorporate the staff position of a full-time plant pathologist for the macadamia nut industry in its budget request for fiscal year 1971-1972. After this time, the position shall be the responsibility of the University of Hawaii, enabling the macadamia nut industry to reallocate its limited resources into other areas of urgent need for the industry.

Your Committee is in accord with the intent and purpose of **H. R. 58**, as amended herein, and recommends that it be referred to your Committee on Finance as **H. R. 58, H. D. 1**.

Signed by all members of the Committee except Representative Shigemura.

SCRep. 436-70 Federal, State and County Relations on **H. B. No. 1390-70**

The purpose of this bill is to improve driver licensing provisions in three major respects. It would abolish the anachronistic chauffeur's license and provide that all drivers be required to secure a "driver's license." It would also allow the State of Hawaii to join The Driver License Compact. This compact provides for the trading of driver license information between member jurisdictions. The bill would also amend our state driver licenses laws so as to adopt the so-called "Single License Concept."

The bill in its original form would have wrought many changes to **PART VI** of Chapter 286, Hawaii Revised Statutes.

Your Committee heard testimony from the Office of the Highway Safety Coordinator, The Honolulu Police Department and The Hawaii Trucking Association. Certain recommendations for amendment of the original bill were suggested. Your Committee has made some of the suggested amendments and has converted the form of the bill in compliance with House Rule 24(2).

The bill as amended would provide the following:

The original bill amended Section 286-

101 so that reference to the "Examiner of Chauffeurs" is replaced with "Examiner of Drivers". Your Committee's amended bill would provide that the Mayor of each county appoint the "Examiner of Drivers" rather than the legislative body of the county.

Sections 286-102 through 286-114 would have been shifted and renumbered by the original bill. The amended bill preserves the present numbering.

This was done by removing reference to the Medical Advisory Board. That section, added by Act 76, Session Laws of Hawaii 1969, can be placed wherever the Revisor of Statutes sees fit. In the amended bill, Section 286-102 is amended so as to remove references to the "Examiner of Chauffeurs" and "Operator's", "Chauffeur's" licenses, replacing them with "Examiner of Drivers" and "Driver's", respectively. It is also amended so that an applicant for a driver's license must surrender all other valid licenses issued to him in Hawaii or elsewhere. If the bill passes, no person will be allowed to have more than one valid license at any time (i.e. The Single License Concept).

Sections 286-103 and 286-104 are amended, by the bill, to remove references to the "Examiner of Chauffeurs" and to "Operator's" and "Chauffeur's" licenses, replacing them with "Examiner of Drivers" and "Driver's" licenses, respectively. Subsection 286-104(2) would be amended by your Committee's draft of the bill so as to reflect changes in the law on drunkenness and addiction.

Section 286-105 is amended to exempt those non-residents who have valid licenses issued by their home states from the requirement of obtaining a Hawaii driver's license. Your Committee amended the original bill to broaden this exemption. The original bill granted this exemption only to members of the Armed Forces and their families. The section is also amended to allow any person on active duty with the U.S. Armed Forces to operate a motor vehicle in Hawaii for 45 days if he has, in his immediate possession, a driver's license issued to him by U.S.

Armed Forces overseas. If he does not have a license from his home state, is a resident of Hawaii and doesn't have a Hawaii license or is under 20 years of age, he would have to get a Hawaii license after that time.

Sections 286-106 through 286-114, Hawaii Revised Statutes, are unchanged except that all references to "Examiner of Chauffeurs" and "Operator's" or "Chauffeur's" licenses would be removed from them if the bill passes.

Section 286-115 of Hawaii Revised Statutes would be repealed by the bill.

Sections 286-116 through 286-126 would be amended by the bill so that all references to the "Examiner of Chauffeurs" and to "Operator's" or "Chauffeur's" licenses would be deleted and replaced by references to the "Examiner of Drivers" and to "Driver's" licenses, respectively.

Sections 286-121 and 286-122 would be amended further to require the Examiner of Drivers to exchange non-resident license and driving privilege suspension and revocation information with concerned states and to authorize the Examiner to suspend and revoke the driving privilege of a non-resident in certain cases.

Section 286-127, Hawaii Revised Statutes, would effectively be repealed by the bill. Most of the section numbered 286-127 in the bill is new. It provides for the surrender to the Examiner of Drivers of all licenses which have been suspended or revoked and prohibits those persons whose Hawaii licenses or driving privileges are under suspension from driving even if they have valid licenses issued by other states.

Section 286-128 in the bill is an amended version of the section from which all references to "Operator's" or "Chauffeur's" licenses have been replaced with references to "Driver's" licenses.

All references to the "Examiner of Chauffeurs" or "Chauffeur's" or "Operator's" licenses would be deleted,

if the bill passes, in Sections 286-129 through 286-133 and Section 286-135, Hawaii Revised Statutes.

Section 286-134 would be amended to remove reference to the Chauffeur's license. Your Committee has corrected a typographical error on the original bill which would have left a reference to chauffeur in the title of the section.

Section 286-136 through 286-139 would remain unchanged if the bill passes.

SECTION 2 of the bill would change the definitions in Section 286-2, Hawaii Revised Statutes, in consonance with the changes wrought in SECTION 1. SECTION 3 would amend all of Hawaii Revised Statutes so as to carry the changes in terminology to other parts of the general laws of Hawaii.

SECTION 4 would enact the Driver License Compact. By joining this compact, Hawaii would be able to actively trade information on driver licenses and better control those non-residents, who drive here and, under the amendments discussed above, would no longer be required to secure a Hawaii license upon their arrival here. SECTION 5 is designed to clarify the compact document and to establish certain official responsibilities.

SECTION 6 establishes the role that the existing "Operator's" and "Chauffeur's" licenses are to play in the new scheme and SECTION 7 reflects the form of the bill while SECTION 8 provides for an effective date of July 1, 1970.

Your Committee is in accord with the intent and purpose of **H. B. No. 1390-70**, as amended herein, and recommends that it pass second reading and that it be referred to your Committee on Judiciary as **H. B. No. 1390-70, H. D. 1**.

Signed by all members of the Committee except Representative Fong.

SCRep. 437-70 Lands on H. B. No. 1776-70

The purpose of this bill is to permit persons age 65 or older to catch mullet during

the closed season. The intent of this bill is to grant more fishing opportunities to our senior citizens since such activity is a healthful and recreational outlet. Your Committee has amended the provisions of the bill to allow the Department of Land and Natural Resources to promulgate regulations as it relates to senior citizens fishing for mullet. The reason for the amendment is to provide flexibility in regulating fishing activities by controlling or eliminating abusive practice. Further, a need may arise requiring restriction such as the use of fishing gears and bag limits.

Your Committee is in accord with the intent and purpose of **H. B. No. 1776-70**, as amended herein, and recommends that it pass second reading and that it be referred to your Committee on Judiciary in the form attached hereto as **H. B. No. 1776-70, H. D. 1**.

Signed by all members of the Committee.

SCRep. 438-70 Government Efficiency and Public Employment on H. B. No. 2137-70

The purpose of this bill is to appropriate money to have the government pay the additional costs of funding the program for dental benefits of all children of public employee-beneficiaries.

Under existing law the State makes a monthly contribution of \$1.40 for each child who has not attained the age of nineteen.

Your Committee has been advised that the cost for each child of eligible public employees has risen to \$1.56. Pursuant to the original legislative intent that the government pay the entire cost of dental benefits for children of employee-beneficiaries, your Committee agrees that the increase of 16 cents be borne by the government.

Your Committee is in accord with the intent and purpose of **H. B. No. 2137-70**, and recommends its passage on second reading and its referral to the Committee on Finance for further consideration.

Signed by all members of the Committee.

SCRep. 439-70 (Majority) Government Efficiency and Public Employment on **S. B. No. 1250-70**

The purpose of this bill is to authorize the director of personnel services to award a working condition differential of not more than \$100 per month to persons who fill positions which have remained vacant despite sustained recruitment efforts at the regular compensation schedule. This differential may be offered when the director finds that further delay in filling the position will adversely affect the rendition of essential services to the public and that exceptional circumstances exist, distinctive and directly related to the performance of duties required by the position.

Your Committee, upon consideration of this bill, recommends the following amendment be included at the end of the first sentence of the first paragraph in the proposed new Section of the Hawaii Revised Statutes:

“Incumbent employees who are working under identical exceptional circumstances shall be entitled to the differential also if determined by the director.”

This bill will not cost the State any additional funds as the differential will be paid out of funds that would otherwise lapse.

Your Committee on Government Efficiency and Public Employment is in accord with the intent and purpose of **S. B. No. 1250-70, S. D. 1**, as amended herein, and recommends its passage on second reading and its referral to the Committee on Finance in the form attached hereto as **S. B. 1250-70, S. D. 1, H. D. 1**.

Signed by all members of the Committee. Representative Devereux did not concur.

SCRep. 440-70 (Majority) Government Efficiency and Public Employment on **S. B. No. 1252-70**

The purpose of this bill is to set the minimum step of SR-25 as the maximum salary rate for computing premium over-

time pay of time and one-half.

Under existing law, the maximum salary rate set for overtime pay is set at SR-20-B (\$4.09 per hour) and will increase to \$4.51 per hour beginning July 1, 1970. Employees whose salary range is between SR-20-C and SR-28-L3 inclusive, are paid time and one half of the minimum of salary range 20 (SR-20-B) for all overtime worked.

Your Committee feels that the limitations of SR-20-B in many cases is inequitable because certain employees find that even though they are actually working overtime, they receive less than their regular hourly rate; for example, overtime pay computed at the rate of one and one-half of \$4.09 (SR-20-B), is equal to \$6.135 per hour. On the other hand, if an employee's regular pay is equivalent to \$6.99 per hour, the maximum rate that he may receive working overtime would be \$6.135 or 85.5 cents less for each hour overtime than the regular hourly rate of \$6.99. As a result, the inequity discourages certain employees from working overtime, or, if they prefer to take compensatory time off rather than taking overtime pay.

Your Committee recommends that salary range 25-B (\$5.22 per hour), which will increase to \$5.75 per hour beginning July 1, 1970, be selected as the ceiling on which overtime may be paid because it approximates the maximum pay of top-level production workers (SR-20-G) in the State and compares with the maximum overtime rate of GS-9 in the federal service.

Your Committee finds that the time and a half provision should also be made applicable to student hires who are presently ineligible for overtime pay. Student hires should be treated like regular employees and be paid overtime rates.

Your Committee has also amended the effective date to read “July 1, 1970”.

Your Committee is in accord with the intent and purpose of **S. B. No. 1252-70, S. D. 2**, and recommends its passage on second reading and its referral to the Committee on Finance for further consideration

in the form attached hereto as **S. B. No. 1252-70, S. D. 2, H. D. 1.**

Signed by all members of the Committee. Representative Devereux did not concur.

SCRep. 441-70 Government Efficiency and Public Employment on **S. B. No. 1255-70**

The purpose of this bill is to provide pay differential for employees who work on split shifts or at nights.

Under existing law, employees who work on split shifts get a pay differential of nine cents per hour. Employees who are on scheduled work during the hours of 6:00 in the evening to 6:00 in the morning receive night shift pay differential of ten cents (Act 11, Session Laws of Hawaii 1968) for each hour of actual work performed.

Your Committee finds that the above pay differential for split shifts and night work do not adequately compensate the employees for the inconvenience and the sacrifice of family life. Your Committee further reports that a survey made by the Hawaii Employers' Council of 278 firms in March, 1968, revealed that private industry provides night shift differential ranging from nine cents to thirty-five cents per hour with the majority paying their employees about fourteen cents per hour.

As for split shifts, the Hawaii hotel industry represented by approximately twenty hotels pay a flat \$1.25 premium to employees who work a split-shift. The Hawaiian Telephone Company pays their split-shift telephone switchboard operators a pay differential of thirty cents per hour.

Your Committee also finds that during the calendar year 1969, the State paid out of the general fund the sum of \$93,855 for night-shift differentials and the sum of \$8,974 for split-shift differentials. Payment from special funds for night shift differentials amounted to \$11,294, and for split-shift differentials the sum of \$5.

Senate Draft 1 of this bill increases the split-shift differential and the night-shift

differential to fifteen cents per hour. Your Committee estimates that for fiscal year 1970-71 the additional cost taking into account Act 127 (pay increase) and increments are as follows:

(1) General fund: \$59,214 for night-shift differentials and \$96,137 for split-shift differentials; and

(2) Special fund: \$25,553 for night-shift differentials.

Your Committee, upon consideration of this bill, recommends the following amendments:

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000 or so much thereof as may be necessary, to be expended by the department of budget and finance for the purpose of this Act.

SECTION 4. This Act shall take effect on July 1, 1970.

Your Committee feels that all departments concerned make every effort to use salary savings first, and if these cannot cover the cost, to use funds appropriated to the department of budget and finance for the purpose of this Act.

Your Committee on Government Efficiency and Public Employment is in accord with the intent and purpose of **S. B. No. 1255-70, S. D. 1**, as amended herein, and recommends its passage on second reading and its referral to the Committee on Finance in the form attached hereto as **S. B. No. 1255-70, S. D. 1, H. D. 1.**

Signed by all members of the Committee.

SCRep. 442-70 Government Efficiency and Public Employment on **S. B. No. 1560-70**

The purpose of this bill is to increase the funeral leave with pay granted to a public officer or employee when there is a death in his immediate family from two days to three days.

Your Committee recognizes that, when

a death occurs, it often takes more than two days to attend to the details which must be taken care of before and after the funeral. A three-day period would be a more realistic period of time.

Your Committee on Government Efficiency and Public Employment is in accord with the intent and purpose of **S. B. No. 1560-70** and recommends its passage on second reading and its referral to the Committee on Finance.

Signed by all members of the Committee.

SCRep. 443-70 Education on **H. B. No. 1840-70**

The purpose of this bill is to initiate a two-year project to examine the feasibility of utilizing public health nurses and health aides to provide health services for grades kindergarten through twelve in the public schools. This pilot project would provide for several health aides working under the supervision of a public health nurse to be assigned to a school complex and its feeder schools. Under the proposal there would be three such school complexes, to reflect the urban, suburban, and rural community setting. The three complexes would be selected by the School Health Services Advisory Committee.

The School Health Services Advisory Committee, composed of thirteen (13) members, would be responsible to coordinate, guide, and evaluate the two-year school health services project. Your Committee has amended Section 2 of the bill to increase the number of members on the advisory committee from nine (9) to thirteen (13).

Your Committee feels that the data obtained in the course of this pilot project will provide information on specific school health problems which would be assessed and the necessary programs developed and implemented to deal with the health needs in our public schools. The evaluation of school health services needs and the effectiveness of the programs developed will be a pre-requisite to the development of a comprehensive school health program.

Your Committee has further amended the bill to provide the sum of \$300,000 for the purpose of funding the two-year health services project. This sum is deemed adequate to support all three (3) pilot programs, wherever they may be located.

Your Committee is in accord with the intent and purpose of **H. B. No. 1840-70**, as amended herein, and recommends its referral in the form attached hereto as **H. B. No. 1840-70, H. D. 1**, to your Committee on Finance.

Signed by all members of the Committee.

SCRep. 444-70 Public Institutions and Social Services on **H. R. No. 169**

The purpose of **H. R. No. 169**, as amended herein, is to request the Department of Social Services to permit welfare recipients who possess up to \$1,500 in liquid assets to qualify for welfare.

Your Committee finds that the policies of the Department of Social Services to preserve the self respect, pride and dignity of welfare recipients will not be served if welfare is arbitrarily restricted to those who have virtually no liquid assets. The Department should take into account the normal propensity of people to collect and save assets. Under existing policies welfare recipients frequently use devious means to hide their assets in order to qualify. The establishment of a realistic limit under which persons may qualify will greatly foster the policies of the Department and will enhance the welfare of recipients.

Your Committee finds that \$1,000, the figure contained in the Resolution as originally drafted, is an unrealistic limit, and accordingly has amended the Resolution to allow recipients to possess a maximum of \$1,500 in liquid assets before losing their eligibility.

It is the intent of your Committee that the Department, in establishing the requested policy, shall not consider the cash value of any life insurance policies owned by a recipient in determining

whether or not such recipient possesses more than the maximum amount of \$1,500. It is further the intent of your Committee that where a recipient has set aside a reasonable sum for his burial expenses, or those of his family, such sum shall also not be considered in determining whether or not he possesses more than the maximum amount.

Your Committee is in accord with the intent and purpose of **H. R. No. 169**, as amended herein, and recommends its adoption in the form attached hereto as **H. R. No. 169, H. D. 1.**

Signed by all members of the Committee.

SCRep. 445-70 Finance on H. R. No. 33

The purpose of this resolution is to request the Hawaii Housing Authority to study methods of providing housing for hotel workers on Maui.

With the recent hotel and resort developments on Maui, there exists a shortage of housing in the resort areas to accommodate employees who service the resorts. Your Committee recognizes that the orderly development of the tourist industry requires that employee housing be available.

As presently drafted, the Hawaii Housing Authority is requested to study the feasibility of condemning lands near hotel sites for the construction of housing. Your Committee has amended this resolution by permitting the Hawaii Housing Authority to explore other means of providing housing as well.

Your Committee is in accord with the intent and purpose of **H. R. No. 33**, as amended herein, and recommends its adoption in the form attached hereto as **H. R. No. 33, H. D. 1.**

Signed by all members of the Committee.

SCRep. 446-70 Economic Development on H. C. R. No. 68

The purpose of **H. C. R. No. 68**, as amended herein, is to request the President and Congress of the United States to repeal the present oil import quota program and implement the majority recommendations of the President's Cabinet Task Force on Oil Import Control in order to eliminate inequities to the consumer and to encourage greater competition within the petroleum and petrochemical industries.

Your Committee finds that the foreign oil import quota system is unjust to consumers in that it maintains the price of petroleum products at higher levels than would exist if unlimited or larger quantities of foreign oil were available for domestic consumption.

Your Committee further finds that the consumers and economy of Hawaii have been more severely affected by the present system than have other States because Hawaii does not have any energy resources of its own and is wholly dependent upon oil.

Moreover, the President's Cabinet Task Force on Oil Import Control has recommended elimination of the present import control system and a transition to a tariff system to take initial effect no later than January 1, 1971. Implementation of these recommendations would greatly benefit the economy and people of Hawaii.

Your Committee has amended the Resolution to point out the recommendations of the Cabinet Task Force and to request the President and Congress to implement those recommendations. The title has likewise been amended in this regard.

Your Committee is in accord with the intent and purpose of **H. C. R. No. 68**, as amended herein, and recommends its adoption in the form attached hereto as **H. C. R. No. 68, H. D. 1.**

Signed by all members of the Committee.

SCRep. 447-70 Economic Development on H. C. R. No. 67

The purpose of this resolution is to request that the President of the United States relieve Hawaii of the mandatory oil import quota program created pursuant to Presidential Proclamation No. 3279 and to request Hawaii's delegation to the Congress of the United States to use their best efforts to secure this relief.

Your Committee concurs with the purpose of **H. C. R. No. 67** and recommends its adoption.

Signed by all members of the Committee.

SCRep. 448-70 Select Committee of Hawaii Representatives on **H. C. R. No. 97**

The purpose of this house concurrent resolution is to request the United States Navy to suspend target bombing in the Kapua area of South Kona, Hawaii, until such time as archaeological excavation and research can be conducted to retrieve and preserve artifacts and to determine the historical significance and value of this area.

It is generally believed that the Kapua area of South Kona contains numerous sites of historical and cultural interests, including refuge caves, burial caves, a holua slide, and shelters. There are also indications that it may be possible that the first polynesian to journey to the Hawaiian Islands may have settled in this area.

Your Committee is in accord with the intent and purpose of **House Concurrent Resolution No. 97** and recommends its adoption.

Signed by all members of the Committee.

SCRep. 449-70 Agriculture on **S. B. No. 1237-70**

The purpose of this bill is to amend Section 149-4(b), Hawaii Revised Statutes to change the annual expiration date of economic poisons from June 30 to December 31 of each year.

Most of the firms affected by Section

149, H.R.S. operates on a calendar year basis. This bill proposes to alter existing statutes which establish the expiration dates of annual state registration of economic poisons from a fiscal to calendar year basis to parallel the normal calendar year operations of industry.

For registrations expiring on June 30, 1970, this bill provides an interim fee of \$5.00 for the period July 1, 1970 to December 31, 1970.

Your Committee on Agriculture is in accord with the intent and purpose of **S. B. No. 1237-70** and recommends that it pass second reading and be placed on the calendar for third reading.

Signed by all members of the Committee.

SCRep. 450-70 Judiciary on **H. B. No. 1308-70**

The purpose of this bill is to permit the judge in a felony case to determine the initial place of confinement of the felon.

Your Committee has amended the bill so as to give the judge this power only in relation to the initial place of confinement. Your Committee feels that this reflects the true intent of the bill which was not to require a judicial determination for every transfer of prisoners amongst institutions within the State, but rather, was to permit the judge to determine the initial place of confinement of the felon.

Under existing law, the judge is unable to condition initial confinement upon the placement of the felon in an honor camp or other specialized facility. His only alternative is either to release the felon on probation or to order his incarceration and hope that the director of social services will confine him within the appropriate facility. Your Committee strongly feels that the best interests of justice are not served by a system which places the court in this dilemma. This bill would give the judge in this situation the power to specify that the felon be placed in a camp, jail, or other specialized facility on the basis of presentence investigation and reports, inclu-

ding the comprehensive findings of diagnostic teams and medical and psychiatric information.

This bill does not affect the power of the director of social services to transfer a prisoner subsequent to the initial confinement.

Your Committee is in accord with the purpose and intent of **H. B. No. 1308-70**, as amended herein, and recommends its passage on second reading in the form attached hereto as **H. B. No. 1308-70, H. D. 1**, and that it be placed on the calendar for third reading.

Signed by all members of the Committee.

SCRep. 451-70 Judiciary on H. B. No. 1621-70

The purpose of this bill is to require all counties having a population in excess of 100,000 persons to compile, consolidate, revise, index and arrange a comprehensive code containing all ordinances which have been duly enacted and not repealed within one year after the passage thereof, and at least once every ten years thereafter. The bill further requires such counties to publish annually a cumulative pocket part supplement which shall be appropriately indexed and shall contain all ordinances enacted subsequent to the publication of the preceding code.

Your Committee is in accord with the finding of your Select Committee of Oahu Representatives that the publishing and annual updating of the comprehensive ordinance code required by this bill will ease the burden of research for the people of the City and County of Honolulu, the county employees who serve them, and the using public.

Your Committee is in accord with the intent and purpose of **H. B. No. 1621-70** and recommends that it pass third reading.

Signed by all members of the Committee.

SCRep. 452-70 Judiciary on H. B. No. 2151-70

The purpose of this bill is to authorize the Department of Transportation to establish, maintain, operate, manage and control energy corridors for the economical transmission of sources of energy, while maximizing the use of available lands necessary therefor.

Energy corridors are the medium through which fuels and other sources of energy are transported from their places of manufacture or storage to distribution areas.

At the present time, Dillingham Petroleum Corporation and Hawaiian Independent Refinery have announced plans to build oil refineries at Campbell Industrial Park. Honolulu Gas Company has also expressed an interest in utilizing the corridor for gas transmission lines. The energy corridor concept will provide the State a means of controlling the design and style of lines in which sources of energy will be transmitted therefrom to the main consumption areas. Further, the Navy, over whose property at Barber's Point, any pipeline to Honolulu must cross, has indicated, as reported by your Committee on Harbors, Airports and Transportation, that it would be disinclined to grant any easements except to a central governmental agency that would regulate the use of the corridor in order to insure the public interest. Your Committee on Harbors, Airports and Transportation also reported that all current privileges of specified utilities to occupy the highway right-of-way will be continued at the same cost to those utility companies as at present.

The bill was amended in Section 2 to provide that the utilization of such energy corridors shall be permissive and not mandatory, with which your Committee on Judiciary is in accord. The reason for this amendment is to clarify the intent of the law, since mandatory action may raise certain legal problems.

Your Committee is satisfied that an energy corridor, permitting installation of pipelines capable of serving all commercial

and government interests, is needed to provide the most economical transportation of oil and gas products to areas of consumption, and is therefore in the public interest.

Your Committee is in accord with the intent and purpose of **H. B. 2151-70, H. D. 1**, and recommends that it pass third reading.

Signed by all members of the Committee.

SCRep. 453-70 Judiciary on **H. B. No. 1459-70**

The purpose of this bill, in its original form, was to make it unlawful for any person to sell, issue, or otherwise distribute a credit card unless the person in whose name the card is sold, issued, or otherwise distributed, had made a written application therefor. The bill provided for a fine of up to \$1,000 for unsolicited issuance of credit cards and further provided that the person in whose name the card is issued shall not be liable for debts incurred through the use of the card without his consent.

Your Committee on Housing and Consumer Protection, having heard and considered testimonies from the consumer protector, the retail board of the chamber of commerce, and representatives of the banking industry, amended the bill in several respects, with which your Committee on Judiciary, having heard and considered the same testimonies, is in accord. The bill was amended by deleting the part thereof which makes it unlawful to issue a credit card without prior written solicitation and providing a fine therefor. The bill was further amended to make it clear that the person in whose name the unsolicited credit card is issued shall not be liable for debts incurred through the use thereof by any other person prior to the first use of the card, either by himself or by another with his consent.

Your Committee on Judiciary is in accord with these amendments because it appears to be common practice in the banking industry to issue credit cards to favored customers of the bank without written

application therefor. And, notwithstanding this practice, there is only one documented instance wherein an unsolicited credit card was fraudulently used to purchase merchandise which was charged to the person for whom the credit card was intended. Therefore, your Committee agrees that ample protection can be afforded the consumer with little accompanying inconvenience to issuers of credit cards in their distribution by limiting the liability of a person in whose name an unsolicited credit card is issued. Your Committee on Judiciary believes that the amendment made by your Committee on Housing and Consumer Protection accomplishes that purpose.

It has been suggested by representatives of the banking industry that in its present form it is not clear whether the bill would apply to an unsolicited but used credit card which had been issued prior to the effective date of the act. If the act would apply to such a card, it is argued that a constitutional question is raised in that the bill would change the legal consequences and relationships resulting from issuance of such cards previous thereto. As such, the law might be construed *ex post facto*.

Your Committee, however, does not concur in that opinion principally because the bill does not make illegal any act which before its enactment was legal, and neither does it carry or impose any criminal sanction constituting it as a measure which renders it vulnerable to an attack of unconstitutionality because of its retroactive effect.

Your Committee is in accord with the intent and purpose of **H. B. No. 1459-70, H. D. 1**, and recommends its passage on third reading.

Signed by all members of the Committee.

SCRep. 454-70 Judiciary on **H. B. No. 1484-70**

The purpose of this bill is to extend the Department of Health's rule-making power to include any which reduces the pollution of the environment by regulating the use of lead, nickel, boron, and other

additives in gasoline if found to be undesirable for the health.

Your Committee respectfully invites your attention to **Stand. Com. Rep. No. 166-70**, wherein your Committee on Public Health, Youth & General Welfare, to which was initially referred **H. B. No. 1484-70**, reported as follows:

Metallic additives are presently compounded with gasoline fuel to increase the combustion quality of the gasoline and is desirable for the efficient operation of high compression automobiles. The regular grade gasoline usually contains from 1½ to 2 milliliters of lead tetraethyl per gallon of gasoline while the premium gasoline has 2½ to 3 milliliters per gallon of gasoline.

Lead is found in the air chiefly as a result of automobile emissions. Epidemiological studies reveal that the mean lead level of the blood of urban dwellers is higher than that of their rural counterparts, especially those urbanities who live near heavily travelled roads. Lead in sufficient amounts has been implicated in anemia, liver and kidney damage, mental retardation in children, and in abnormalities of fertility and pregnancy.

The Federal Government, by setting Air Quality Control Standards has compelled both automobile manufacturers and oil companies to make drastic changes in automobile and gasoline production. Beginning with the 1975 model year, Federal standards will sharply lower limits on exhaust emission of carbon monoxide and hydrocarbons that went into effect on 1970 model vehicles. Also, the new standards will set limits on exhaust emission of nitrogen oxides, beginning with the 1973 model year, and will set limits on exhaust emission of particulates such as lead beginning with the 1975 model year.

The main objection to this bill, voiced by Dr. Gordon J. Stopps of E. I. du Pont de Nemours and Company, was that there was no medical evidence that lead in gasoline presents any health

hazard. In answer to this contention, Louis Dickinson, M.D., Associate Professor of Public Health, University of Hawaii, states that: (1) studies of the effect of lead in gasoline have been inadequate; (2) the effects of lead poisoning may have very long induction (or latent) periods, as long as 30 to 40 years.

Autopsy studies, such as described in the du Pont testimony, concluding that lead had no adverse effect on health often have misleading conclusions, partly because of the selective nature of the material and partly because of the impossibility of controlling for confounding variables.

Second, there is sound scientific evidence that lead-induced illnesses may not appear until 30 to 40 years after exposure. Around 1930 a high incidence of chronic nephritis was noticed in Queensland, Australia. By application of cohort analysis, it was inferred that exposure of the affected population began around 1885 and diminished after 1926. After further historical and clinical investigation, the exposure proved to be from an increase of lead poisoning which occurred following the turn of the century.

Your Committee on Judiciary, having considered substantially the same written testimonies received by your Committee on Public Health, Youth & General Welfare, agrees that experts disagree on whether air lead can be considered a hazard to the health of well individuals; however, these experts do agree that air lead is detrimental to the health of a susceptible minority in the community such as children and pregnant women. Whether this suggestion that because the health of susceptible people is impaired by the breathing of air lead, that in time healthy people may be affected in unforeseen ways, your Committee does not undertake to decide.

However, in order to protect the public from possible adverse affects of air lead and to accommodate the divergent views upon the subject, your Committee agrees that the Department of Health should be

authorized to regulate the use of lead, nickel, boron, and other additives in gasoline if found to be desirable for the health of the public; and, therefore, is in agreement with the amendments to this bill recommended by your Committee on Public Health, Youth & General Welfare, if, indeed, because section 322-64 mandates that the Department of Health shall control air pollution in accordance with any rule and regulation promulgated by it for that purpose, this legislation is necessary.

Your Committee is in accord with the intent and purpose of **H. B. No. 1484-70, H. D. 1**, as amended herein and recommends that it pass third reading in the form attached hereto as **H. B. No. 1484-70, H. D. 2**.

Signed by all members of the Committee.

SCRep. 455-70 Finance on H. B. No. 1515-70

The purpose of this bill is to provide sufficient funds to the Attorney General for a study relating to the fixing of financial and criminal responsibility for damages resulting from oil spillages. Oil spillages have caused extensive damages to beaches and harbors, and marine environment in other jurisdictions. The study will review what laws this State may be able to enact in order to protect its interests.

Your Committee has amended Section 2 of this bill by reducing the appropriation for this study from \$10,000 to \$5,000.

Your Committee is in accord with the intent and purpose of **H. B. No. 1515-70, H. D. 1**, as amended herein, and recommends that it pass third reading in the form attached hereto as **H. B. No. 1515-70, H. D. 2**.

Signed by all members of the Committee.

SCRep. 456-70 Finance on H. B. No. 1934-70

The purpose of this bill is to allow Department of Education certificated per-

sonnel returning from sabbatical leave to serve in the Department of Education, the University of Hawaii, or any community college without loss of benefits.

The present statutes require that teachers or educational officers who go on sabbatical leave must return to and serve in the Department of Education for a period of not less than two years. If they fail to return to the Department, they must refund to the State all monies received while on sabbatical leave. There is no provision in the statutes allowing them to return to the State to accept a position at the University of Hawaii or any of the community colleges.

Your Committee has converted the form of the bill in compliance with House Rule 24(2).

Your Committee is in accord with the intent and purpose of **H. B. No. 1934-70, H. D. 1**, as amended herein, and recommends its passage on third reading in the form attached hereto as **H. B. No. 1934-70, H. D. 2**.

Signed by all members of the Committee.

SCRep. 457-70 Finance on H. B. No. 1687-70

The purpose of this bill is to exempt crop shelters of specified construction in determining and assessing taxable real property.

The primary industries affected by this bill are the ornamental horticulture and vegetable crop industries. As diversified agriculture has developed in Hawaii, these enterprises have offered promising potentials for economic growth. Significant capital investments by flowers and vegetable growers in the form of artificial crop shelters have proven to be essential factors for successful and profitable operations. The installation and subsequent real property tax expenses of these structures, however, add considerably to the high operating expenses which have been a factor in restricting these industries' growth.

Your Committee feels that this bill by

reducing the real property tax liability of those growers who invest in these crop shelters will significantly assist the industries and encourage their development. The Department of Taxation has testified that the revenue loss of this bill is not too great because the shelters in question do not constitute a large portion of the tax base.

Your Committee has amended this bill by requiring that the shelters be maintained in good condition in order to qualify for the exemption.

Your Committee is in accord with the intent and purpose of **H. B. No. 1687-70, H. D. 1**, as amended herein, and recommends its passage on third reading in the form attached hereto as **H. B. No. 1687-70, H. D. 2**.

Signed by all members of the Committee.

SCRep. 458-70 Finance on H. B. No. 1457-70

The purpose of this bill is to exempt the special funds of the community colleges and of the college bookstores from the periodic five per cent deduction for administrative expenses.

The college bookstores of the University of Hawaii system are entirely self supporting, with the entire cost of the operation of the facilities, including buildings, fixtures, employees, etc. being borne by the proceeds of the sale of books. The special funds of the various community colleges contain monies taken in from student fees and the proceeds of other student activities. Each of these activities is self supporting, and in both instances, the five per cent depletion of the special funds for administrative expenses must be passed on to the students and customers in order to recoup the loss and enable the organization to function. Other special funds at the University of Hawaii have in the past been exempted from this administrative charge. It is the opinion of this Committee that the two special funds in question, being self supporting and in a large part deriving most of their money from student fees or

purchases, are worthy of exemption from this surcharge as well.

Your Committee is in accord with the intent and purpose of **H. B. No. 1457-70** and recommends its passage on third reading.

Signed by all members of the Committee.

SCRep. 459-70 Finance on H. B. No. 2093-70

The purpose of this bill is to establish a procedure to be used in excluding from each county's debt limitations certain types of county general obligation bonds in compliance with the 1968 amendments to Section 3 of Article VI of the State Constitution.

Section 3 of the Constitution provides that the determination of such exclusions shall be made annually and certified by law or as prescribed by law. In the absence of a law establishing a procedure, the counties are unable to carry out the requirement that certain types of obligations be excluded.

Your Committee has amended this bill by correcting the direction in Section 1 from "Subtitle 1 of Title 6, HRS, is hereby amended to read as follows:" to "Subtitle 1 of Title 6, Hawaii Revised Statutes, is amended by adding a new chapter to be appropriately designated and to read as follows:".

The bill does not make a substantive change in the law.

Your Committee is in accord with the intent and purpose of **H. B. No. 2093-70**, as amended herein, and recommends that it pass third reading in the form attached hereto as **H. B. No. 2093-70, H. D. 1**.

Signed by all members of the Committee.

SCRep. 460-70 Government Efficiency and Public Employment on S. B. No. 1180-70

The purpose of this bill is to permit

nationals of the United States to be eligible for employment by the State and county governments.

The federal statutes make reference to the term "U.S. national". United States Code 8-1101(22) defines the term "national of the United States as "(A) a citizen of the United States or (B) a person who, though not a citizen of the United States, owes a permanent allegiance to the United States". The latter description stated in USC: 8-1101(22) aptly defines the term "national of the United States", as utilized in **S. B. No. 1180-70**.

Under existing law only citizens of the United States are eligible to be employed by the State and county governments.

Nationals such as persons from American Samoa owe allegiance to the United States and they are employed by the federal government on the same basis as citizens. Many of these nationals have been legal residents of Hawaii for many years and they possess skills which can be effectively utilized by the State and county governments.

Your Committee is in accord with the intent and purpose of **S. B. No. 1180-70** and recommends that it pass second reading and be placed on the calendar for third reading.

Signed by all members of the Committee.

SCRep. 461-70 Judiciary on H. B. No. 2146-70

The purpose of this bill is to correct various inconsistencies contained in the motor vehicle industry licensing law which resulted from the passage of Act 263, Session Laws of Hawaii, 1969.

When the licensing and regulatory functions were transferred to the State from the various counties by Act 263, several sections referring to county jurisdiction and powers were not amended. This bill makes those appropriate changes and others. Furthermore, this bill provides that monies collected by the board as of

November 1, 1969, become a realization of the State, because, also, Act 263 did not amend the provision which requires all fees and other monies collected and received under the affected chapter deposited with the counties to be deposited with the State.

Your Committee is in accord with the intent and purpose of **H. B. No. 2146-70** and recommends that it pass second reading and be placed on the calendar for third reading.

Signed by all members of the Committee except Representative Duponte.

SCRep. 462-70 Judiciary on H. B. No. 2112-70

The purpose of this bill is to amend the law relating to the licensing of automobile manufacturers, representatives, and distributors, by adding the following provisions to the present law as reasons for suspension, revocation, or denial of renewal of a license:

1. Under section 437-28(b) (22) (B), which prohibits the coercion of a dealer into agreements which are illegal or to refrain from doing any act which he may legally perform, by awarding or threatening to award the franchise to another person in the same "sales territory" covered by the franchise, the term "county" for which the dealer holds the franchise and in which he is licensed to sell is substituted.

2. Under section 437-28(b) (22) (F), which prohibits inequitable pricing policies by manufacturers, the same is extended to make more explicit that any direct or indirect charge for a new motor vehicle or for parts or accessories therefor which provides a greater transportation benefit for franchise dealers in other states constitutes a discriminatory practice.

3. Under section 437-28(b) (22), adds a new subsection (G) which prohibits manufacturers from forcing dealers and consumers to purchase undesired and unneeded equipment and accessories.

The Hawaii automobile dealers associa-

tion has expressed before your Committee that the amendments to subsections (B) and (F) clarify certain apparent vaguenesses therein, pointed up in the suit by General Motors Corporation against the State of Hawaii, attacking the constitutionality of section 437-28.

The addition of subsection (G), the Hawaii automobile dealers association claims, is necessary to protect the Hawaii consumer from being forced by the manufacturer to purchase equipment such as heater and de-fogger which are neither desired or necessary, particularly since Hawaii has been exempted under Standard 103 of the Highway Safety Act of 1966.

Additionally, the motor vehicle industry licensing board, within the department of regulatory agencies, supports this measure.

Your Committee is in accord with the intent and purpose of **H. B. No. 2112-70** and recommends that it pass second reading and be placed on the calendar for third reading.

Signed by all members of the Committee except Representative Duponte.

SCRep. 463-70 Judiciary on H. B. No. 2115-70

The purpose of this bill is to amend Section 407-84(1), Hawaii Revised Statutes, which governs the amount and percentage in home loans by allowing the savings and loan association to make loans in excess of 80% when the net proceeds of the loans do not exceed \$35,000 and 95% of the unencumbered appraised value of the property.

Your Committee is fully aware that the housing cost has continually risen over the past few years to a point where low and middle income families are all but excluded from home ownership. The raise in the limitations of the dollar amount from \$30,000 to \$35,000 and in the percentage of the loan from 90% to 95% will be a positive direction in aiding families to finance the purchase of moderate priced homes. These two changes in the present law will encourage the increase of financing home

ownership in this State.

Your Committee is in accord with the intent and purpose of **H. B. No. 2115-70** and recommends that it pass second reading and be placed on the calendar for third reading.

Signed by all members of the Committee except Representatives Shigemura and Duponte.

SCRep. 464-70 Judiciary on H. B. No. 1910-70

This bill has several purposes, which are substantially as follows:

1. To permit the removal of the certificate of registration from a motor vehicle for the purpose of applying for renewal, transfer of ownership, or recording a change in registration.

2. To permit the director of finance to annually microfilm registration and ownership records and to destroy the originals.

3. To permit the purchaser of a motor vehicle which carries a currently valid certificate of safety inspection to record the transfer of ownership and registration thereto without obtaining a new certificate of safety inspection.

4. To provide for a single application form for obtaining a duplicate certificate of ownership and transfer of ownership, both transactions to be accomplished in one step, where the certificate of ownership is lost, stolen, or mutilated and the owner has determined to transfer the motor vehicle.

The amendment to section 286-47(3), which permits the removal of the certificate of registration from the motor vehicle, would encourage the public to use the mail to transact its business involving its use. In its present form, the law requires that such certificates be kept in or on the motor vehicle at all times, which means that a removal thereof for any reason constitutes a technical violation of the law.

The amendment to section 286-45, which

permits the director of finance to annually microfilm registration and ownership records and to destroy the originals, will save the counties valuable office space, which even presently are overcrowded with records.

The amendment to section 286-26(d), which permits the purchaser of a motor vehicle to record the transfer of ownership and registration thereof without obtaining a new certificate of safety inspection of the motor vehicle carries a currently valid one, alleviates the unreasonable burden imposed upon purchasers under the existing law, both in time and money, in having to obtain a new certificate of safety inspection notwithstanding that the vehicle already carries one which is currently valid.

The amendment to section 286-55 will relieve the transferor whose certificate of ownership has been lost, stolen, or mutilated from the inconvenience of applying for a duplicate certificate as a condition precedent to releasing his interest in the motor vehicle. Under the existing law, such person must first apply for a duplicate certificate which he signs, thereby releasing his interest, which he then gives to the transferee, who then signs and applies for the transfer. Under the proposed amendment, the transferor will secure a new application form, sign it, give it to the transferee who will then file the same for a duplicate certificate of ownership and transfer in one step.

Testimony received from the Department of Finance, City and County of Honolulu, is to the effect that the provision under the immediately aforementioned section requiring the payment of a fee of \$1.00 for issuance of a duplicate certificate of registration or ownership was not intended to be deleted as inadvertently occurred in the preparation of this bill in compliance with House Rule 24(2). Your Committee, therefore, deleted the deletion.

Your Committee further converted the form of this bill in strict compliance with House Rule 24(2).

Your Committee is in accord with the intent and purpose of **H. B. No. 1910-70** as amended herein and recommends that it pass second reading in the form attached hereto as **H. B. No. 1910-70, H. D. 1**, and be placed on the calendar for third reading.

Signed by all members of the Committee except Representatives Duponte and Shigemura.

SCRep. 465-70 Judiciary on H. B. No. 1296-70

The purpose of this bill is to disallow banks and savings and loan associations from accelerating the payment upon any mortgage, loan, or other type of indebtedness prior to judgment in a case for which garnishee summons is issued.

The law of garnishment is such that a plaintiff praying out execution is entitled to an order making demand of the garnishee for the goods and effects, or for the debt, wages or monies held by him for the defendant, which it is his duty to pay, provided that the garnishee is allowed to retain or deduct therefrom at the time of service, all demands against the defendant to which he might have availed himself if he had not been garnished, whether the same are at the time due or not, and if set off between himself and the defendant, the garnishee is liable only for the balance after adjustment of all mutual demands between himself and the defendant, provided that the same are for liquidated damages only.

Apparently, there is a common practice among financial institutions, whenever the account of one of its customers is garnished, to immediately accelerate the payments against the customer upon any mortgage, loan or other type of indebtedness upon which there is a balance owing to the financial institution, even, and particularly, prior to judgment. As a result, the plaintiff's claim is defeated at the time of judgment because the garnishee fund has been exhausted for the purpose and to the extent of satisfying the payments owing the garnishee, which have been accelerated.

Your Committee converted the form of the bill in compliance with House Rule 24(2).

Your Committee is in accord with the intent and purpose of **H. B. No. 1296-70** as converted and amended herein and recommends that it pass second reading in the form attached hereto as **H. B. No. 1296-70, H. D. 1**, and that it be placed on the calendar for third reading.

Signed by all members of the Committee except Duponte and Shigemura.

SCRep. 466-70 Lands on H. B. No. 1993-70

The purpose of this bill is to add one additional member to the Board of Trustees for The Hawaii Foundation for History and the Humanities. The additional board member is the Director of Finance who shall serve as an ex-officio voting member. Your committee has amended the bill by adding the attorney general as ex-officio voting member to the board. Your Committee feels that as a member of the board the state attorney general's advice will be instrumental in possibly preventing legal entanglements, especially because the foundation will be actively engaged in transactions involving both public and private property and other material goods.

Your Committee is in accord with the intent and purpose of **H. B. No. 1993-70**, as amended herein, and recommends that it pass second reading and be placed on the calendar for third reading in the form attached hereto as **H. B. No. 1993-70, H. D. 1**.

Signed by all members of the Committee.

SCRep. 467-70 Judiciary on H. B. No. 1439-70

The purpose of this bill is to except from the requirements that all officers and employees in the service of the State or municipal governments shall be residents of the State for at least three years immediately preceding their appointment, any citizen of the United States who was

a resident of the State for at least three years before establishing residence in another state and who re-establishes residence in the State.

Your Committee on Government Efficiency and Public Employment, to which the bill was initially referred, found that:

Under present residency requirements for State employment, a former resident who has established residency in another state would be treated in the same manner as those individuals who have never lived in, or even visited the State. The present law lessens the opportunity for former residents to return to Hawaii. Under the proposed amendment, the State would be the recipient of the benefits that former local people could contribute from the added education and broader base of experience which they gained elsewhere. Many former residents possess skills which are in short supply and are needed by the State. This amendment will also restore to former residents the right to be employed in their home state.

Your Committee on Judiciary, not unmindful that the entire subject of residency requirements is in receipt of much judicial attention since the recent case of *Shapiro v. Thompson*, 394 U.S. 618 (1969), is constrained to comment upon the bill in that light, however briefly. Without respect to the Hawaii law generally, since the proposed measure is intended to serve more of a purpose "than to chill the assertion of constitutional rights by penalizing those who chose to exercise them," *United States v. Jackson*, 390 U.S. 570 (1968); and since the same, in fact, broadens rather than narrows the existing requirements, your Committee is satisfied that it "may promote compelling state interests on the one hand or, on the other, [are not] penalties upon the exercise of the constitutional right of interstate travel." *Shapiro v. Thompson*, 394 U.S. at 638, n.21.

Your Committee is in accord with the intent and purpose of **H. B. No. 1439-70** and recommends that it pass third reading.

Signed by all members of the Committee except Duponte and Shigemura.

SCRep. 468-70 Government Efficiency and Public Employment on **H. B. No. 451**

The purpose of this bill is to amend the urban renewal law, Chapter 53, Hawaii Revised Statutes, to provide for the direct appointment by the mayor of the county of the manager and the deputy manager of the county redevelopment agency.

Under the present law the manager and the deputy manager of the county redevelopment agency are appointed by the redevelopment agency. Your Committee feels that the urban renewal law cannot be effectively administered and coordinated with federal housing and urban renewal programs by means of a redevelopment agency which is independent of both the executive and legislative branches of the county. This bill amends the law to make the manager and the deputy manager of the redevelopment agency direct appointees of the chief executive of the county.

Your Committee is in accord with the intent and purpose of **H. B. No. 451, H. D. 1** and recommends its passage on third reading.

Signed by all members of the Committee except Representative Takamine.

SCRep. 469-70 (Majority) Government Efficiency and Public Employment on **H. B. No. 1817-70**

The purpose of this bill is to give effect to certain of the policies arrived at by the Civil Service directors of the State and the several Counties at their conference in Hilo relating to the elimination or correction of certain inequities and inconsistencies with respect to certain county positions exempt from civil service.

A new section has been added to Chapter 46, Hawaii Revised Statutes, which in large part restates the existing law affecting exempt county positions except for subsections (b) and (k). Subsection (b) excludes the heads of the offices of Information and Complaint and Budget Director from the position classification plan. Subsection (k) exempts from civil service

the positions of first deputy and private secretaries to the heads of departments and their first deputies.

Your Committee is in accord with the intent and purpose of **H. B. No. 1817-70, H. D. 1**, and recommends its passage on third reading.

Signed by all members of the Committee. Representatives Baptiste and Devereux did not concur.

SCRep. 470-70 Public Health, Youth and General Welfare on **H. R. No. 99**

The purpose of this Resolution is to request the office of the Legislative Auditor to conduct a management audit of the operations and finances of Molokai General Hospital.

Molokai General Hospital has received State funds under private hospital subsidies over a number of years. Many complaints have been made against the hospital regarding the alleged lack of adequate patient care services, questionable hiring practices, and inadequate bookkeeping procedures. In view of the frequency of such complaints, it would appear that a management audit of the operations and financing of Molokai General Hospital is in order.

Your Committee concurs with the purpose of **H. R. No. 99** and recommends its referral to the Committee on Finance.

Signed by all members of the Committee.

SCRep. 471-70 Public Health, Youth and General Welfare on **H. C. R. No. 38**

The purpose of this Resolution is to request the office of the Legislative Auditor to conduct a management audit of the operations and finances of Molokai General Hospital.

Molokai General Hospital has received State funds under private hospital subsidies over a number of years. Many complaints have been made against the hospital

regarding the alleged lack of adequate patient care services, questionable hiring practices, inequitable staff privileges for private practicing physicians and inadequate bookkeeping procedures. In view of the frequency of such complaints, it would appear that a management audit of the operations and finances of Molokai General Hospital is in order.

Your Committee concurs with the purpose of **H. C. R. No. 38** and recommends its referral to the Committee on Finance.

Signed by all members of the Committee.

SCRep. 472-70 Public Health, Youth and General Welfare on **H. B. No. 2104-70**

The purpose of this bill is to annually reimburse the City and County of Honolulu for the cost of operating the emergency health services returned to the City by Act 265, SLH 1969. The bill contains an appropriation of \$1,500,000 for the fiscal year 1970-1971.

Act 97, SLH 1965, fixed responsibility for public hospitals and other public health and medical facilities in the state government. Since 1965 the State has completely funded all statewide public health operations, including the operations of Maluhia Hospital and the emergency health services in Oahu.

Your Committee finds that the return of the emergency health services to the City and County of Honolulu would violate the intent of Act 97 unless the State will continue to accept financial responsibility.

Your Committee is in accord with the intent and purpose of **H. B. 2104-70**, and recommends its passage on second reading, and that it be referred to your Committee on Finance.

Signed by all members of the Committee.

SCRep. 473-70 Agriculture on **H. B. No. 2097-70**

The purpose of this bill is to create a special "Agricultural Marketing Order" revolving fund of \$30,000 to implement state or federal marketing orders. The fund would be administered by the Department of Agriculture with all disbursements from the fund to be reimbursed in total by the users of the fund.

Your Committee finds that the establishment of marketing orders at the state level has not been provided for by State law. However, the Hawaii papaya industry is presently in the process of establishing itself as a federal marketing order. Once such a marketing order is established, this bill would provide an appropriation to cover the estimated operational costs which would be incurred by the Department of Agriculture. The costs estimate include training and hiring on a contractual basis eight papaya inspectors to control the quality and volume of papaya marketed.

By imposing an assessment of \$.003 per pound of marketed papayas on the producers, the marketing order is expected to generate sufficient revenue to allow a full reimbursement to the revolving fund within the first year of operation. The revolving fund would then be available to the Department of Agriculture in similarly servicing other marketing orders that may arise in the future.

Your Committee on Agriculture is in accord with the intent and purpose of **H. B. No. 2097-70** and recommends that the bill pass second reading and be referred to your Committee on Finance for further consideration.

Signed by all members of the Committee except Representatives Takitani, Kawakami, Ajifu and Oda.

SCRep. 474-70 Lands on **H. C. R. No. 73**

The purpose of this concurrent resolution is to request the City and County of Honolulu to consider creating, pursuant to Article 12 of the Comprehensive Zoning Code, an Historic, Cultural and Scenic Zoning District for the urban environs of Diamond Head for the protection of Diamond Head State Monument.

The City and County of Honolulu is requested to consider the following:

(1) Creation of a Historic, Cultural and Scenic Zoning District for the urban environs of Diamond Head for the protection of the State Monument.

(2) Review the 1967 study by Pacific Planners, the State's Consultant on Diamond Head, and the adopted report of the Board of Land and Natural Resources of March 1968 to aid in its planning of this Historic, Cultural and Scenic Zoning District.

(3) City and County of Honolulu to work cooperatively with the Division of State Parks, Department of Land and Natural Resources, and the Hawaii Foundation for History and Humanities in its preservation planning.

Your committee finds that the joint State and City-County effort proposed in this resolution is particularly important since Diamond Head rests partly in the Conservation District controlled by the State and partly in the Urban District administered by the City-County. The key to the proper development of Hawaii's most famous landmark, for now and the future, rests in this type of coordinated effort.

Both agencies will report their findings and prepared plans to the Legislature twenty days before the convening of the Regular session of 1971.

Your Committee is in accord with the intent and purpose of H. C. R. No. 73 and recommends its adoption.

Signed by all members of the Committee.

SCRep. 475-70 Lands on H. C. R. No. 74

The purpose of this concurrent resolution is to request the Division of State Parks of the Department of Land and Natural Resources to take certain steps to preserve the integrity of Diamond Head State Monument. Included in the request are:

(1) Review of both the 1967 study by Pacific Planners, the State's Consultant on Diamond Head, and the report and recommendations of the State Defense Department Diamond Head Crater Task Force on the Future Uses of Diamond Head Crater.

(2) Preparation of a detailed map of the Diamond Head State Monument boundaries as adopted by the Board of Land and Natural Resources March 1968.

(3) Establish preservation criteria and control concepts for the state-owned lands comprising the Diamond Head State Monument area.

(4) Have the Hawaii Foundation for History and the Humanities to serve as the advisory committee (Act 236-69) to review the historic preservation plans for Diamond Head developed by the Division of State Parks.

Your committee finds that the proposals of this resolution will greatly facilitate the development of long-range goals in the preservation of Diamond Head as a natural landmark, the enhancement of its natural beauty and that of its environs, and the preservation of historical sites in the Diamond Head area.

Your committee is in accord with the intent and purpose of H. C. R. No. 74 and recommends its adoption.

Signed by all members of the Committee.

SCRep. 476-70 Lands on H. B. No. 1943-70

The purpose of this bill is to promote the educational, cultural, economic and general welfare of the public through the preservation and protection of buildings, sites and areas of historic significance in Kailua-Kona, County of Hawaii, through the maintenance of landmarks and through the development of appropriate settings for such buildings, sites and areas.

Your committee finds that the future of Kailua-Kona as an economically viable area is dependent upon the preservation

of the area's environment of open space, historic homesites, churches, landmarks and the scenic beauty of the town. In order to maintain this unique educational, historic, cultural and scenic center of Hawaii, your committee finds that the creation of the Kailua-Kona historic preservation district is essential to the unimpaired preservation of the area as a tangible reminder of old Hawaii. In planning for its future the retention of the beauty and serenity that has drawn visitors to Kailua-Kona since the early days of Hawaiian history is paramount.

Kailua-Kona has been a world-renowned resort area, second only to Waikiki. However, because of the increase of tourism in recent years, the limited area of Kailua town has been exploited by an influx of new developers. The unfortunate result has been hodge-podge development and the deterioration of the unique "Kona way of life" which appears to be its greatest tourist attraction. Coupled with this erosion has been the threat of possible loss of the historical sites associated with Kamehameha I. It is reported that Kamehameha I moved his residence back to Kailua-Kona from Oahu in 1812.

In order to preserve the unique "Kona way of life" and the historic sites in the area it is imperative that the state do everything within its power to restore and preserve these assets. Previous attempts to preserve the character of the town have been unsuccessful due to the large number of individual landowners in this small village. Therefore, it seems that single ownership is the only solution to the problem.

The bill will designate Kailua-Kona as a historic preservation district to be administered by the Department of Land and Natural Resources. The department shall include such lands it considers essential to the unimpaired preservation of the historic, cultural and scenic aspects of Kailua-Kona. To assist in the establishment and preservation of the district will be a Kailua-Kona advisory commission, consisting of individuals competent in zoning, planning, conservation and architectural design. It will recommend to the department designated areas and sites to

be included in the district, historic and aesthetic factors to be considered, and regulations that are to be promulgated by the department.

The bill further provides that the department may acquire designated sites or areas recommended by the committee by gift, purchase, exchange or condemnation and promulgate rules and regulations in accordance with Chapter 91, Hawaii Revised Statutes, for the proper maintenance and preservation of the designated sites. In addition, the department will be authorized to approve or reject individual and county plans, permits and zoning ordinances relating to the restoration, preservation, alteration and development of designated sites or areas. Furthermore, before any changes can be made within the district, a certificate of appropriateness must have gained the approval of the department.

Your committee is of the opinion that all occupants of lands surrendered to the state through exchange should have the option to lease such lands for the same use as that prior to surrender. **H. B. No. 1943-70** has been amended to provide this option.

As an added incentive and inducement to effectuate the purpose of the bill, your committee suggests that the old Kailua airport lands be used by the state to exchange for Kailua village lands. This will allow for an orderly, well-planned new resort development in close proximity to an old historic village without marring the virtues of the past.

It is the opinion of your committee that the provisions of this bill are timely, especially since there is a nation-wide concern for the preservation and restoration of historic sites. Examples of historic preservation districts are Gettysburg, Pennsylvania, Williamsburg, Virginia and our own Lahaina, Maui. The public is slowly realizing that our past history has much to offer in terms of lessons learned; further, it has given us direction for future growth.

Looking at Hawaii, we see that much of what was once alluring and beckoning

is being replaced by urbanization and commercialization. Therefore, it is imperative that, wherever possible, we recapture the beauty and serenity that once characterized our islands. The state has the opportunity to accomplish this by designating Kailua-Kona as a historic preservation district.

Your committee is in accord with the intent and purpose of **H. B. No. 1943-70**, as amended herein, and recommends that it be referred to your Committee on Finance in the form attached hereto as **H. B. No. 1943-70, H. D. 1**.

Signed by all members of the Committee except Representatives dela Cruz and Takamine.

SCRep. 477-70 Federal, State and County Relations on **H. B. No. 286**

The purpose of this Act is to designate an area in the district of Honolulu as the seat of government for federal, state and municipal agencies situated on the island of Oahu and to provide for the orderly development and growth of the area, which shall be known as the Hawaii State Capitol Complex.

Your Committee has held a series of three public hearings and has issued notice of those public hearings totaling approximately 118 notices. Your Committee finds that there is need for the creation of a capitol complex by statute. Your Committee has come to the conclusion that while the report prepared by John Carl Warnecke and Associates has a great deal of merit, we recommend against its adoption in total and have amended **H. B. No. 286** so as to provide the following:

1. Boundaries which do not effectuate any property set backs.
2. Boundaries that will eliminate or exclude from the capitol complex any of those residential and/or apartment lands mauka of Lunalilo Freeway.
3. Exemption from county zoning ordinances for uses rather than specific parcels of property.

The exemptions granted are for the new judiciary building, the new municipal office building, structures within the medical complex and for the new federal office building.

Your Committee finds strong objections to the location of the high rise judiciary complex in the vicinity of Punchbowl and King Streets and therefore recommends that an alternate site on the periphery of the proposed State Capitol be studied for possible location. While your Committee makes this recommendation, it does not wish to allude to any course that might otherwise hamper the efforts of the administration in the development of a new judiciary complex and leaves the matter of site selection entirely up to administration.

Your Committee is in accord with the intent and purpose of **H. B. No. 286** as amended herein and recommends its passage on second reading in the form attached hereto as **H. B. No. 286, H. D. 1**, and its referral to your Committee on Finance.

Signed by all members of the Committee except Representatives Serizawa and Fong.

SCRep. 478-70 Federal-State and County Relations on **H. B. 1187**

The purpose of this bill is to establish a new Principal Department in the Executive Branch of the State Government and providing an appropriation therefor.

Your Committee has engaged over the past 24 months in extensive research into the area of intergovernmental relations and the effectiveness of current operations to meet the growing needs of our urban communities and as a result come to the conclusion that it is time to express its concern over "urban crisis" Hawaii and to recommend to this legislature the creation of an executive department to deal with Hawaii's urban problems.

While we do not intend to cast aspersions upon current governmental operations it is the intention of your committee to

express its concern over the lack of concentrated efforts to coordinate state operations with municipal operations to assist in expediting work programs and cut through governmental red-tape.

It has become apparent across the nation that the plight of our cities cannot be adequately challenged without the States' taking a more active role in assisting the counties in such programs as mass transit, law enforcement and long term planning to achieve clean air and water. While it is true that our state role in combating pollution has heretofore been confined to setting standards of air and water quality, we have not yet embarked upon a campaign to join the counties in their efforts in solid waste disposal, the responsibility with which they are charged. In this and other areas of such paramount concern we have found a sore need for establishing long term programs supported by realistic estimates in terms of time, money and manpower.

In its deliberations your committee has found that there is need to catalogue all State programs much as has been done in Document No. 91-77, 91st Congress of the United States, prepared by the staff of Congressman William V. Roth of Delaware. The aforementioned report compiles for "potential recipients," 1,315 Federal assistance programs.

In hearings held by your committee relative to the creation of a department such as is alluded to in the subject measure your committee has become aware of the requirement by the Federal Government to have filed an application for recertification of Federal programs used or proposed to be used in Hawaii and wishes to elaborate upon this point in detail so the intentions of your committee will be clearly understood in the movement of this measure.

Testimony taken by your committee to the subject measure was in support of its passage. Such testimony was given by the urban renewal coordinator for the City and County of Honolulu who did give detailed explanation of the application for recertification of a workable program which describes in detail the efforts of govern-

ment, State and County, to meet urban problems. Of special interest to your committee is the Community Renewal Program (CRP) for Oahu which proposes to up-grade 30,000 dwelling units with estimated expenditures totalling some 309 million dollars in project cost including general improvements in drainage, sanitary sewers and streets. A major portion of the expenditures will be Federal grants with the State providing certain enforcement and regulatory personnel necessary for recertification by the Federal Government.

While the aforementioned workable program is directed in one part to the issue of renewal of declining older neighborhoods and additional part relates to the development of 30,000 new units to meet Honolulu's housing crisis.

Examination of the application for workable program recertification has proven most interesting to your committee for it has provided greater insight to the problems which must be overcome in combating urban decay in Hawaii, but more than that it has pointed up the need for improvement in inter-governmental relations in Hawaii. It should be noted here that for the first time the "workable Program Application" is made on a bi-ennial basis and in addition is being judged on standards of performance rather than conformance.

Of further interest to your committee are the recommendations of the report by the President's ADVISORY COMMISSION ON INTER-GOVERNMENT RELATIONS, of April 1969, titled STATE AID TO LOCAL GOVERNMENT. While Hawaii may not have been guided in any way by ACIR recommendations, it is worthwhile to note that we are reasonably in conformance with the recommendations. The one recommendation to which Hawaii should address itself at this time is the systematizing of State Aid and in this regard your committee feels that by the passage of H. B. No. 1187 that we will be able to:

1. Set up effective coordinating machinery

2. Devise meaningful performance standards

3. Develop yardsticks for measuring local government viability

Your committee feels that where the Department of Community affairs appears on the State organizational chart is a secondary issue. The critical need is for our State policymakers to fix responsibility for assembling complete information about State-local fiscal relationships to be used as a basis for continuing critical evaluation.

The need is obvious; it becomes more urgent with each passing day.

Our State and Federal aid dollars should work together systematically to strengthen local responsibility and at the same time assure a fair distribution of burdens and benefits. A comprehensive State-local information system, the committee is a necessary administrative tool for evaluating the effectiveness of State aid and Federal aid to local governments. The information system should provide our State policy-makers with data on such things as program needs and results, local fiscal capacity and tax effort, the fiscal viability of local governments, and possibilities of consolidating State aid programs.

ACIR data shows that nationwide, State aid to local governments accounts for more than one-third of all State expenditures, and in some States aid to localities runs to 40 or 50 percent of the total budget.

With a comprehensive and smooth functioning information system our State can begin measuring performance—not only at the State level but also at the local level.

Your committee stresses the need for both fiscal and program performance standards. Obviously our State should prescribe and enforce accounting, auditing and fiscal reporting requirements for local governments that receive State funds. But just as important our State should make sure that funds are being put to the program uses for which they were intended and that the quality of service is as high as it should be.

Performance standards for State grants to local governments serve a dual purpose. Local program administrators need them as an indication of the intent of our State policymakers. By the same token, those charged at the State level with reviewing and evaluating grant programs need standards in order to measure results against intended goals.

As our State moves into new urban development programs, many of which can have an impact on entire neighborhoods, it will be necessary to spell out some benchmarks for citizen participation, including, where appropriate, the holding of public hearings, before programs are launched.

But here, as in all things, moderation is needed. The Federal Government has been too specific and too detailed in many of its standards and requirements. Federal categorical aid programs requirements seem all too often to imply that officials at other levels of government cannot or should not be trusted to exercise good judgment.

There is a lesson here for our State policymakers. In framing standards for State aid to local governments, our State legislators and administrative officials should steer a middle course between “too much” and “not enough” specificity in fiscal and performance standards.

Effective information systems and realistic performance standards are powerful tools. With them our State can achieve a high degree of coordination.

Our State has the right and the obligation to insist that local programs and projects aided by State dollars conform to statewide and areawide planning objectives. Only in this way can our State make sure that State assistance to local government contribute to statewide goals, produces programs and projects that complement one another, and discourages overlapping and duplication. Reasonable planning and review requirements, your committee insists, should be an integral part of all State aid legislation.

Admittedly, requiring local plans to con-

form to regional, State and Federal planning objectives has a "centralist" tinge. But to put the issue bluntly, a price must be paid for orderly development. This price is reflected in the length of time required to secure the necessary approval for local plans from officials at higher levels, the cost of local personnel whose efforts are consumed in development and clearing the plans, and a very real but hard-to-measure factor — the diminution of local autonomy. Moreover, the "pioneers" in planning conformance — the Federal policymakers — thus far have demonstrated an inability to avoid conflicting and extremely complex planning requirements.

Thus, as in the case of performance standards, our State policymakers will have to steer a middle course between extreme specificity and the "law of the Jungle" approach. Hopefully, our State will develop planning guides to serve their own needs and as models for the Federal Government to follow.

Your committee has amended **H. B. No. 1187** in the following manner:

1. To require the Director to prepare and submit to the legislature a statewide "workable program".

2. To require the Director to submit to the governor who shall in turn submit to the legislature such estimates of the amounts as may be reasonably required for expenses and overhead as may be required for the administration of Hawaii Urban Renewal law and such other amounts as may be deemed necessary as State contribution for Urban Renewal projects.

Your Committee is in accord with the intent and purpose of **H. B. No. 1187** as amended herein, and recommends its passage on second reading in the form attached hereto as **H. B. No. 1187, H. D. 1**, and that it be referred to your Committee on Government Efficiency and Public Employment.

Signed by all members of the Committee except Representatives Serizawa and Fong.

SCRep. 479-70 (Majority) Government Efficiency and Public Employment on H. B. No. 1315-70

The purpose of this bill is to increase holiday pay for fire-fighting members to an amount equal to two and one-half times his regular rate of pay. This bill also calls for double and a half time payment for public officers and employees for work performed on a Saturday, Sunday, or a holiday.

Under present law any fire-fighting member of the fire departments of the counties is entitled to double time payment in lieu of his straight time pay for work performed on any of the holidays designated in Section 80-4(d)(3), Hawaii Revised Statutes. Your Committee has been advised that an increase in holiday pay for fire-fighters would result in a more equitable form of holiday compensation. Your Committee agrees that fire-fighters should be entitled to double and a half time payment for work performed on a holiday.

This bill also amends Section 80-5, Hawaii Revised Statutes by adding therein a provision calling for double and a half time payment to public officers and employees for work performed on a Saturday, Sunday, or a holiday. The rationale behind this proposal is to encourage department heads to initiate intra-departmental policy which fosters the scheduling of work of personnel during the normal workweek of Monday through Friday.

For reason of clarification pursuant to the intent of the proposed amendment to Section 80-5, Hawaii Revised Statutes, your Committee has amended the title of Section 80-5, as stated in line 6, page two of **H. B. No. 1315-70**, to read: "Saturday, Sunday, holiday pay for officers and employees and per diem employees."

Based on technical grounds your Committee has amended the numerical designation of the subparagraph referred to in Section 80-4(d) by **H. B. No. 1315-70**. The numerical designation (4) of the subparagraph has been deleted and substituted with a (3).

Your Committee has converted the form of the bill to comply with House Rule 24(2).

Your Committee is in accord with the intent and purpose of **H. B. No. 1315-70**, as amended herein, and recommends its passage on second reading and its referral to the Committee on Finance in the form attached hereto as **H. B. No. 1315-70, H. D. 1.**

Signed by all members of the Committee. Representative Devereux did not concur.

SCRep. 480-70 Government Efficiency and Public Employment on H. B. No. 1892-70

The purpose of this Act is to set a uniform maximum schedule of working hours for all firemen throughout the State.

Firemen working for the City and County of Honolulu now enjoy a 63 hour average workweek, based on an eight-week cycle. Neighbor island firemen still are covered by a maximum average workweek of 72 hours per week, based on a four-week cycle.

There is a growing movement through the country to reduce firemen's hours. Neighbor island firemen are now working longer hours than the firemen in most mainland jurisdictions. The requirement of uniform working hours is consonant with the concept of equal pay for equal work.

Your Committee recommends that in order to effect a successful transition period for the counties to adjust in recruitment and training the extra personnel needed, that the effective date be amended to January 1, 1971.

Your Committee on Government Efficiency and Public Employment is in accord with the intent and purpose of **H. B. No. 1892-70**, as amended herein, and recommends its passage on second reading and its referral to the Committee on Finance in the form attached hereto as **H. B. No. 1892-70, H. D. 1.**

Signed by all members of the Committee except Representative Oda.

SCRep. 481-70 Government Efficiency and Public Employment on H. B. No. 1311-70

The purpose of this bill is to prevent public employees from operating government-owned motor vehicles which are deemed to be unsafe.

This bill provides that if an employee is assigned to a motor vehicle which he considers unsafe, he or his employee representative and a representative of the employer will get together and appoint a qualified third party to inspect the motor vehicle. If the third party decides that the vehicle is unsafe to operate, then another vehicle must be assigned to the employee. If, on the other hand, the third party says that the vehicle is safe to operate, then he must operate the vehicle originally assigned to him.

Your Committee has converted the form of the bill to comply with House Rule 24(2).

Your Committee is in accord with the intent and purpose of **H. B. No. 1311-70**, as amended herein, and recommends its passage on second reading and its referral to the Committee on Judiciary in the form attached hereto as **H. B. No. 1311-70, H. D. 1.**

Signed by all members of the Committee except Representative Oda.

SCRep. 482-70 Government Efficiency and Public Employment on H. B. No. 1313-70

The purpose of this bill is to limit liability for damages caused by a public officer or employee to government property while performing work within the scope of his employment.

Under existing law, an employee may be held liable for reimbursing the government in part, or in whole, for any damages incurred to government property if he were found to be negligent. However, your Committee has been advised that this practice is not uniformly applied at the present time throughout the government. This bill is designed to establish uniform and equitable treatment to all public employees in reference to damages incurred to govern-

ment property where the employee has been found to be at fault.

Your Committee feels, however, that there should be a restriction to the extent of liability limitation a public employee is entitled to in reference to damages incurred to government property. Your Committee agrees that where a public employee causes damages to government property with malicious and willful intent, such employee should not be absolved of liability for damages. Accordingly, your Committee has amended the first line of the proposed new Section 78- . . . to read: "Except in cases of willful misconduct or malicious intent,".

Your Committee has converted the form of the bill to comply with House Rule 24(2).

Your Committee is in accord with the intent and purpose of **H. B. No. 1313-70**, as amended herein, and recommends its passage on second reading and its referral to the Committee on Finance in the form attached hereto as **H. B. No. 1313-70, H. D. 1**

Signed by all members of the Committee except Representative Oda.

SCRep. 483-70 Government Efficiency and Public Employment on **H. B. No. 922**

The purpose of this bill is to repeal the provision of the retirement law providing that any benefit paid by the State or county under the provisions of the Workmen's Compensation Law on account of disability or death shall be offset against any pension of the System on account of the same disability or death. This amendment would allow the beneficiary to receive both the pension and the Workmen's Compensation benefits at the same time, rather than waiting until Workmen's Compensation payments have been exhausted in order to receive the full pension payment.

Your Committee amended Section 1 of **H. B. No. 922** by citing the most recent version of the "pensions offset by compensation benefits" section as contained in the Hawaii Revised Statutes: specifically, Section 88-86, HRS.

Your Committee has converted the form of the bill to comply with House Rule 24 (2).

Your Committee is in accord with the intent and purpose of **H. B. No. 922**, as amended herein, and recommends its passage on second reading and its referral to the Committee on Finance in the form attached hereto as **H. B. No. 922, H. D. 1**.

Signed by all members of the Committee except Representative Oda.

SCRep. 484-70 Government Efficiency and Public Employment on **H. B. No. 540**

The purpose of this bill is to increase the annual post-retirement allowance of pensioners so that they may keep up with the increased cost of living.

The bill proposes to increase the allowance from the present one and one-half per cent annual increase to three per cent annual increase. Your Committee recommends an annual benefit increase of two and five-tenths per cent. To increase the benefit to two and five-tenths per cent would require an additional \$4.1 million per year.

Your Committee amended Section 1 of **H. B. No. 540** by citing the updated version of the "post-retirement allowance" section as contained in the Hawaii Revised Statutes: specifically, Section 88-90, HRS.

Your Committee felt that both employee and government contributions to the post-retirement fund necessarily must be increased to cover the cost of the post-retirement benefit increase. The employee's contribution was increased from one-half of one per cent to one and eight-tenths per cent. The government's contribution was increased from one-half of one per cent to two and five-tenths per cent. Accordingly, your Committee recommended the amendment of the relevant, updated sections in the Hawaii Revised Statutes, namely Section 88-45 and Section 88-115.

Upon consideration of this bill your

Committee has changed the effective date to read "July 1, 1970".

Your Committee has converted the form of the bill to comply with House Rule 24(2).

Your Committee is in accord with the intent and purpose of **H. B. No. 540**, as amended herein, and recommends its passage on second reading and its referral to the Committee on Finance in the form attached hereto as **H. B. No. 540, H. D. 1**.

Signed by all members of the Committee except Representative Oda.

SCRep. 485-70 Housing and Consumer Protection on H. B. No. 43

The purpose of this bill is to encourage the repair of substandard housing by protecting tenants who withhold rent to make minor repairs — after giving the landlord ample notice and opportunity to act — or who make complaints to public officials about health hazards in their dwelling units from eviction or rent increases in retaliation. The protection is limited, and is for a six-month period only.

From testimony before your Committee, your Committee concludes that the number of substandard dwelling units in this State is increasing, rather than decreasing. The primary mechanism for enforcing the maintenance of health standards is inspection by department of health inspectors, who respond only to complaints. The department informed your Committee that tenants rarely complain; and tenants informed your Committee that the reason they do not complain is the fear of eviction in retaliation for the complaint.

Your Committee considered measures that would call for full enforcement of health standards, but decided to abandon that approach—full enforcement would result in taking too many dwelling units off the market—with the present shortage of housing, your Committee has concluded that it is simply not possible for everyone to live in a unit that does not in some respects violate some health laws and regulations.

Your Committee has therefore decided to recommend a measure that retains the present selective enforcement when there is a complaint, but one which increases to a certain extent the options open to a tenant who lives in a unit where his health is endangered.

Most of the rental units which contain health violations appear to your Committee to be rented month-to-month rather than under a lease. Under present law, a month-to-month tenancy may be terminated at any time, after 25 days notice. The landlord may evict for any reason whatever, including the reason that the tenant has petitioned the health department for an inspection.

Under present law, furthermore, if a tenant withholds part of his rent to repair a condition which the landlord has the duty to repair, the tenant may be evicted for non-payment of rent on five days notice, even though the landlord has refused to make the repair.

Your Committee is proposing, in House Draft No. 1, attached, to make these changes in this present law: if a dwelling unit contains a violation of a health statute or a department of health regulation which violation was not caused by the tenant's own lack of ordinary care, and the tenant withholds a limited amount of rent to repair the condition or reports the violation to a public body charged with enforcing health standards, the tenant is protected for six months from a retaliatory eviction or a retaliatory rent increase. The tenant is not protected from either eviction or rent increase if the landlord has grounds other than the withholding or complaining to evict the tenant or to raise the rent. The bill provides the landlord with eight grounds to evict and five grounds to raise the rent, under such circumstances. It also limits the total amount of rent that may be withheld in a six-month period to an amount equal to three months' rent and provides protection against rent withholding designed merely to harass.

Several examples might help clarify how the bill would work:

EXAMPLE 1. A reasonably standard house has a toilet clogged by roots. The tenant gives the landlord a written notice, but the landlord refuses to take reasonable steps to have the drain cleared within two weeks after he gets the notice. The tenant may thereafter withhold up to \$100 to have the drain cleared in a workmanlike manner, and he is protected from eviction for six months, subject to the eight exceptions described below.

EXAMPLE 2. Same as Example 1, but the toilet was clogged because the tenant's children tried to flush a diaper. If the tenant withholds rent in such a case, the landlord may evict the tenant, on five days notice, for non-payment of rent.

EXAMPLE 3. A tenant notifies his landlord that his bedroom has an insufficient number of electrical outlets, in violation of the building standards, and withholds rent to install another outlet. The landlord may evict the tenant for non-payment of rent. The proposed measure relates only to violations of **health** standards.

EXAMPLE 4. A dwelling unit has 12 separate violations of health standards, including a door that has fallen off because the wooden frame rotted through, window screens that have rusted through, an open sewer pipe, and rat holes. The rent for the unit is \$150 a month. It would cost \$125 to fix the door, \$110 to repair the screens, \$800 to replace the sewer pipe, and \$25 to plug the rat holes.

The tenant in such a unit must make a judgment as to how to proceed, if at all. If he decides to go the rent withholding route, he gives the landlord a written notice. The notice would need to state all 12 violations existing at that time. If the tenant fails to list one, he is barred for six months from using the retaliatory eviction provision with respect to it.

The tenant would also state in the notice which of the 12 violations he intends to withhold rent to repair, if the landlord fails to repair.

The tenant in this example is not con-

cerned about most of the violations, but does want the door and window screens fixed and the rat holes plugged. He so notifies the landlord, who refuses to repair. The tenant may, then, in one month, deduct \$25 from his rent to plug the rat holes; in another month he may deduct \$100 to fix the door (paying \$25 himself); and in a third month deduct \$100 to fix the screens (paying \$10 himself). In all cases the tenant must give the landlord receipts to justify the deductions. The tenant is not protected for more than three deductions, and all three must be made within six months of the time the tenant first notifies the landlord of the need for repairs.

EXAMPLE 5. Same as Example 3, but the tenant also provides the landlord with an estimate from a qualified workman before proceeding to fix the door, and gives the landlord four weeks in which to fix the door. In that case, the tenant may deduct up to one month's rent rather than up to \$100 (the tenant could deduct the full \$125 cost of the door, since his rent is \$150).

EXAMPLE 6. Same as Example 3, except that some time after the tenant gave the landlord notice, the drain under the sink started leaking. The tenant may notify the landlord of that violation, since he did not and could not have known of it initially, and is protected from eviction for an additional six months, starting on the date of the new notification.

EXAMPLE 7. Same as Example 3, but the tenant is mostly concerned with the open sewer. In this case, the rent withholding provision would not work unless the tenant is willing to pay the difference between one month's rent (\$150).

The tenant would need to consider reporting this violation to the health department. If he does report it, the health department would inspect, note all 12 violations, and order the landlord to repair.

EXAMPLE 8. The tenant notifies his landlord of a violation. The landlord tells the tenant that he knows there is a violation but that he will take the unit off the market

rather than make repairs. The landlord and tenant would then be in a position to bargain about repairs.

As your Committee has indicated, even though a tenant withholds rent or complains to the health department, there are eight circumstances under which the landlord may evict the tenant. They are:

- (1) The tenant is committing waste, or a nuisance, or is using the dwelling unit for an illegal purpose or for other than living purposes in violation of the rental agreement;
- (2) The landlord decides to live in the house himself;
- (3) The landlord decides to substantially remodel the house or to demolish it;
- (4) The landlord decides to stop renting the unit as a dwelling place for a period of six months;
- (5) The condition complained of was caused by lack of ordinary care on the part of the tenant;
- (6) The tenant was wrong about there being a health violation;
- (7) The landlord sells the property, and the purchaser decides to live in the house, substantially remodel it, or demolish it, or not rent it as a dwelling unit for a period of six months;
- (8) The landlord had given the tenant an eviction notice before the tenant requested repairs or complained to the health department.

There are also five grounds on which the landlord may raise the rent even though the tenant has withheld rent or complained. They are:

- (1) The tenant was wrong about there being a health violation;
- (2) Not less than four months before the rent increase, the landlord has had a substantial increase in property taxes or maintenance or operating costs;

(3) The landlord has completed an improvement of the dwelling unit; the increase is limited to the prorated amount measured by federal income tax depreciation schedule;

(4) The tenant caused the condition complained of by his own want of ordinary care;

(5) The landlord can show that the standard rent for a unit like the tenant's is an amount equal to the amount he is requesting.

Your Committee is in accord with the intent and purpose of **H. B. No. 43**, as amended in the form attached hereto as **H. B. 43, H. D. 1**, and recommends that it pass second reading and be referred to your Committee on Finance.

Signed by all members of the Committee except Representatives Kondo, Sakima, Oda, Saiki and Fong.

SCRep. 486-70 Select Committee of Oahu Representatives on **H. B. No. 1623-70**

The purpose of this bill, as amended herein, is to provide for county charter amendment and revision at minimum prescribed intervals, and further to provide that county officers shall be empowered to and shall promulgate rules and regulations relating to performance of their duties.

Your Committee is of the opinion that the county charters, because the county governments are concerned principally and directly with the ever-changing everyday affairs of the people, must be revised at prescribed intervals, certainly not to exceed the period for review of the state constitution as provided therein. Your Committee finds that it is both desirable and necessary to provide for periodic re-examination of county charters, and has, therefore, provided for a procedure of allowing the county councils to submit the question to the electorate, in the absence of which, after any ten-year period, the county clerk shall certify the question.

Further, it is the opinion of your Committee that because of variations in the minimum terms set for mandatory charter review, occasioned by the question of whether or not a review can be made by a charter commission at any time prior to the minimum term set by the charter provisions, this procedure will resolve that question and tend toward a degree of uniformity among the counties. Thus, the amendment to section 50-11 does not preempt the counties from providing the means by which their charters shall be amended, but it does prescribe the minimum term for certification of the question while allowing for interim review.

With regard to the provision that county officers shall be empowered to and shall promulgate rules and regulations relating to the performance of the duties of their office, it is the opinion of your Committee that because of uncertainty as to which of the various county agencies are or are not empowered so to act, that an enabling statute is necessary to remove any doubt that all agencies, by their respective administrative officers, are so empowered.

The problem area lies in the definition of the term "agency", which under section 91-1 (1) means "... each state or county board, commission, department, or officer **authorized by law to make rules . . .**" (emphasis added). Frequently, this has been held to mean an agency which is authorized by statute. See, e.g., Faust, **Compliance of County Agencies with the Hawaii Administrative Procedure Act**, University of Hawaii, Legislative Reference Bureau Report No. 3 (1968) pp. 2-3.

In this regard, the bill provides that all county department heads and administrative officers, and their subordinates, are empowered thereby, as an enabling measure, to promulgate rules and regulations, which shall have the force and effect of law, and that they shall so promulgate relating to the powers, duties, and functions of their office, whether by statute, charter or rule or order of the council.

Your Committee not unmindful that there are several other measures presently pending before the legislature concerned

with amendments to county charters in various regards, specifically, (a) reapportionment of the City Council of the City and County of Honolulu, (b) procedures for amendments to general plans, and (c) composition of zoning boards of appeal, to mention a few, has undertaken to draft the bill's provisions in the light of broad examination of all statutory and charter provisions generally so as to minimize the possibility of conflict with any fragmentary legislation which may otherwise result.

Your Committee converted the form of this bill in compliance with House Rule 24(2).

Your Committee is in accord with the intent and purpose of **H. B. No. 1623-70** as amended in the form attached hereto as **H. B. No. 1623-70, H. D. 1**, and recommends that it pass second reading and that it be referred to your Committee on Judiciary.

Signed by all members of the Committee except Representatives Oshiro, Oda and Poepoe.

SCRep. 487-70 Select Committee of Oahu Representatives on **H. B. No. 1761-70**

The purpose of this bill is to make an appropriation for park and recreational development of Sand Island. Your Committee finds that the development of parks and beaches for the use of Central and West Honolulu residents has not kept up with the needs in these areas. District IV of the Department of Parks, and Recreation, which includes the Kalihi-Palama and Pearl City areas, has no public golf course, no beach park in existence or planned. There is no swimming at Keehi Lagoon Park. To meet standards set by the Department, there should be 459 acres of neighborhood, community and district parks in this district. There are 133 acres. In 1985, there should be 756 acres; only 508 acres are projected. Anuenue Island can provide the residents of Central and West Honolulu with an easily accessible and fine beach and surfing park.

Your Committee is in accord with the intent and purpose of **H. B. No. 1761-70**

and recommends its passage on second reading and that it be referred to your Committee on Lands.

Signed by all members of the Committee except Representative Oda.

SCRep. 488-70 Select Committee of Oahu Representatives on **H. B. No. 808**

The purpose of this bill is to make an appropriation for an emergency medical care unit to render twenty-four-hour emergency medical care to be located at the Leahi Hospital, Kaimuki, Oahu.

It is the understanding of your Committee that with such a medical care unit, Leahi Hospital would develop a capability to render twenty-four-hour emergency medical care service.

There are no emergency treatment facilities operated by the City and County of Honolulu in the Leahi Hospital neighborhood. The nearest emergency unit operated by the City and County is in the Pawaa Annex at 1455 South Beretania Street.

Additionally, there is every reason to believe, and your Committee therefore suggests, that such a medical care unit could serve to offer teaching opportunities for the medical school of the University of Hawaii.

Your Committee is in accord with the intent and purpose of **H. B. No. 808**, and recommends it pass second reading, and that it be referred to your Committee on Finance.

Signed by all members of the Committee except Representative Oda.

SCRep. 489-70 Select Committee of Oahu Representatives on **H. B. No. 1355-70**

The purpose of this bill is to provide an appropriation of \$10,000,000 for planning and construction of a sewage treatment plant on Anuenue. The need for such a plant to facilitate waste treatment and preserve Oahu's valuable marine resources is unquestioned. The treatment process to be

used in this plant has not as yet been selected. The City has testified that actual construction of a sewage treatment facility cannot commence in fiscal 1971. However, it is imperative that planning and preliminary site preparation commence immediately. The City estimates the cost of a primary, secondary and tertiary treatment plant to be \$12,000,000, \$23,000,000 and \$37,000,000 respectively.

Engineering for the specifications and construction drawings of the Anuenue plant is expected to begin in March 1971 after design parameters are provided by the Water Quality Program. The engineering phase is expected to take 13 months and bid opening for the proposed facilities should take place by the end of the 1971-1972 Fiscal Year. Construction will take approximately 18 months and the new treatment plant is expected to be completed by February 1974. This schedule can be met only if the State appropriates planning funds now.

Your Committee is in accord with the intent and purpose of **H. B. No. 1355-70** and recommends that it pass second reading and that it be referred to your Committee on Finance.

Signed by all members of the Committee except Representative Oda.

SCRep. 490-70 Select Committee of Oahu Representatives on **H. B. No. 2003-70**

The purpose of this bill is to permit the city council to submit to the budget director a schedule of anticipated expenditures for each quarter following the enactment of the operating budget ordinance. It further provides that such schedule of anticipated expenditures would not require the approval of the mayor nor can it be altered by the mayor.

The intent of this bill is to clarify the intent of Act 261 (S.L.H. 1959), the charter of the city and county of Honolulu, by providing that the mayor shall have no power to withhold allocation of budgeted funds to the council.

The city charter provides that before any

agency of the city can expend funds appropriated by the budget ordinance, the agency must (1) submit an expenditure schedule to the budget director, and (2) obtain approval thereof from the mayor. The approval by the mayor constitutes the allotment to the agency. The corporation counsel has interpreted the charter to mean that the term "agencies" includes the council and that before the council may expend its funds, which are part of the budget ordinance, it must first submit an expenditure schedule and also obtain the mayor's approval thereof.

The budget procedure as set forth under Act 261 are generally as follows:

1. Council and all agencies seeking appropriations are to submit requests to the budget director, who prepares the operating budget under the direction of the mayor.

2. Mayor submits the proposed budget to the council and the council schedules hearings thereon. Council may reduce any item on mayor's budget by majority vote and may increase any items or add new items thereto by two-thirds vote of its entire membership.

3. Council, after consideration of estimated revenues, expenditures, and programs, enacts the budget ordinance, which budget shall include the appropriation for the council.

4. After enactment of the budget ordinance, the agencies submit expenditure schedules for the year to the budget director for approval by the mayor. Said schedule, which may be changed by the mayor from time to time, constitutes the budgetary allotment. No expenditures can be made that is not in accordance with such allotment.

The mayor of the city and county of Honolulu testified against **H. B. No. 2003-70** and stated that "[t]his bill, if enacted into law, would take one department of the city and county of Honolulu and exempt it from the budgetary allotment system which is now applicable to all departments of the city and county of

Honolulu." He referred to the corporation counsel's opinion which held "that the administrative review and approval of the city council's expenditures schedule was in accord with the underlying division of administrative matters in the executive department from the policy making authority found in the legislative department [and that] the great weight of legal authority holds that the theory of coordinate, independent branches of government that has been generally held to apply to the national and state governments does not apply to the municipal corporations". The real question according to the mayor was: "Do we or do we not have a strong mayor form of government in the city and county of Honolulu?"

Testifying in favor of the bill was the chairman of the city council, who stated that the charter clearly reposes the legislative power in the council. In order to effectively exercise this power, the council must have a staff which would be independent of the executive branch. He felt that the council should not solely rely upon the facts, conclusions and recommendations of any agency whose very programs and performance may be under scrutiny by the council.

Your Committee has considered all of the testimony and evidence presented and believes that the city charter intended that the council exercise full legislative powers and that in the exercise of the powers, it must have control over its own funds, including the right to provide funds for a staff, if the council so desired. To allow the mayor blanket budgetary controls over the council's expenditures, which were approved as part of the budget ordinance, would destroy the principle of the separation of legislative and executive powers set forth in the charter. The so-called "strong mayor" system is not to say that the mayor may cut off any and all funds to the council by use of the power to allocate. If this contention were correct, the mayor could refuse to allocate any funds to the council and thus frustrate the council's power to legislate effectively. Your Committee is not persuaded, as the mayor alleges, that the principle of separation of powers does not apply to Honolulu.

In **City Council of the City & County of Honolulu vs. Frank F. Fasi, Mayor of the City & County of Honolulu, et. al.** (No. 4945, Decided April 3, 1970), the court points out that: "The charter has as its basic scheme a clear and definite separation of the legislative power and the executive power of the city and county, vesting the former in the legislative branch represented by the council and the latter in the executive branch headed by the mayor. Under the separation of powers so provided, each branch is coordinate with the other and neither may exercise the power vested in the other." The court further clearly points out in its opinion that "the council is not a department of the city & county."

It is axiomatic that he who controls the purse strings, controls the lifeblood of the organization.

Your Committee believes that it was the basic scheme of the charter to provide a clear and definite separation of the legislative power and the executive power. The **Fasi** case cited above affirms this position.

Your Committee is in accord with the intent and purpose of **H. B. 2003-70**, and recommends its passage on second reading, and that it be referred to your Committee on Judiciary.

Signed by all members of the Committee except Representatives Loo, Oshiro, Judd, Oda and Poepoe.

SCRep. 491-70 Public Utilities on H. B. No. 1965-70

H. B. No. 1965-70 amends Chapter 347, Hawaii Revised Statutes, which relates to the blind and visually handicapped, in several respects. The bill accomplishes the following purposes:

1. Under the bill blind and otherwise physically disabled persons are entitled to equal privileges on common carriers and within other places to which the general public is invited. Further, the bill provides that the blind shall have the right to be accompanied by a guide dog in such places without being required to pay an extra charge for the dog.

2. The bill provides that any driver who fails to take precautions for the protection of a blind or physically handicapped person, who is carrying a white cane or who is accompanied by a guide dog, shall be liable for any injury caused to such disabled person.

3. The bill provides that a blind or physically handicapped pedestrian carrying a white cane or using a guide dog in any public place shall have all of the rights and privileges conferred by law upon other persons. Further, the failure of a blind or physically handicapped pedestrian to carry a cane or to use a guide dog shall not be held to constitute nor be evidence of contributory negligence.

4. Finally, the bill requires the Governor to proclaim and make special notice of April 15th as "WHITE CANE SAFETY DAY".

Your Committee finds that **H. B. No. 1965-70** is a significant step toward insuring the complete integration of the blind and visually handicapped into the economic and social life of the State.

Your Committee is in accord with the intent and purpose of **H. B. No. 1965-70** and recommends its passage on second reading and its referral to your Committee on Judiciary.

Signed by all members of the Committee except Representatives Duponte and Takitani.

SCRep. 492-70 Judiciary on H. B. No. 1688-70

This bill is intended, in short, to put some teeth into the law relating to disposition of abandoned vehicles, initially enacted in 1949 and amended on at least 3 subsequent occasions.

The present law authorizes the various counties to cause to be taken into custody, and to dispose of the same, vehicles which have been left unattended for a continuous period of more than 24 hours and which are unlawfully on any public highway or any public property or which have been

left on private property without authorization of the owner or occupant of the property. It authorizes the mayors of the various counties to designate an agency to carry out the functions and requirements of the law.

The present law contains provisions for notice to the owner of such vehicle, disposition thereof at public auction in the event it is not repossessed within 20 days, repossession by any person entitled prior to the auction, waiver of public auction requirements, the effect of transfer of title, and disposition of proceeds from the sale of the vehicle. Additionally, in 1969, the legislature enacted provisions relating to vehicles abandoned upon the premises of a motor vehicle repair business, authorizing the owner thereof to dispose of it as junk and retain the proceeds of the sale to the extent of compensation due him for services rendered in respect to the vehicle.

Notwithstanding all of these measures, and considering the length of time that they have been in effect, there is substantial evidence of their ineffectiveness to justify reevaluation thereof. A Sunday afternoon drive around the island is filled with evidence of the distressing evil which this measure seeks to remedy. The cry of distress is the summons to relief.

The bill, as amended herein, amends the present law in the following respects:

Present section 290-1, authorizing the counties to cause abandoned vehicles to be taken into custody and to dispose of the same, and authorizing the mayors to designate an agency therein to carry out the functions and requirements thereof, is deleted. In its place, new section 290-1 sets forth the following definitions: (1) "Police department" as the police department of a county. (2) "Abandoned motor vehicle" as a motor vehicle that is inoperable and over 8 years old and is left unattended on public property for more than 48 hours, or a motor vehicle that has remained illegally on public property for a period of more than 48 hours, or a motor vehicle that has remained on private property without the consent of the owner or person in control of the property for more than 48 hours.

(3) "Demolisher" as any person whose business is to convert a motor vehicle into processed scrap or scrap metal, or otherwise to wreck or dismantle motor vehicles.

New section 290-2 provides that a police department may take into custody any motor vehicle found abandoned on public or private property and may employ its own personnel and equipment for that purpose.

Present section 290-2, providing for written notice to the legal and registered owner by registered or certified mail, is deleted. New section 290-3 provides that a police department which takes into custody an abandoned vehicle shall notify, within 15 days, by registered mail, the last known registered owner of the motor vehicle and all lien holders of record. If the identity of such persons cannot be determined, notice by publication is authorized, and the consequences and effect of failure to reclaim is the same as if valid notice had been given.

Present section 290-3, providing for public auction after advertisement in a newspaper, is deleted. New section 290-4 provides that if an abandoned vehicle has not been reclaimed as hereinabove provided, the police department shall sell the abandoned vehicle at a public auction. The purchaser of such a motor vehicle shall take title thereto free and clear of all liens and claims of ownership, and shall receive a sales receipt and be entitled to register the vehicle and receive a certificate of title. The sales receipt shall be sufficient title only for the purpose of transferring the vehicle to a demolisher for demolition, for which case no further titling of the vehicle shall be necessary. From the proceeds of the sale, the police department shall reimburse itself for all expenses and costs incurred pursuant thereto, and any remainder from the proceeds shall be held for the owner or entitled lien holder for 90 days, after which the same shall be deposited in a special county fund to remain available for the payment of expenses and costs involved in the disposition of other abandoned vehicles whenever the proceeds from a sale thereof are insufficient to meet these expenses and costs. Whenever the

county director of finance finds there is an excess of reserves, he may transfer the same to the general fund.

Your Committee amended this section of the bill by incorporating the language of present section 290-3 relating to a situation where no bid is received, in which case the vehicle may be either sold by negotiation, disposed of or sold as junk, or donated to any governmental agency.

Your Committee amended the bill by including at this point present section 290-4, authorizing any person entitled to the vehicle to repossess the same prior to the date of auction upon payment of all expenses and costs incurred in connection therewith, and redesignating the same as new section 290-5.

Your Committee further amended the bill by including at this point present section 290-5, providing that the requirements of public auction may be waived when the appraised value of any vehicle is less than \$100, allowing the same to be disposed of in the same manner as when no bid is received, and redesignating the same as new section 290-6.

Present sections 290-21 through 290-25, enacted as Act 178, Session Laws of Hawaii 1969, relating to vehicles abandoned on business premises of persons engaged in motor vehicle repair business, are deleted. New section 290-7, relating to "garage keepers", includes such business within its definition, and provides that any motor vehicle left for more than 10 days in a garage, after notice by registered mail to the owner, shall be reported by the garage keeper to the police department. Such vehicle may be taken into custody by the police department and sold in accordance with the procedures of new section 290-4 hereinabove, the proceeds of sale to be first applied to the garage keeper's charges for servicing, storage, or repair, and any surplus to be distributed in accordance with new section 290-4 hereinabove.

New section 290-8, relating to demolishers, consists of several subsections which provide as follows: (a) Any

person upon whose property or in whose possession is found an abandoned motor vehicle, or whose title certificate is faulty, lost or destroyed, may apply to the police department for authority to sell, give away, or dispose of the vehicle to a demolisher. (b) The applicant is required to execute an affidavit setting forth the facts surrounding the abandonment or that the title of the motor vehicle was lost or destroyed. (c) If the police department finds the application is in proper form and is satisfied that the vehicle was abandoned and that the applicant is the rightful owner, it shall follow the notification procedures of new section 290-3 hereinabove. (d) If any such abandoned motor vehicle is not reclaimed, the police department shall give the applicant a certificate to sell it to a demolisher, who shall accept such certificate in lieu of title. (e) Notwithstanding any other provision of this bill, any person within its purview may dispose of such motor vehicle to a demolisher without notification if the same is over 8 years old and has no engine or is otherwise totally inoperable.

New section 290-9, relating to duties of demolishers, provides that such person who purchases or otherwise acquires a motor vehicle for the purpose of wrecking, dismantling, or demolition shall not be required to obtain a certificate of title for such motor vehicle in his own name. Instead, after the motor vehicle has been so processed that it is no longer a motor vehicle, the demolisher is required to surrender for cancellation the certificate of title or auction sales slip. The police department is required to issue such forms, rules and regulations governing the surrender of certificates and receipts as are appropriate, subject, your Committee added, to chapter 91. The demolisher is required to keep an accurate and complete record of all motor vehicles purchased or received by him in the course of his business.

Your Committee further amended the bill by including at this point present section 290-6, providing that the transfer of title and interest by sale hereunder shall be considered a transfer by operation of law and governed by the provisions applicable thereto, and redesignating the same as new section 290-10.

Present section 290-7, providing that all proceeds from the sale of vehicles shall be deposited into the general fund of the county, is deleted. New sections 290-11 and 290-12 were substituted therefor.

Under new section 290-11, effective July 31, 1970, whenever the ownership of a motor vehicle is transferred within a county, \$30.00 shall be paid by the transferee into the treasury of such county, such amount only to be paid once for any one motor vehicle. Thereafter, any person who disposes of a motor vehicle pursuant to new section 290-8 hereinabove, or who disposes of a motor vehicle duly registered in his name, shall be entitled to receive, upon presentation of appropriate proof of such disposal, \$30.00 to be paid out of the funds held in the county treasury.

New section 290-12 provides that the counties shall have the power, subject to chapter 91, to promulgate rules and regulations relating to the administration of the disposal funds established hereunder.

Section 2 of the bill is an appropriations measure and provides that the sum of \$150,000 shall be allocated for the purpose of making the payments herein contemplated in cases where the vehicle demolished has not been transferred after the effective date of the Act and no funds have yet been paid to the county pursuant to new section 290-11 hereinabove.

The "bounty" of \$30.00 per abandoned vehicle, incidentally, has been established based upon offers to a request for bids received by the governor's committee on housing to remove some 500 abandoned vehicles upon State owned lands in Waimanalo for which a low income housing project has been proposed and appears to be nearing approval. If necessity requires, there is no reason the price cannot be subsequently increased toward the purpose of establishing the program as totally self sufficient.

Your Committee does not undertake to predict the success of this measure if enacted. However, it is painfully evident that present legislation upon the subject of abandoned vehicles is entirely

inadequate. If the placing of a "bounty" upon such vehicles proves to be the solution, then the distressful cry has been answered. If not, and until this measure, as prior measures, proves ineffective, it is for the legislature in forthcoming sessions to undertake other means of resolving the problem. In any event, your Committee is satisfied that action is presently in order.

Your Committee converted the form of the bill in compliance with House Rule 24(2).

Your Committee is in accord with the intent and purpose of **H. B. No. 1688-70** as amended herein, and recommends that it pass second reading in the form attached hereto as **H. B. No. 1688-70, H. D. 1**, and that it thereafter be referred to your Committee on Finance for further consideration.

Signed by all members of the Committee except Representatives Baptiste and Duponte.

SCRep. 493-70 Lands on H. B. No. 1429-70

The purpose of this bill is to appropriate the sum of \$100,000, or so much thereof as may be necessary, to be expended by the Department of Land and Natural Resources for reducing the population of inshore species of sharks.

Testimony heard by your committee during the public hearing on this bill indicated that the chartering of a fishing vessel for the specific purpose of fishing for sharks is the most feasible method of controlling the shark population. To insure that the intent and purpose of the program is implemented, a representative from the Division of Fish and Game, Department of Land and Natural Resources, will be detailed to the chartered fishing vessel to act as liaison between the crew and the department.

Your committee is in accord with the intent and purpose of **H. B. No. 1429-70** and recommends that it pass second reading and be referred to your Committee on Finance.

Signed by all members of the Committee except Representatives dela Cruz and Takamine.

SCRep. 494-70 Lands on H. B. No. 1281-70

The purpose of this bill is to lengthen the minimum agricultural land dedication period from ten years to fifteen years, and also to extend the advance notice period from five years to ten years.

The current law allows a land owner to dedicate his land for a specific ranching or other agricultural use and have his land assessed at its value in such use. Such dedication upon approval by the director of taxation places the land in reserve and cannot be withdrawn for a minimum period of ten years. However, either the owner or the director of taxation can cancel such dedication by advance notice of five years any time after the first five years.

By extending the dedication period as well as the advance notice requirement for cancellation, the bill will discourage those land owners who may dedicate their lands for the purpose of taking advantage of the tax savings provided under this program.

Your Committee on Lands is in accord with the intent and purpose of **H. B. No. 1281-70, H. D. 1**, and recommends that it be referred to the Committee on Finance for further consideration.

Signed by all members of the Committee except Representatives dela Cruz and Takamine.

SCRep. 495-70 Public Utilities on H. B. No. 1931-70

The purpose of **H. B. No. 1931-70**, as amended herein, is to require drivers of taxicabs in counties with a population in excess of 100,000 to deliver to any person who sustains or complains of injury while a passenger, a written statement setting forth the names and addresses of the driver and registered owner of the taxicab. The bill specifies penalties to be imposed when a driver fails to furnish such a statement.

Your Committee finds that there have

been instances in which taxicab passengers who have sustained injury have experienced difficulty in obtaining information from the driver which is required in order to assert a claim for damages. This bill will eliminate the problem by requiring the driver to immediately furnish the passenger with a written statement setting forth his name and address, and the name and address of the registered owner of the taxicab. Such a written statement will provide the passenger with all the information he needs if he desires to institute proceedings because of his injuries. Whenever a taxicab driver fails to furnish the required statement, both he and the owner of the taxicab may be fined not more than \$1,000, or imprisoned for more than one year, or both.

The bill gives the Public Utilities Commission the power to administer, execute and enforce the act and to prescribe rules, regulations and procedures for its administration. Under existing law, the Public Utilities has jurisdiction over taxicabs with respect to safety matters. Although this bill certainly is related to the safety of taxicab passengers, it has been amended in the interests of clarity to specifically set forth the authority of the Commission.

Section 2 of the bill has been amended to provide that the written statement need not contain the name and address of the liability insurer of the taxicab. Your committee finds that the inclusion of such information might tend to encourage fraudulent claims.

Section 3 of the bill has been amended to delete the provisions calling for suspension and revocation of the business license of a taxicab operator whenever multiple violations of this act occur which involve taxicabs owned by the same person. Your Committee finds that such provisions are extremely harsh and place an unreasonable burden on taxicab operators.

Your Committee is in accord with the intent and purpose of **H. B. 1931-70**, as amended herein, and recommends its passage on second reading and its referral to your Committee on Judiciary in the form attached hereto as **H. B. 1931-70, H. D. 1**.

Signed by all members of the Committee except Rep. Duponte.

SCRep. 496-70 Labor and Employment Problems on H. B. No. 1618-70

The purpose of this bill is to amend the Workmen's Compensation Law to provide compensation benefits for persons performing service for the state or any county in voluntary or unpaid capacities under the authorized direction of public officers or employees.

The Workmen's Compensation Law presently provides full benefits, including dependents' benefits, for members of public boards and commissions who are injured in the performance of service as members of said boards or commissions. Others who also serve the state in voluntary or unpaid capacities, however, are not afforded such protection. They are only provided hospital and medical benefits if they are injured while serving the state or any county.

A recent case where a Honolulu reserve policeman was killed in the performance of duty as a policeman emphasized the present inequity in the law. There appears to be no reason why a reserve policeman, for example, or any other person who contributes valuable services to the state or counties should not be entitled to the same protection as members of public boards and commissions.

Your Committee has converted the form of the bill in compliance with House Rule 24(2).

Your Committee is in accord with the purpose and intent of the bill as amended herein and recommends its passage on second reading in the form attached hereto as **H. B. No. 1618-70, H. D. 1**, and that it be referred to your Committee on Government Efficiency for further consideration.

Signed by all members of the Committee.

SCRep. 497-70 (Majority) Higher Education on H. B. No. 1719-70

The purpose of this bill is to amend existing law relating to non-resident tuition dif-

ferential to include newly hired full-time employees of the Department of Education among the persons exempted from paying the higher rate.

Your Committee has amended **H. B. 1719-70** to exempt newly hired full-time certificated employees of the Department of Education. Many teachers, especially those on our neighbor islands, desire to take additional education courses to augment their credentials, and the Department of Education with its incentive pay scale encourages such professional upgrading. However, under the present statute, mainland hires of the Department of Education are not exempted from the non-resident tuition differential, and are thus discouraged from furthering their education during their first year in the Hawaii School System. This situation goes against all logic and common sense, which would dictate that our teachers should be encouraged to obtain additional education.

It has been a concern of this Committee that to amend the exemption portion of this statute might set precedent for larger scale amendments by future legislative bodies, with the end result being the undetermining of the intent of the law. This Committee, however, believes that in the present instance, the amendment will not emasculate the statute but will rather bring it into closer conformity with the expectations of the legislature that passed the original law. In a sense, the nonresident tuition differential statute has been on a shakedown cruise for the last two semesters. There are some flaws which have shown up, which must be and are herein corrected.

The Administration of the University of Hawaii, in expressing its support for the amendment proposed herein, made the following observation regarding the non-resident tuition differential. This Committee was pleased to note that far from discouraging nonresident students from attending the University of Hawaii, the institution of a non-resident tuition differential has caused seemingly no ill effects at all. The University of Hawaii has, in fact, had an increase in nonresident applications since the differential has been put into effect.

Your Committee is in accord with the intent and purpose of **H. B. 1719-70** as amended herein, and recommends its passage on second reading, and its referral to the House Committee on Finance in the form attached hereto as **H. B. 1719-70, H. D. 1.**

Signed by all members of the Committee except Representative Fong. Representative Serizawa did not concur.

SCRep. 498-70 Public Utilities on H. C. R. No. 36

The purpose of **House Concurrent Resolution No. 36** is to request the Department of Regulatory Agencies to make a study of the feasibility and desirability of establishing a system whereby applications to the Public Utilities Commission are heard in the first instance by examiners. The Resolution requests the Department to report its findings in this regard to the Legislature ten days prior to the convening of the Regular Session of 1971.

Your Committee finds that during recent years the work load and responsibilities of the Public Utilities Commission have greatly increased. The increase has produced delays in Commission action because under existing law the Commission itself must process and conduct hearings on all applications. Such delays are costly to applicants and are detrimental to the Public interest.

Your Committee further finds that the interests of the people of Hawaii will be better served if applications to the Commission are first heard by hearings examiner who can receive evidence and make findings and recommendations to the Commission. A study of the ramifications and feasibility of establishing such a system should be accomplished prior to the enactment of specific legislation.

Your Committee is in accord with the intent and purpose of **H. C. R. No. 36**, and recommends its referral to your Committee on Judiciary.

Signed by all members of the Committee except Representative Duponte.

SCRep. 499-70 Select Committee of Oahu Representatives on H. R. No. 256

The purpose of this resolution is to request the department of transportation to conduct a feasibility study for the planning and construction of a vehicular tunnel beneath the waters of Pearl Harbor linking the Ewa Beach-Waipahu area to the Fort Kam-Hickam field area on Oahu.

A hearing was held on this particular subject (**H. B. No. 1542-70**) and the evidence adduced strongly suggested that the most desirable manner in which to attack this problem would be by way of first conducting a feasibility study as requested in this resolution.

It appears that in addition to the cost of planning and construction, there are strong indications of other problems of some magnitude, such as the maintenance cost thereof, the vulnerability to inundation by seismic waves, and the position of the department of defense on such a proposed facility.

It is the opinion of your Committee that there had not been a serious in-depth feasibility study on this proposed facility of a vehicular tunnel.

Accordingly, it would subserve the best interests of the public that before any further consideration to be given to any proposed legislation on such a facility as this vehicular tunnel that meaningful in-depth study be conducted by the department of transportation and such study be reported to the Legislature for its consideration.

Your Committee is in accord with the intent and purpose of **H. R. No. 256** and recommends that it be referred to your Committee on Finance.

Signed by all members of the Committee except Representative Oda.

SCRep. 500-70 Select Committee of Oahu Representatives on H. C. R. No. 98

The purpose of this concurrent resolution is to request the department of transportation to conduct a feasibility study for

the planning and construction of a vehicular tunnel beneath the waters of Pearl Harbor linking the Ewa Beach-Waipahu area to the Fort Kam-Hickam field area on Oahu.

A hearing was held on this particular subject (**H. B. No. 1542-70**) and the evidence adduced strongly suggested that the most desirable manner in which to attack this problem would be by way of first conducting a feasibility study as requested in this resolution.

It appears that in addition to the cost of planning and construction there were some suggestions relative to the probable attendance of other problems of some magnitude, such as the maintenance cost thereof, the vulnerability to inundation by seismic waves and the position of the department of defense on such a proposed facility.

It is the opinion of your Committee that there had not been a serious in-depth feasibility study on this proposed facility of a vehicular tunnel.

Accordingly, it would subserve the best interests of the public that before any further consideration be given to any proposed legislation on such a facility as this vehicular tunnel that meaningful in-depth study be conducted by the department of transportation and such study be reported to the Legislature for its consideration.

Your Committee is in accord with the intent and purpose of **H. C. R. No. 98** and recommends that it be referred to your Committee on Finance.

Signed by all members of the Committee except Representative Oda.

SCRep. 501-70 Select Committee of Oahu Representatives on **H. R. No. 100**

Testimony by the department of transportation representatives indicated the scheduled improvement for Fort Weaver Road to begin in the fiscal year 1973 and end in fiscal year 1977.

The present average daily traffic count

(ADT) from Renton Road to Ewa Beach is 8,720, well within the accepted design level of service of 13,000 ADT.

Further testimony discloses that planned studies for the first unit, that is, from Farrington Highway to Renton Road of approximately two miles, have been completed. Construction of this first unit is scheduled for fiscal year 1975.

Planned studies for the second unit, that is, from Renton Road to Ewa Beach, is scheduled for the second half of fiscal year 1971.

When completed, this facility as planned will provide a six-mile-four-lane divided expressway.

There was also testimony indicative of a possible expediting of the planning and construction, contingent upon proper and adequate funding.

Your Committee seriously considered the time table and target dates set forth by the department of transportation in the matter of the planning and construction generally of our network of highways. Testimony adduced seems to give proper inference that, given a favorable set of circumstances, there is a possibility of advancing the time table in this instance.

Therefore, it is the opinion of your Committee, armed with this possibility of advancing the time table set for the planning and construction of Fort Weaver Road, that the request as set forth in this resolution be made known to the department of transportation.

Your Committee is in accord with the intent and purpose of **H. R. No. 100**, and recommends that it be referred to your Committee on Finance.

Signed by all members of the Committee except Representatives Taira and Oda.

SCRep. 502-70 Judiciary on **H. B. No. 1874-70**

The purpose of this bill is to repeal sections 286-81 and 286-82, constituting part

IV, chapter 286, Hawaii Revised Statutes, requiring the wearing of a safety helmet and safety glasses by the operator and passenger of a motorcycle or motor scooter while upon any public highway in the State, failure of compliance with which constitutes a misdemeanor.

The law, enacted in 1967, prescribes that such protective devices shall meet the specifications and requirements established by rules and regulations adopted by the State highway safety coordinator, and authorizes him to prescribe any other safety devices to be worn.

In enacting the Highway Safety Act, the legislature declared as its purpose:

"Deaths of persons and injuries to them and damage to property with the other losses suffered on account of highway traffic accidents are of grave concern to the State and its citizens as well as to the federal government. The legislature finds and declares that it is in the public interest that the State initiate, coordinate and accelerate every available means to decrease the fatalities, injuries, damages and losses resulting from highway traffic accidents." Section 1, Act 214, Session Laws of Hawaii, 1967.

As a general principle, this proposition was no doubt intended to apply generally to the entire Act, consisting of more than 100 separate sections covering a range of general subjects from inspection and registration of vehicles to training and licensing of drivers. Since its enactment, and more specifically since the decision of the Supreme Court of Hawaii in *State v. Lee*, No. 4793, decided February 12, 1970, which relies measurably upon the aforementioned expression of legislative intent to require motorcyclists to wear a safety helmet on pain of criminal punishment for failure to do so, your Committee believes that it is now for the legislature to re-examine whether it intended that declaration to apply where an individual's conduct, or the conduct of a class of individuals, does not directly harm others, and the public interest is, therefore, not affected.

Your Committee submits that it did not; that, at best, this legislative declaration was intended to impart only a prospective expression of sentiment concerning the Act as a whole, which, when retrospectively applied to the safety helmet requirement in light of the effects thereof which that provision has had upon the individuals it was designed to regulate, can no longer be employed to justify the legislature's exercise of its police power.

Your Committee's conclusion is not intended as a commentary upon the Supreme Court's decision in *State v. Lee*, supra. Although contrary, it comes after the consideration of testimonies, the equivalent of which in the form of probative evidence, the Supreme Court did not have before it in reaching its result. By virtue of the judicial process, the sole question of constitutionality was decided upon the record. Your Committee, on the other hand, was able to and did avail itself to the views of motorcyclists and others representing a broad cross section of the community, unhampered by the strict standards of the courtroom.

The wisdom of wearing protective head gear as a matter of individual discretion is not disputed; it is the requirement that such be worn at all times which is another issue and which is disputed. The helmet has undoubtedly saved lives, and some of those whose lives were saved wore it not by choice, but by law. Nonetheless, your Committee received testimonies from many motorcyclists, some of whom had disposed of their machines rather than comply with the law which they considered the source of an even greater evil than the evil sought to be remedied, that there are times when the law itself is dangerous. Many experienced motorcyclists claim that the helmet impairs both hearing and vision, and that vision is further impaired when safety glasses and shields become rain splashed or when a refractory glare results from driving into the sun or oncoming traffic. Operating under these conditions, it is claimed, causes more accidents than minimizes the degree of injury resulting from accidents.

Why, then, was the headgear law

enacted in the first instance?

P. L. 89-564, the Highway Safety Act of 1966 (23 U.S.C. Sec. 402(a)) requires each state to have a highway safety program approved by the Secretary of Transportation in accordance with uniform standards promulgated by him, for non-compliance with which a state stands to lose all federal highway safety grants and 10% (penalty) of federal construction aid. Highway Safety Program Standard 4.4.3, released by the Secretary in June of 1967, entitled "Motorcycle Safety" (23 C.F.R. Part 204) requires the states to provide as a minimum that the operator and passenger shall, when a motorcycle is being operated on a public highway, wear an approved safety helmet.

Latest figures show that 39 states, including Hawaii, have enacted headgear statutes. Such legislation has been declared unconstitutional by the Supreme Court of Illinois; the Michigan legislature has repealed its law. These states and the eleven states and the District of Columbia which have never enacted headgear legislation, have never, according to the assistant state highway safety coordinator, because they have otherwise substantially complied with the Highway Safety Act, had their federal monies withheld. Hawaii has, even though its headgear law be repealed, otherwise substantially complied.

Your Committee, being satisfied that the legislature intended to interpose its authority on behalf of the public generally by the entire Highway Safety Act, rather than upon individuals comprising a particular class with regard to a particular provision thereof, is further satisfied:

(1) That because the headgear statute bears no relationship to the general welfare and has the sole effect of requiring an individual to protect himself from himself, it establishes a restriction upon personal liberty such as to constitute a denial of due process, and

(2) That because the headgear statute restricts the liberty of but one class of users of the public highway, motorcyclists and their passengers, with no similar restriction

upon the operators and passengers of other motor vehicles, such a distinction constitutes a violation of the requirement of equal protection of laws.

The repeal of this law in no way infringes upon the right of an individual to wear or not to wear a helmet, but, on the other hand, its continued enforcement "attempts to infringe upon and stifle fundamental personal liberties for one's own safety and is not concerned with the preservation of public order, safety, health and morals, or for the public welfare." Abe, J. dissenting in *State v. Lee*, supra. And, your Committee cannot help but wonder, as did Justice Abe, whether and just where the public interest begins:

"I submit that once a step is taken that the protection of an individual from himself as within the legitimate exercise of the police power, there is no limit to this power and a state can entirely regulate one's life and his way of living." *Ibid*.

Your Committee converted the form of the bill in compliance with House Rule 24(2).

Your Committee is in accord with the intent and purpose of H. B. No. 1874-70 as converted and thereby amended in the form attached hereto as H. B. No. 1874-70, H. D. 1, and recommends that it pass second reading and be placed on the calendar for third reading.

Signed by all members of the Committee except Representatives Duponte, Pule, Shigemura, Aduja and Judd.

SCRep. 503-70 Judiciary on H. B. No. 1926-70

The purpose of this bill is to amend the bonding provision relating to the licensing of cemetery and pre-need funeral authorities by requiring such authority whose annual gross income totals \$50,000 or more to file and maintain a bond in the penal sum of \$50,000 and for any other such authority, a bond in the penal sum of \$5,000. Your Committee finds that the present law which requires all cemetery and pre-need funeral authorities to post a

\$50,000 bond for licensure is inequitable and unreasonable as it relates to the smaller such authorities. To illustrate the inequity, your Committee notes that the larger cemetery authorities are actively engaged in selling what is known in the trade as a "pre-need plan" which involves the sales of burial plots to living persons for future use; whereas, the smaller authorities, who do not have the salesmen for this purpose, are, therefore, not actively engaged in the selling of the so-called "pre-need plan". The bonding requirement was initiated to strike at the public need for protection in this particular area, and yet, under the existing law, both the large and small authorities must file and maintain with the cemetery board a \$50,000 bond.

Your Committee feels that the enactment of this measure will resolve the inequities without upsetting the basic purpose of the law, which is the protection of the general public in its acquisition of burial plots and pre-need funeral arrangements.

Your Committee amended the bill so as to include an amendment to section 441-22 enacted by the last session of the legislature, including within the provisions thereof pre-need funeral authorities.

Your Committee is in accord with the intent and purpose of **H. B. No. 1926-70** as amended in the form attached hereto as **H. B. No. 1926-70, H. D. 1**, and recommends that it pass second reading and be placed on the calendar for third reading.

Signed by all members of the Committee except Representatives Duponte, Pule, Shigemura, Aduja and Judd.

SCRep. 504-70 Finance on H. B. No. 1118

The purpose of this bill is to appropriate funds for the planning and construction of oil storage tanks and facilities.

The construction of oil storage tanks and facilities has been recommended as a means of introducing meaningful price competition in Hawaii. At present all the oil companies marketing in Hawaii depend in whole or in part on the local refinery

for their local gasoline requirements. Under these circumstances the major oil companies are reluctant to disturb the existing price structure.

A public terminal and storage facility would enable independent companies to bring in and store their own supplies from West Coast sources. Such a facility would permit independents to come in without fear of having their supplies cut off. It is hoped that the entry of these independents into the Hawaii gasoline market will result in meaningful price competition.

Your Committee has amended this bill by:

(1) providing for \$100,000 in general obligation bond funds for plans and construction for oil storage tanks and facilities;

(2) providing that the location of the facility shall be in the vicinity of Anuenue rather than requiring that it be on the island; and

(3) amending the title of the bill to conform with the changes made herein.

Your Committee is in accord with the intent and purpose of **H. B. No. 1118**, as amended herein, and recommends its passage on second reading in the form attached hereto as **H. B. No. 1118, H. D. 1**, and that it be placed on the calendar for third reading.

Signed by all members of the Committee.

SCRep. 505-70 Public Utilities on H. B. No. 1850-70

The purpose of **H. B. No. 1850-70**, as amended by your Committee on Harbors, Airports and Transportation, is to amend Section 291-35, Hawaii Revised Statutes, which sets forth regulations with respect to gross weight, axle and wheel loads of motor vehicles. The primary purpose of this bill is to allow vehicles between 14 and 18 feet in length to carry greater pay loads, but not to such an extent as would constitute a hazard.

Your Committee is in complete agreement with the findings and recommendations contained in the report of your Committee on Harbors, Airports and Transportation and with the amendments to the bill made by that Committee.

Your Committee is in accord with the intent and purpose of **H. B. No. 1850-70, H. D. 1**, and recommends that it pass third reading.

Signed by all members of the Committee except Representatives Duponte and Takitani.

SCRep. 506-70 Judiciary on H. B. No. 1456-70

The purpose of this bill is to exempt aliens employed by the University of Hawaii from having to swear a loyalty oath to the United States, as is required of State employees under Section 85-32, Hawaii Revised Statutes.

The present requirement that employees of the State must take an oath of loyalty to the United States creates a difficult problem for many aliens who are hired by the University of Hawaii. It is frequently the case that such persons are hired as instructional, research, or technical assistants, or as specialists in a particular field, for the duration of their own studies at the University of Hawaii, thus making them relatively short term employees of the State. Many of these alien employees find that their swearing a loyalty oath to the United States would seriously jeopardize their own national citizenship, and thus they are extremely reluctant to swear such an oath. This bill would remedy the situation by exempting such persons from the loyal oath requirement.

Your Committee is in accord with the intent and purpose of **H. B. No. 1456-70, H. D. 1**, and recommends its passage on third reading.

Signed by all members of the Committee except Representatives Baptiste, Duponte, Morioka and Judd.

SCRep. 507-70 Judiciary on H. B. No. 1596-70

The purpose of the bill is to permit a law enforcing officer to issue a citation as well as arresting and taking into custody any person who violates the rules and regulations of State airports. The present arrest procedures, which essentially involve physical transportation of the violator to a police station for booking or detaining him while obtaining pertinent information and followed up later by placing formal charges upon him, are cumbersome and wasteful of the enforcement officer's time. The issuance of a summons or citation directly to a violator by the law enforcement officer would aid in a more efficient handling of a person arrested.

Your Committee is in accord with the intent and purpose of **H. B. No. 1596-70, H. D. 1**, and recommends that it pass third reading.

Signed by all members of the Committee except Representative Baptiste and Duponte.

SCRep. 508-70 Judiciary on H. B. No. 1388-70

The purpose of this bill is to permit the director of transportation to dispose of abandoned vessels. Under the present law, the Department may require any person who abandons a vessel on the shores or shore waters of the State to remove it pursuant to the provisions of Section 266-16, Hawaii Revised Statutes. The Department has indicated that it has experienced problems in the area of abandoned vessels since the owners of such vessels can rarely be located. This bill provides procedures for disposition of abandoned vessels in a more convenient and expeditious manner.

Your Committee is in accord with the intent and purpose of **H. B. No. 1388-70** and recommends its passage on third reading.

Signed by all members of the Committee except Representatives Baptiste and Duponte.

SCRep. 509-70 Judiciary on **H. B. No. 1453-70**

The purpose of this bill is to aid in preventing unauthorized boarding of vessels and thereby assisting in preventing or reducing vessel and equipment thefts and vandalism. At the present time, there is no adequate law covering the boarding of vessels without the owner's consent. Harbor attendants and police officers often discover persons on board vessels under suspicious circumstances, but are hampered unless there is obvious evidence of an intent to commit a crime.

Your Committee is in accord with the intent and purpose of **H. B. 1453-70** and recommends that it pass third reading.

Signed by all members of the Committee except Representatives Baptiste and Duponte.

SCRep. 510-70 Finance on **H. B. No. 2042-70**

The purpose of this bill is to amend Chapter 36, Hawaii Revised Statutes, so that the five per cent surcharge on special fund receipts is applied on receipts to the Airport Revenue Fund on the same basis as it presently applies to receipts from the State Highway fund and the Harbor Special Fund.

Sections 36-28 and 36-29, Hawaii Revised Statutes, provides a five per cent surcharge on the receipt of the State Highway Fund and the Harbor Special Fund. It is your Committee's belief that it is desirable and only proper that the surcharge be applied uniformly on all special funds including the Airport Revenue Fund.

Your Committee is in accord with the intent and purpose of **H. B. No. 2042-70**, **H. D. 1**, and recommends its passage on third reading.

Signed by all members of the Committee.

SCRep. 511-70 Finance on **H. B. No. 2092-70**

The purpose of this bill is to amend Part

I of Chapter 47, Hawaii Revised Statutes, by allowing counties to issue bonds and bond anticipation notes at interest rates not exceeding 8 per cent per year. The present law as it relates to bonds states that it shall not exceed 7 per cent per year.

This amendment will insure that the counties will be able to issue bonds and bond anticipation notes should the market interest rate exceed seven per cent.

Your Committee is in accord with the intent and purpose of **H. B. No. 2092-70**, **H. D. 1**, and recommends that it pass third reading.

Signed by all members of the Committee.

SCRep. 512-70 Finance on **H. B. No. 1664-70**

The purpose of this bill is to correct certain inequities in the compensation of principals and vice-principals of larger schools which have developed because of the tremendous growth in enrollment in many of the larger schools in the State.

The present compensation structure for principals and vice-principals which makes their salary level a function of the number of pupils enrolled in their schools was devised in 1962. The highest salary level for principals was based on a student enrollment of 1,500 pupils. Since 1962, the enrollment in some of our larger schools has increased to over 2,000 pupils. In two schools, the present student enrollment exceeds 3,000 pupils.

Under present law, the principal of a school with an enrollment in excess of 3,000 pupils is paid the same as a principal of a school whose enrollment is 1,500 pupils. By creating two additional principal salary classifications, this bill will eliminate the inherent inequity. The cost of this salary classification restructuring is eliminated to be \$4,400 per year.

This bill further changes existing law by repealing the requirement that when two vice-principals are assigned to a school with a large student enrollment one vice-

principal is classified in a lower salary range than the other. Your Committee finds that the duties of each of the vice-principals in these larger schools are substantially identical. Since the duties and responsibilities are shared equally by the two vice-principals, they should be compensated at the same level. This bill provides that all vice-principals assigned to schools whose enrollment exceeds 1,500 are to be classified, for salary purposes, in the higher Vice-Principal II category. The annual cost of implementing this change in the salary structure is estimated to be \$3,200 per year.

Your Committee has amended this bill by adding a new section relating to the promotion of vocational agriculture and technical school teachers and vocational agriculture and technical school teachers serving as acting educational officers who are subsequently appointed as educational officers.

Section 297-33, Hawaii Revised Statutes, enacted in 1969 provided that vocational agriculture and technical school teachers were to be classified as regular teachers. Hence, upon appointment of these teachers as educational officers beginning school year 1969-70, the Department of Education first reclassified them as regular teachers and then converted them to the educational officers salary schedule. This has resulted in almost no increase or a decrease in salary for the affected teachers who were promoted. This amendment would eliminate this inequity.

Your Committee is in accord with the intent and purpose of **H. B. No. 1664-70, H. D. 1**, as amended herein, and recommends its passage on third reading in the form attached hereto as **H. B. No. 1664-70, H. D. 2**.

Signed by all members of the Committee.

SCRep. 513-70 Finance on H. B. No. 1979-70

The purpose of this bill is to appropriate the sum of \$100,000 for the development

of a master plan for Hawaii State correctional facilities.

Your Committee finds that existing corrections facilities in Hawaii, particularly those at Oahu Prison, are antiquated and wholly inadequate. However, the problem is actually two-fold: 1) existing facilities are not in consonance with the rehabilitative concepts of the National Council on Crime and Delinquency; 2) additional satellite facilities are needed to implement a basic program of rehabilitation and reintegration. These satellite facilities would include half-way houses, conditional release centers, pre-parole centers and such other transitional facilities as might most effectively facilitate the successful re-entry of the individual into the community.

There is therefore an urgent need to begin the development of a master plan at the earliest practicable time. Such a plan should be based on the concepts of the National Council on Crime and Delinquency as outlined in Chapter VII entitled "Future Correctional Program" in **Correction in Hawaii — A Survey of Correctional Services in Hawaii**, and should be presented to the Legislature upon completion for further review and analysis.

It is the intent of your Committee that the master plan be designed for incremental implementation. Your Committee also intends that the county jails shall not be used for a medium-security or close-security facility.

Your Committee has amended this bill by authorizing the use of \$100,000 from a previous appropriation for the State prison and by clarifying the scope of the master plan desired.

Your Committee is in accord with the intent and purpose of **H. B. No. 1979-70, H. D. 1**, as amended herein, and recommends its passage on third reading in the form attached hereto as **H. B. No. 1979-70, H. D. 2**.

Signed by all members of the Committee.

SCRep. 514-70 Finance on H. B. No. 2002-70

The purpose of this bill is to provide for the establishment of an annual conference of high school student leaders who will meet to identify, discuss and develop possible solutions to major youth problems, with emphasis on problems in Hawaii's high schools.

Recommendations of these student leaders will be transmitted to the Governor, the Legislature and the Board of Education for study and action as deemed appropriate and necessary. Your Committee believes that this is the most effective and acceptable way to have young student leaders and educational leaders in government work together in solving many of the problems confronting today's youthful citizens.

Your Committee believes that this Conference should be designed to aid not only the people in government but also the schools themselves in that the student leaders who attend the Conference should return with a greater understanding of statewide youth problems and possible solutions to them. Accordingly, it is the intent of your Committee that participation in the Conference provide for a cross-section of all high school grade levels.

Your Committee has amended this bill by:

(1) providing for a student conference committee composed of fourteen student leaders who will plan, coordinate and evaluate the Annual Conference of Student Leaders;

(2) providing for an advisory committee to assist and advise the Student Conference Committee. The advisory committee shall consist of the Education Committee chairman of both houses of the Legislature and three persons from the Department of Education appointed by the Superintendent of Education;

(3) setting the date of the Conference during a school vacation within 145 days after the start of school and limiting it to

not more than three days; and

(4) appropriating the funds to the Department of Education.

Your Committee is in accord with the intent and purpose of **H. B. No. 2002-70, H. D. 1**, as amended herein, and recommends its passage on third reading in the form attached hereto as **H. B. No. 2002-70, H. D. 2**.

Signed by all members of the Committee.

SCRep. 515-70 Finance on H. B. No. 1440-70

The purpose of this bill as amended is to remove discriminatory provisions concerning the position of unskilled laboring employees. At present the unskilled labor employee cannot be promoted to a skilled labor or trade position unless he has already served one year as such skilled laborer or tradesman. Consequently, an individual without any such experience prior to employment with the State must work at a higher level of position classification for one year before he may be promoted. This requirement is contrary to the merit system principles that employees be classified and compensated appropriately for the work they are actually doing and that State employees be treated equally. The present bill eliminates this special requirement and will result in the equal treatment of all employees, including unskilled laborers, under the general provisions concerning promotions.

Your Committee has amended this bill by deleting those amendments extending the right of the appointing authority to grant non-competitive promotions to an employee from another department. These amendments were justified on the basis that they will provide management with a broader selection of State employees in filling vacancies for all State employees regardless of the department in which they may be employed. Your Committee feels, however, that the broader selection and greater promotional opportunities may be gained at the expense of the employee within the department with the vacancy.

The selection process will be open to all State employees and where qualifications are equal, the statute provides that the employee with the longest government service shall receive first consideration. Thus your Committee can foresee instances in the future where the appointing authority although he wishes to promote a person within his department, is forced to open the vacancy to all State employees and is then forced to hire an employee from another department with similar qualifications but longer years of service.

Your Committee prefers the present procedure which gives due consideration to the fact that the appointing authority would have personal knowledge of the ability and fitness of the prospective appointee from his department and should be permitted to hire him if he wishes. If, however, the appointing authority does not have a qualified employee within his department, then he can open the position to all State employees through competitive examination.

Your Committee is in accord with the intent and purpose of **H. B. No. 1440-70, H. D. 1**, as amended herein, and recommends its passage on third reading in the form attached hereto as **H. B. No. 1440-70, H. D. 2**.

Signed by all members of the Committee.

SCRep. 516-70 Finance on H. B. No. 1293-70

The purpose of this bill as amended is to provide for the establishment and operation of a program for waste management, including cooperative planning by the State and county governments, State technical assistance to the counties, and utilization of private enterprise.

In recent years, legislation has been enacted to institute federal, State and local programs to bring about a safe environment which provides for man's survival and well-being. The Solid Waste Disposal Act of 1965 (Public Law 89-272; Title II) launched a new program to develop efficient means of disposing of wastes. In

1965 only two states had identifiable waste programs, while today at least 38 states are developing plans for statewide waste programs.

In 1965 the Governor of Hawaii designated the State Department of Health to carry out the purposes of Section 206 of Title II, Public Law 89-272, the Solid Waste Disposal Act for the State of Hawaii. The Department of Health then contracted with the University of Hawaii to develop a preliminary report of the Hawaii State plan for Solid Waste Disposal. This report, which was completed on June 30, 1969, recommends a Solid Waste Advisory Council to coordinate State and county planning and to provide overall guidance for the solid waste management program. The Council would review the progress being made in the implementation of the waste disposal plans of the State and county governments and make recommendations regarding the implementation of the plans.

Your Committee has amended this bill by:

(1) deleting reference to the Solid Waste Advisory Council. This Council should more appropriately be created by resolution rather than being fixed by statute;

(2) removing the requirement that the Department of Health and each county submit a waste management plan by July 1, 1971, which would become effective no later than December 31, 1971. Your Committee feels that this plan involves a complex problem which will require considerable study and discussion before implementation. A resolution will be introduced requesting the county to submit waste management plans to the Legislature before the Regular Session of 1971;

(3) deleting the section prescribing county duties. Such action shall come only after the county plans have been submitted and studied; and

(4) deleting the appropriation.

Your Committee is in accord with the intent and purpose of **H. B. No. 1293-70**,

H. D. 1, as amended herein, and recommends its passage on third reading in the form attached hereto as **H. B. No. 1293-70**, **H. D. 2**.

Signed by all members of the Committee.

SCRep. 517-70 Finance on H. B. No. 2021-70

The purpose of this bill is to effect a closer liaison and rapport between the state agency managing the fish and wildlife resources and the people utilizing these resources through the establishment of fish and wildlife advisory committees in the several counties of the State. These committees and a central fish and wildlife advisory council are intended to reflect and express the sentiments and needs of the people concerning the management of fish and wildlife resources of the State.

Your Committee finds that there is, and will continue to be, an increasing demand for recreational fishing and hunting throughout the State. In addition, with the increasing demands being made on the limited land and water areas available in the State, the entire ecological complex may be threatened. The committees and council created by this bill are therefore requested as their first priority to cooperate with the Department of Land and Natural Resources in developing guidelines for the orderly development of a fish and wildlife program to meet the present and projected demands for recreational fishing, hunting and other uses and to provide for the preservation and enhancement of fish and wildlife habitats. It is also essential that steps be taken to integrate the overall fish and wildlife plan with the environmental needs of the State.

Your Committee has amended this bill by clarifying that the **chief** of the division of fish and game shall serve on the fish and wildlife advisory council. The term "director" usually refers to the head of the department.

An appropriation of \$10,000 is provided for the purposes of this bill.

Your Committee is in accord with the intent and purpose of **H. B. No. 2021-70**, **H. D. 1**, as amended herein, and recommends its passage on third reading in the form attached hereto as **H. B. No. 2021-70**, **H. D. 2**.

Signed by all members of the Committee.

SCRep. 518-70 Select Committee of Kauai Representatives on H. B. No. 2005-70

The purpose of this bill is to amend the Hawaii Revised Statutes by adding a new chapter which creates a separation of functions by providing for the election of prosecuting attorneys in counties with a population of less than 500,000. The bill provides for the prosecuting attorney's term of office, qualifications, removal and that compensation be established by ordinance. It further establishes the powers, duties and functions of the prosecuting attorney.

Your Committee is in accord with the intent and purpose of **H. B. No. 2005-70** and recommends that it be referred to your Committee on Judiciary.

Signed by all members of the Committee.

SCRep. 519-70 Education on H. B. No. 1900-70

The purpose of this bill is to provide acoustic noise control techniques to existing classrooms, libraries and other educational facilities, as well as to new school facilities to be built in areas which are affected by disturbing noises that impede the learning process.

The human ear ranks second only to the eye as a corridor to the mind. Therefore, the acoustical environment of the school assumes cardinal importance in the learning situation. Unwanted and disturbing sounds must be kept to a minimum in order to provide a desirable learning environment. The main purpose of noise control in the classroom is to provide those conditions which make it possible to hear with distinctness, with ample loudness, and with sufficient accuracy of the material delivered at the source. If a student must defend himself against unwanted and disturbing noises, he must divert energy from

the learning process to the listening process, thereby, lessening his capacity for learning. In some classroom situations, it is a common experience to have syllables, words, or even whole sentences drowned out by aircraft, traffic or other noise, thereby, resulting in annoyances, loss of efficiency, auditory fatigue, and sometimes partial loss of hearing.

Your Committee visited schools affected by aircraft and traffic noises to observe and experience first hand the severe impact of such acoustic disturbances to the learning situation. Subsequently, at the hearing held on the problem of schools affected by aircraft, traffic and other noises, the Committee heard testimonies presented by representatives of the Department of Education, Department of Accounting and General Services, the Mayor's Committee on Noise Control and the University of Hawaii's Department of Mechanical Engineering. All agreed that it is time for an establishment of some kind of public policy to minimize the harmful effects of aircraft, traffic and other noise on the learning process.

On the basis of the on-site studies and the testimonies presented, your Committee feels that immediate action is necessary to apply remedial acoustic noise control measures now to affected schools experiencing acoustical disturbances. The interim criteria established by the bill were developed from testimony presented by the Department of Mechanical Engineering, University of Hawaii. Such testimony included findings and recommendations based upon acoustic measurements conducted at three of the schools in the Kalihi area affected by acoustic disturbances.

The recommended interim criteria provide for the acoustic treatment of existing facilities when sound levels exceed 55 dBA more than 10 per cent of the time when the cause of such noise is from an external source, and 65 dBA when the sound is the result of classroom activities. To illustrate what this means, your Committee would like to give the following example:

Two persons standing 24 feet apart speaking in a normal voice would require

an ambient sound level of no higher than 48 dBA, plus or minus 5 dBA, for effective and reliable voice communication to take place. If the ambient sound level were raised to 54 dBA the individuals would have to stand about 12 feet apart in order to communicate effectively in a normal voice.

Your Committee recognizes that the problem of acoustic disturbances to our schools, libraries and other educational facilities will become more severe in the future. It, therefore, considers it important that steps be taken not only to abate the immediate problem but also to develop plans and standards of acoustical control on a long-range basis. Thus, in addition to the interim criteria, it has amended this bill to enable the Department of Education to develop standards and criteria for adoption by the Board of Education and acceptance by the State Comptroller.

The title of the bill has been amended to read: "A BILL FOR AN ACT RELATING TO ACOUSTIC NOISE CONTROL OF EXISTING SCHOOL FACILITIES AND NEW SCHOOL FACILITIES TO BE CONSTRUCTED IN AREAS AFFECTED BY AIRCRAFT, TRAFFIC, AND OTHER NOISE". The words "acoustic noise control" have been substituted for the word "soundproofing" since acoustic noise control more clearly defines the end objective of the bill. The term "other noises" has been added to the title since traffic and aircraft noise are not the only sources of objectionable noise, as is pointed out in the body of the bill.

Your Committee is in accord with the intent and purpose of **H. B. No. 1900-70**, as amended herein, and recommends its passage on second reading in the form attached hereto as **H. B. No. 1900-70, H. D. 1**, and that it be referred to your Committee on Finance.

Signed by all members of the Committee except Representatives Sakima, Loo and Nakama.

SCRep. 520-70 Housing and Consumer Protection on **H. B. No. 528**

The purpose of this bill is to amend the Retail Installment Sales Act to provide that the entire amount of payments made pursuant to the terms of a retail installment sales contract shall be applied toward purchases made previous to the time of the payment on a first purchased-first paid for basis. The bill further provides for termination of security interest in the goods which are the subject matter of the retail installment sale to the extent that such purchases are paid for. The bill further provides that payments received by the seller on a revolving charge account are to be applied first to the payment of finance charges in the order of their entry to their account and then to the payment of purchases in the order in which the entries to the account showing that purchases were made. The bill further requires the holder of a retail installment contract to mail to the buyer, upon payment of all sums for which the buyer is obligated, good and sufficient instruments to indicate payment in full and to release all security in the goods and cancelled negotiable instruments evidencing the indebtedness. Upon consideration of this bill, your Committee has amended section 2 thereof to provide that in the case of payment for purchases made after the consolidation of retail installment contracts or for any purchase upon a revolving charge account in which a security interest in the goods purchased was retained by the seller the holder of the contract shall mail to the buyer notice to indicate payment in full of the purchase and release of all security in the goods purchased. The purpose of this amendment is to minimize the expense of preparing documentation and receipts for purchases upon a revolving credit plan when a security interest is not established. Your Committee has further amended the bill by adding a new section thereto which provides that the debtor shall have the right to refinance the amount of any balloon payment which is more than twice as large as the average of earlier scheduled payments without penalty and upon terms which are no less favorable to the debtor than the terms of the original loan.

Your Committee is in accord with the intent and purpose of **H. B. No. 528**, as amended herein, and recommends that it

pass second reading in the form attached hereto as **H. B. No. 528, H. D. 1**, and that it be referred to your Committee on Judiciary.

Signed by all members of the Committee except Representatives Heen, Kunimura, Sakima and Fong.

SCRep. 521-70 Select Committee of Maui Representatives on **H. R. No. 150**

The purpose of **H. R. No. 150** is to express the whole hearted support of the House of Representatives for the County of Maui's efforts in seeking the return of Kahoolawe Island to civilian use.

Your Committee finds that the use of Kahoolawe Island by the Navy as a target range constitutes wanton and blatant destruction of this once beautiful island. Further, such bombing is seriously disturbing to the residents of nearby areas of Maui.

Your Committee further finds that the destructive use of the Island is directly contrary to the wishes of the majority of the people of Hawaii, and that such destructive use should cease immediately if the quality of our environment is to be improved.

Your Committee further finds that the County of Maui has been using all means at its disposal to accomplish the transfer of Kahoolawe Island to civilian use.

Your Committee is in accord with the intent and purpose of **H. R. No. 150** and recommends its adoption.

Signed by all members of the Committee.

SCRep. 522-70 Select Committee of Oahu Representatives on **H. R. No. 278**

The purpose of this resolution is to request the mayor and the department of traffic of the city and county of Honolulu to investigate traffic conditions at Maunaloa and Sixth Avenues in Kaimuki

and to correct any unsafe conditions thereat.

Testimony given by the Honolulu police department disclosed four traffic accidents at that intersection in 1969, causing a total property damage in excess of \$1600 and two persons injured. Also, there are over 200 intersections within this city and county which are scaled as hazardous with five or more accidents annually.

Testimony by the traffic engineer of the city and county of Honolulu was that all hazardous intersections are under continuous investigation for possible improvements to minimize, if not eliminate, traffic accidents.

In reporting out this resolution, your Committee is not unmindful that it might unintentionally open the flood gates to a deluge of resolutions of similar import for those other 200 or so hazardous intersections. Such possibility certainly envisions the invitation of administrative chaos for the agencies concerned.

But there is sufficient concern here to suggest to your Committee of the necessity of affirming the need for such an investigation as called for in this resolution. Because of the peculiar topographical layout of these converging thoroughfares in this intersection, and because of testimony which suggest that improvements might well be instituted which might minimize the traffic accident rate at this intersection, your Committee is constrained to invoke its affirmative judgment here. A copy of the street layout is herewith attached and made a part of this report.

However, your Committee has amended the resolution consonant with the supportive facts adduced, in the following respects:

a. The title thereof has been amended by the insertion of the word "ANY" between the words "ELIMINATE" and "UNSAFE".

b. The deletion of the words "numerous serious automobile" appearing in the first recital clause.

c. The deletion of the words "appear to be" and the addition of the words "may have been" and "pattern at and the" in the second recital clause, so as to read as amended:

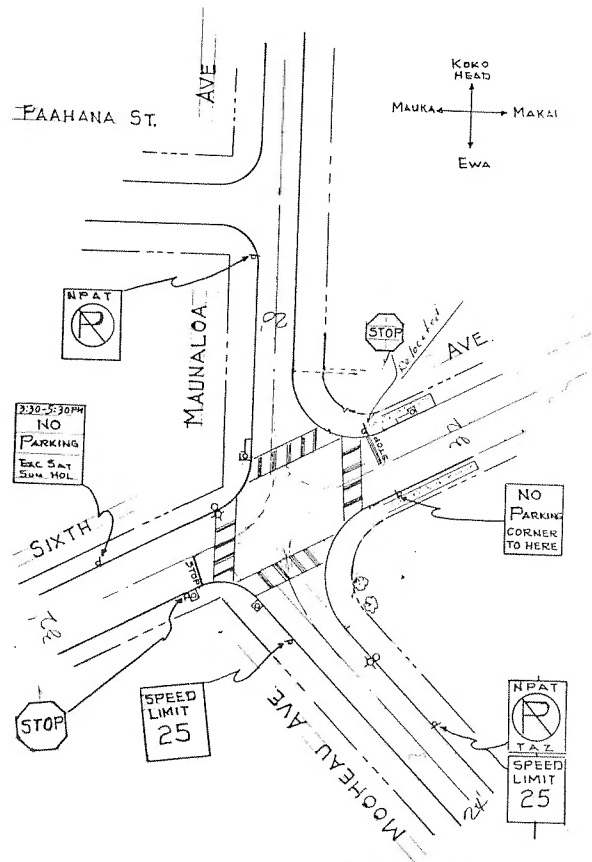
"WHEREAS, these accidents may have been in part caused by unsafe traffic pattern at and the regulation of the intersection; and"

d. The deletion of the word "are" and the addition of the words "continue to pose" and "likely" in the third recital clause, so as to read as amended:

"WHEREAS, existing conditions at the intersection continue to pose a likely threat to the life and safety of the general public and should be corrected by the department of traffic of the city and county of Honolulu, now, therefore,".

Your Committee is in accord with the intent and purpose of **H. R. No. 278**, as amended herein, and recommends its adoption in the form hereto attached as **H. R. No. 278, H. D. 1.**

Signed by all members of the Committee except Representative Oda.



SCRep. 523-70 Public Utilities on H. R. No. 188

The purpose of **H. R. No. 188**, as amended herein, is to request the Public Utilities Commission to establish rules and regulations to insure that esthetics are considered in the planning, construction and improvement of public utilities facilities.

Your Committee finds that in the past the quality of the environment in Hawaii has often been destroyed by thoughtless planning of utility facilities. Article 8, section 5, of the Constitution of the State of Hawaii requires the State to conserve and improve its natural beauty, sightliness and physical good order, and for that purpose makes private property subject to reasonable regulation. It is consistent with the purpose of this constitutional mandate that the State require esthetic considerations in construction and improvement of public utilities facilities.

Your Committee has amended the Resolution in certain nonsubstantive respects

in the interests of clarity.

Your Committee is in accord with the intent and purpose of **H. R. No. 188**, as amended herein, and recommends its adoption in the form attached hereto as **H. R. No. 188, H. D. 1**.

Signed by all members of the Committee except Representatives Duponte and Takitani.

SCRep. 524-70 Economic Development on H. R. 163

The purpose of this Resolution is to request the Department of Planning and Economic Development to conduct a study on the feasibility of the extensive use of bagasse as fuel for the generation of electricity on the Island of Hawaii.

Your Committee is in accord with the intent and purpose of **H. R. No. 163** and recommends its adoption.

Signed by all members of the Committee except Representative Takitani.

SCRep. 525-70 Lands on H. B. No. 1879-70

The purpose of this bill is to compel subdividers to make full disclosures regarding the types of buildings and the location of such buildings in their subdivisions.

At the present time, purchasers of homes in residential areas have bought homes in areas that they thought were single-family dwelling areas. After the purchase, they have learned, to their regret, that the subdividers contemplate construction of high-density apartments. This bill amends the existing statutes which would give prospective purchasers adequate notice. Your Committee has effected certain nonsubstantive style changes in the bill.

Your Committee is in accord with the intent and purpose of H. B. No. 1879-70, as amended herein, and recommends that it pass second reading in the form attached hereto as H. B. 1789-70, H. D. 1 and be placed on the calender for third reading.

Signed by all members of the Committee.

SCRep. 526-70 Judiciary on H. B. No. 2067-70

The purpose of this bill, as introduced, is to allow for the giving of security in lieu of garnishment before or after judgment.

There is no law upon this subject in this jurisdiction presently, and the proposed statute constitutes a codification, in effect, of the holding of the Supreme Court of the State of Hawaii in *Shelton Engineering vs. Hawaii Pacific Industry*, 51 Haw. 242 (1969), in which it is stated:

Literally speaking the statutory provisions do not permit the total release of garnisheed funds due to substitution by a bond . . .

It is our opinion that in creating this ancillary proceeding to protect creditors, the Legislature did not consider every possible situation . . . In this day, when equity and law have merged, the solution is a simple one. Common sense

and fairness dictate that the trial court exercise discretion in the substitution of funds, provided the parties are not prejudiced.

Your Committee believes that the aforementioned reasoning is sound and warrants the codification proposed.

Your Committee narrowed the scope of the bill by limiting its provisions to garnishment before judgment and by broadening the provisions pursuant to which the garnishment may be removed.

As such, the court is required to order the "garnishee fund" released on the filing by the debtor of a bond sufficient to pay the claim of the creditor, together with costs and interest and conditioned upon judgment rendered in favor of the creditor, to the extent the same is awarded.

Your Committee further amended the bill by including the provision as a new paragraph under section 652-1(a) which relates to garnishee process before judgment, and by further converting the form of the bill in compliance with House Rule 24(2).

Your Committee is in accord with the intent and purpose of H. B. No. 2067-70 as amended herein and recommends that it pass second reading in the form attached hereto as H. B. No. 2067-70, H. D. 1, and be placed on the calendar for third reading.

Signed by all members of the Committee except Representative Shigemura.

SCRep. 527-70 Judiciary on H. B. No. 1798-70

The purpose of this bill is to eliminate concurrent jurisdiction in the Family Court and the criminal courts in cases which involve minors eighteen years of age and older already under the jurisdiction of the Family Court who are alleged to have further violated any criminal law.

Such concurrent jurisdiction, which is not a part of the present Uniform Family Court Act, is said by those charged with administering the Act to place disobedi-

ence at a premium by leaving open the way for preferential treatment, as juveniles, of persons eighteen years of age and older with, in some cases, a long line of criminal violations which brought them before the Family Court in the first instance, whereas persons of such age not previously convicted as juveniles and with no previous criminal record are treated as adults in the criminal courts as a matter of course.

Section 571-11(1) was originally construed to allow the prosecuting attorney the discretion of deciding in which cases 18 and 19 year olds under the jurisdiction of the Family Court were to be treated as adults, until a recent series of decisions by the Supreme Court of Hawaii requiring an express waiver from the Family Court as a constitutional guarantee of due process of law. (See the cases of **John Doe I, II, and III** in 50 Hawaii Reports.) Such a mandate fortifies the incongruous result hereinabove described.

Section 571-22(a)(1) and (2) deals with circumstances wherein the Family Court may waive jurisdiction and transfer a minor 16 years of age or over or who committed a criminal act prior to reaching the age of 18, to the criminal courts, if the act alleged to have been committed would constitute a felony if committed by an adult. Subsection (a)(3) thereof covers minors 18 years of age or over already under the jurisdiction of the Family Court where such is the case, and should be deleted for the reasons mentioned hereinabove.

The present law, which gives the court jurisdiction until the minor reaches the age of 20 years, is considered no longer consonant with the facts of life by both the National Council on Crime and Delinquency and the Legislative Guide for Drafting Juvenile and Family Court Acts. It has been established scientifically that children develop to maturity several years earlier in life than they did a half a century ago, in consequence of which little, if anything, constructive can be done to ameliorate incorrigibility in the case of 18 and 19 year old minors, to which the senior judge and at least one referee of the Family Court testified before your Committee.

This same reasoning caused your Committee to incorporate herein the provisions of **H. B. No. 1799-70** entitled: "A BILL FOR AN ACT AMENDING SECTION 571-11(2), HAWAII REVISED STATUTES, RELATING TO THE JURISDICTION OF THE FAMILY COURT", to which your Committee was also referred. The purpose of this bill is to eliminate Family Court jurisdiction over "non law-violating" minors in need of supervision once they have attained the age of 18 years. This is accomplished by substituting the word "child" for "minor" in section 571-11(2), the word "child" being defined in section 571-2(5) to mean a person less than 18 years, over the age of which the Family Court would no longer exercise its jurisdiction with regard to persons who have been neglected as to support, education or medical care, or where environment or behavior are injurious to their own or others' welfare, or who are beyond the control of parent or custodian.

The net effect of these amendments, therefore (1) eliminates concurrent jurisdiction and waiver thereof by the Family Court as to persons over 18 years, and (2) provides for supervision by the Family Court of persons who are under 18 years, only.

Your Committee further converted the form of the bill, as amended, in compliance with House Rule 24(2), and amended the title thereof to reflect its content only generally, yet expressing the subject which it embraces.

Your Committee is in accord with the intent and purpose of **H. B. No. 1798-70** as amended herein and recommends that it pass second reading in the form attached hereto as **H. B. No. 1798-70, H. D. 1**, and be placed on the calendar for third reading.

Signed by all members of the Committee.

SCRep. 528-70 Judiciary on **H. B. No. 2114-70**

The purpose of this Bill is to amend Chapter 407, Hawaii Revised Statutes, by adding a new section to permit State char-

tered savings and loan associations to form or invest in a service corporation.

The primary function of such service corporation is to provide and serve any participating associations in clerical, book-keeping, accounting, statistical and data processing. Not only would such service corporations be of value to the participating associations to improve its services to the public but would also permit the Bank Examiners to readily obtain pertinent and accurate information through the latest equipment in the least amount of time. The provisions of this section are similar to Section 545.9-1 of the Rules and Regulations governing federally chartered savings and loan associations.

Your Committee has amended the bill by deleting the phrase "home office in Hawaii" to allow all associations chartered in this State to become members of the service corporation.

Your Committee has further amended the bill by adding another section to Chapter 407, Hawaii Revised Statutes, similar to Sec. 545.8-1 of the Rules and Regulations governing federally chartered savings and loan associations, to specifically permit the savings and loan associations to make educational loans. With the increase in the number of young people in this State desiring loans for higher education, your Committee is also aware of the proportionate increase in the cost of higher education. This section will enable the savings and loan associations to make such loans to qualified students for college or university or vocational education.

To safeguard against unlimited educational loan investments, an association will be limited in such investments not to exceed 5% of its assets. The associations may require such loans to be secured, partly secured or unsecured with the borrower's certification that the loan will be used for college, university or vocational education. The terms "college or university education" and "vocational education" are clearly defined in this section.

Your Committee is in accord with the intent and purpose of **H. B. 2114-70** and

recommends that it pass second reading in the form attached hereto as **H. B. 2114-70 H. D. 1**, and be placed on the calendar for third reading.

Signed by all members of the Committee except Representatives Shigemura and Duponte.

SCRep. 529-70 Judiciary on H. B. No. 1539-70

The purpose of this bill is to authorize the courts, upon an appropriate petition, to grant an order annulling the record of conviction for a criminal offense.

H. B. No. 1539-70 would authorize the court in which a conviction of a criminal offense has been had, at the time of discharge, parole, or thereafter, to enter an order annulling the record of conviction and disposition when in the opinion of the court the order would assist in rehabilitation and be consistent with public welfare, which would restore the civil rights of the person against whom the conviction had been entered.

H. B. No. 1522-70 entitled: "A BILL FOR AN ACT AUTHORIZING THE COURTS TO ANNUL A RECORD OF ARREST OR CONVICTION OF A MISDEAMEANOR", which was also referred to your Committee, would empower the circuit courts to enter an order annulling the record of arrest or conviction on a misdemeanor charge when in the opinion of the court the order would be consistent with the purpose of minimizing or abolishing extrajudicial penalties which may confront the individual convicted or arrested.

Thus, **H. B. No. 1539-70** would allow for expungement of all criminal convictions; whereas **H. B. No. 1522-70**, although limited to misdemeanors, would allow for expungement of records of arrest as well.

Your Committee, being in agreement with the intent and purpose of both measures, consolidated the best features of each in order to achieve the efficacy of both.

Having achieved this fundamentally academic purpose, your Committee turned to evaluate the effect of this measure in light of the testimonies it received from persons who have been victimized by the evil which the bill seeks to relieve, and your Committee is in sympathy both with the intent of the bill and the persons whose lives it touches.

That a record of arrest, be it for an alleged misdemeanor or felony violation, upon which there is no prosecution or conviction should be annulled, there is no doubt, because the same, nonetheless, carries too often extrajudicial penalties in a myriad of forms bearing a diversity of consequences upon the individual arrested, out of proportion with the status and disposition of the case and frequently with the nature of the alleged crime.

Where such arrests are followed by a conviction, and particularly where the defendant is incarcerated as punishment therefor, having "paid his debt to society", nonetheless the same carries certain extrajudicial penalties as aforesaid. Your Committee agrees that such records of conviction which interfere with the rehabilitation of the person convicted should, therefore, be annulled.

Your Committee, however, has determined that notwithstanding one's service of sentence for his criminal indiscretion, he should be required, additionally, to prove his entitlement to resume his former position in society by more than the mere filing of an application for an order annulling his record. Without necessary resort to statistical data, is a matter of common knowledge that ex-convicts are frequently returned to the institutions of reform from which they are released; and whether this is so because of or in spite of their status subsequent thereto, your Committee does not undertake to decide. The fact remains, that just as anxiously as society may purport to await the return and rehabilitation of one who has deviated from its pronounced standards of conduct, society likewise watchfully awaits proof of his assertion that he has seen the error in his way. Therefore, your Committee amended the bill by providing for the annulment

of records as follows: (1) Upon a record of arrest for a misdemeanor or for a felony violation upon which there is no prosecution or conviction, immediately upon the entry of an order of dismissal, an order of judgment of acquittal, or an order of nolle prosequi. (2) Upon any record of conviction for a misdemeanor violation or in which there has been a forfeiture of bail or bond, after a period of two years from the time of discharge of the person from the court's control, or upon his discharge from imprisonment or parole, or other disposition, or at any time thereafter. (3) Upon any record of conviction for a felony violation or in which there has been a forfeiture of bail or bond, after a period of 5 years from the time of discharge of the person from the court's control, or upon his discharge from imprisonment or parole, or other disposition, or at any time thereafter.

Your Committee received testimonies from the John Howard Association and individuals whom it has sought to rehabilitate that have been victims of untoward community prejudices because of prior criminal records. One specific case involved a young man previously convicted and sentenced for a felony offense whom in the course of rehabilitation, having been married and having fathered several children, applied for a position involving the operation of a motor vehicle which necessitated the obtaining of liability insurance thereon as by law required. However, because of his prior arrest and conviction record, unrelated to any offense arising out of the ownership, maintenance, or use of a motor vehicle, his application for the required insurance was denied, in consequence of which he was in turn denied the position.

The bill, as amended, provides that such person shall be restored to his civil rights; it entitles him to a certificate stating that an order has been so entered; it authorizes him to reply negatively to any inquiry concerning his criminal past.

On this point, opponents of the bill argue that the court's order in effect authorizes prevarication in response to such inquiry; they would limit the extent of inquiry

instead. This, however, raises a serious problem in framing questions which would equally exclude the absolutely innocent from those whom this measure seeks to protect, since any question such as "have you ever been arrested or convicted of a crime which has not been annulled by a court?", no matter how answered, tends to indict the person so interrogated.

Finally, there are those who are satisfied that this measure is unnecessary, as its purpose can be achieved through pardons grantable by the governor under his executive authority. Your Committee, however, is not entirely satisfied that resort to the judicial branch before which the proceedings giving rise to the purpose of this bill were had in the first instance, is not the best, if not the only, effective means of achieving that purpose. It is plain to your Committee that the judicial branch, having caused entry of the records which the bill would authorize to be expunged is the proper authority to which persons affected thereby must turn in order to attain the relief which they seek. Moreover, this comports with the lines traditionally dividing the branches of government. In addition to the amendments herein mentioned, your Committee additionally amended the title of the bill to reflect the inception herein of **H. B. No. 1522-70**.

Your Committee is in accord with the intent and purpose of **H. B. No. 1539-70** as amended in the form attached hereto as **H. B. No. 1539-70, H. D. 1**, and recommends that it pass second reading and be placed on the calendar for third reading.

Signed by all members of the Committee.

SCRep. 530-70 Housing and Consumer Protection on H. B. No. 1773-70

The purpose of this bill is to provide for inspection and approval of factory built housing by the Department of Labor and Industrial Relations to insure that such factory built housing meets relevant standards of safety and structural soundness. The bill empowers the Department of Labor and Industrial Relations to promulgate rules and regulations concerning the construc-

tion of factory built housing to be installed in the State of Hawaii and the inspection thereof to insure compliance with the standards and specifications of relevant building, mechanical, plumbing and electrical codes. The bill prohibits the installation of any factory built housing on any building site in Hawaii in the absence of the approval of such housing by the Department of Labor and Industrial Relations. The bill will in no way modify or make inapplicable any applicable land use requirements, building set back, site development and property line requirements and review and regulation of zoning and requirements which are specifically reserved to local jurisdictions by law.

The bill provides for penalties for persons who violate any provisions of the act or of the rules and regulations promulgated thereunder and further provides that the Department of Labor and Industrial Relations may enjoin the installation of factory built housing on any building site upon affidavit being made by the Department to a circuit court of competent jurisdiction that such factory built housing does not conform to the requirements of this bill or the rules and regulations promulgated thereunder.

The bill further provides that the rules and regulations adopted by the Department in accordance with the provisions of the act shall be periodically reviewed by a factory built housing advisory board appointed by the Governor from representatives of building code enforcement agencies, architectural and engineering associations, building and construction trade unions, the construction and housing manufacturing industry, the legislative bodies of county government and the general public. This advisory board shall recommend to the Department amendments to the rules and regulations as it deems advisable.

Your Committee is concerned that the consumers of housing in Hawaii have assurance that all factory built housing, no matter where manufactured, which is to be installed in Hawaii meets the standards of safety and structural soundness that this bill makes applicable thereto. Section 8 of

the bill empowers the Director of Labor and Industrial Relations to provide by regulation for the approval of factory built housing which has been assembled outside of the State upon his determination that the standards for factory built housing prescribed by statute, rule or regulation of another State are at least equal to the regulations prescribed under this bill and that such standards are actually enforced by such other State. Your Committee has amended this section to read as follows:

“SECTION 8. If the director of the department determines that the standards for **construction and inspection of** factory built housing prescribed by statute, rule or regulation of another state are at least equal to the regulations prescribed under this act, and that such standards are actually enforced by such other state, he may provide by regulation that factory built housing **which has been inspected and approved** by such other state shall be deemed to have been approved by the department.” (under-scoring added to show new language)

The purpose of the above amendment is to clarify the director's power to waive inspection of factory built housing which is produced in any state whose standards for construction and inspection are at least equal to those promulgated pursuant to this bill and are actually enforced by such other state.

The director is empowered to enter into reciprocal arrangements with other states which have similar legislation to assure himself that the standards for construction and inspection of factory built housing produced in such other State will guarantee that such housing meets the standards set forth in this bill and the rules and regulations promulgated thereunder.

Your Committee is in accord with the intent and purpose of H. B. No. 1773-70, as amended herein, and recommends that it pass second reading in the form attached hereto as H. B. No. 1773-70, H. D. 1, and that it be placed on the calendar for third reading.

Signed by all members of the Committee except Representatives Fong and Oda.

SCRep. 531-70 Finance on H. B. No. 1273-70

The purpose of this bill is to appropriate funds to be deposited into the fee simple residential revolving fund authorized under the Land Reform Act enacted in 1967.

Your Committee has amended this bill by providing for a second survey of residents of a development tract to more fully ascertain the interest of the lessees in purchasing their leased fee interest. Under the present law, if more than 50 per cent of the lessees of a development tract are desirous of owning the leased fee interest to their lots and have the financial capabilities to pay for the same, the Hawaii Housing Authority is required to proceed for the acquisition of the tract through negotiation or eminent domain proceedings. This survey is often made with the lessees having only a general idea as to the cost involved in purchasing their leased fee interest. Upon the acquisition of the tract by the Hawaii Housing Authority, the lessees are not required to purchase their leased fee interest even though they may have previously signified their interest in doing so. If the lessee does not buy, he will remain on the land under the terms of his lease with the State becoming the landowner. If a large number of lessees fail to purchase, your Committee feels that the intent of the Land Reform Act is aborted. The private land-owner is merely replaced by the State. Since the provisions of the Act involve considerable expenditure of public funds, and since there are numerous requests by communities to take advantage of the Act, your Committee feels that the provisions of the Act should not apply unless there is reasonable assurance that a large number of lessees will, in fact, purchase, their leased fee interest after the Hawaii Housing Authority has acquired the development tract.

Accordingly, your Committee has provided that there be two surveys by the Hawaii Housing Authority. Upon a show-

ing that more than 50 per cent of the lessees are desirous of owning their leased fee interest, the Authority shall preliminarily designate the development tract for acquisition. Within eight months after such designation, the Authority shall submit to each lessee in general terms, its estimate of the cost of the leased fee interest and the terms of the sale should the lessee wish to purchase his leased fee interest. Upon the Authority's finding that more than 80 per cent of the lessees of the leasehold tract are desirous of owning the leased fee interest to their lots and have evidence of financial capabilities to pay for the same, the Authority may then designate a development tract for acquisition.

Within four months after such designation, the Hawaii Housing Authority shall acquire through voluntary negotiation of the parties or institute eminent domain proceedings to acquire the tract so designated. The effect of this amendment is to provide a second survey with additional facts and additional requirements so that a clearer picture may be received and lessen the possibility of a large percentage of persons not buying the leased fee interests.

Your Committee has authorized the issuance of \$5,000,000 in general obligation bonds for the residential leasehold program. Section 516-36 authorizes the Hawaii Housing Authority to issue revenue bonds for that purpose but the Authority feels that such bonds will not be saleable or will be too expensive. Since the revenue bonds are to be secured by the income and revenues of the development tract and since the lessees are not required to buy their leased fee interest, the security for the bonds is not very good. Hence, revenue bonds have not been issued. The authorization for the issuance of general obligation bonds in this bill should permit the Authority to proceed with its program.

Your Committee has amended the title of this bill to conform to the changes made herein.

Your Committee is in accord with the intent and purpose of H. B. No. 1273-70, as amended herein, and recommends its passage on second reading in the form

attached hereto as H. B. No. 1273-70, H. D. 1, and that it be placed on the calendar for third reading.

Signed by all members of the Committee.

SCRep. 532-70 Finance on H. B. No. 1321-70

The purpose of this bill is to supplement the program presently carried on by the Center for Governmental Development and to make an appropriation to the Center for the purpose of carrying out the functions of the Center.

The Center for Governmental Development provides in-service training, scholarships, internships and other means to aid in the development of government officers and employees. At the present time the Center is doing a commendable job of training people in the administrative classes. However, due to lack of sufficient funds, the training program is limited in scope. This bill provides for furnishing more funds to the Center so that the program can be broadened and made more meaningful.

Your Committee has provided an appropriation of \$144,000 to be used to carry on the functions of the Center for Governmental Development. This appropriation is based on the expenditure of \$12,000 per month and is expected to be supplemented by funds from other departments which were budgeted for training purposes. Since appropriations are usually made to the department rather than specific divisions or programs within the department, the appropriation is made to the University of Hawaii. In addition, your Committee has made the appropriation for one rather than two years. If the funds appropriated are insufficient, additional requests may be made for fiscal year 1971-1972 through the Center's budget request.

It is the intent of your Committee that the amendment permitting the Center to receive and use donations, gifts and allotments should not be construed to mean that the present University procedures as to donations, gifts and allotments are

superseded. Since the Center is a part of the University, it should follow the University-wide procedure which was set up to permit the University to account for and acknowledge donations, gifts and allotments.

Your Committee is in accord with the intent and purpose of **H. B. No. 1321-70, H. D. 1**, as amended herein, and recommends its passage on third reading in the form attached hereto as **H. B. No. 1321-70, H. D. 2**.

Signed by all members of the Committee.

SCRep. 533-70 Lands on H. B. No. 1389-70

The purpose of this bill was to transfer the jurisdiction over shores, beaches encumbered with easements in favor of the public, and streams of the state from the Department of Transportation to the Department of Land and Natural Resources. It was intended that the Department of Transportation maintain control over shore waters of the state. It was also intended that all other powers, with respect to the control and management of shores, beaches and streams be vested in the Department of Land and Natural Resources.

After studying the bill, your committee, with the concurrence of the Department of Transportation, has amended the bill and given the Department of Land and Natural Resources jurisdiction over shores, shore waters, beaches encumbered with easements in favor of the public and streams of the state and provided that the Department of Transportation maintain control of all shipping and recreational boating within the harbors, roadsteads, waters and streams. House Draft 2 contains the following:

Section 1 transfers jurisdiction over shores, shore waters, beaches encumbered with easements in favor of the public and streams of the state to the Department of Land and Natural Resources and provides that the Department of Transportation maintain control over all shipping and recreational boating within the harbors,

roadsteads, waters and streams by amending Section 26-15, Hawaii Revised Statutes.

Section 2 amends Section 266-1 by deleting ocean shores below mean highwater mark, shore waters and navigable streams from the jurisdiction of the Department of Transportation. Recreational boating has been added to the jurisdiction of the department.

Section 3 amends Section 266-2 by rewriting it in its entirety and redefining the section more explicitly.

Section 4 amends Section 266-3 by deleting all references to areas whose control was transferred to the Department of Land and Natural Resources.

Section 5 adds a new section to Chapter 171 entitled Rules and Regulations. This addition allows the Department of Land and Natural Resources to adopt rules and regulations, pursuant to Chapter 91, promoting safety, health and welfare on the shores and beaches encumbered with easements in favor of the public.

Your Committee is in accord with the intent and purpose of **H. B. No. 1389-70, H. D. 1**, as amended herein, and recommends its passage on third reading in the form attached hereto as **H. B. No. 1389-70, H. D. 2**.

Signed by all members of the Committee except Representatives Shigemura and Ajifu.

SCRep. 534-70 Judiciary on H. B. No. 1531-70

The purpose of this bill is to make unlawful the providing of transportation services to passengers without any requirement for the payment of compensation therefor if the transportation is performed in motor vehicles owned or leased by an enterprise, the main purpose of which is to offer the use on a regular and continuing basis of transportation, entertainment, or other public services and accommodations, unless such transportation services are authorized by a certificate or permit issued by the Public Utilities Commission.

The evil which this measure seeks to remedy involves the offering of purportedly free transportation by businesses principally engaged in tourism and entertainment to their patrons in conjunction with other services, on a regular and continuing basis but without authorization of or regulation by the Public Utilities Commission. Such business provides the use of shuttle buses and courtesy cars to their patrons without the direct assessment of a fare from them, while indirectly absorbing the cost thereof by an increase in prices charged for other goods and services. It goes without saying that no one gets something for nothing; but, because no compensation is exacted for the transportation service, this extracurricular operation does not technically come within the jurisdiction of the Public Utilities Commission, except as to matters of safety, notwithstanding the same, your Committee is satisfied, is within the spirit and intent of the Hawaii Motor Carrier Law.

The Hawaii Motor Carrier Law, under section 271-1, Hawaii Revised Statutes, expressly declares that it is the intent of the legislature to provide for "fair and impartial regulation of . . . transportation; to promote safe, adequate, economical, and efficient service, and foster sound economic conditions . . . among the several carriers, to encourage . . . reasonable rates and charges . . . without unjust discrimination, undue preference or advantage, or unfair or destructive competitive practices." Moreover, section 271-21 requires common carriers by motor vehicle subject to commission jurisdiction to file and adhere to tariffs showing all rates for transportation and other services in connection therewith, which, under section 371-20 must be "just and reasonable".

Thereunder, therefore, at least three situations exist which require remedy: (1) Since the non-regulated operators of "free" transportation services generally assess a common charge for their "other services", persons who choose to avail themselves thereto but who arrive thereat by way of their own or hired transportation are, in effect, subjected to an unfair and discriminatory practice by not accepting the "free" ride. (2) Since the non-regulated

carriers are not required to file and adhere to tariffs, they are free to increase the price for other goods and services to absorb the cost thereof, effectively denying assurance that the transportation rates and charges reflected therein are "reasonable" or that the same will foster "sound economic conditions . . . among the several carriers". (3) Since the non-regulated carriers are not required to meet the same standards and fares as those required of the regulated carriers, many of whom offer transportation services over essentially the same routes, the same is not a "fair and impartial regulation" of such transportation and constitutes a "destructive competitive practice".

This bill makes it clear that operators furnishing "free" transportation are subject to regulation by the Public Utilities Commission, which your Committee, as stated, believes is in accord with the spirit and intent of the Motor Carrier Law as enacted.

The bill expressly provides that it does not prevent any employer from providing free transportation for his employees to and from the place of employment, and as amended by your Committee on Public Utilities exempts any county or political subdivision of the State from providing free transportation for the blind or elderly, with which your Committee on Judiciary is in accord.

Your Committee on Judiciary further amended the bill by substituting the word "person" for "enterprise" in line 6 of page 1, the former, under section 1-19, Hawaii Revised Statutes, signifying not only individuals, but corporations, firms, etc. Furthermore, your Committee, upon the recommendation of the Public Utilities Commission, included the phrase "in the furtherance of a primary business purpose or enterprise of that person, including but not limited", referring to the kind of other services and accommodations furnished. This is intended to clarify the provision pertaining to "regular and continuing basis of transportation" and will enable the enforcing agency to render meaningful enforcement as intended. It is thereby mandatory that any person or organization

providing "free" transportation, however infrequently, if for the purpose specified, be required to obtain a certificate or permit from the Public Utilities Commission.

Your Committee is in accord with the intent and purpose of **H. B. No. 1531-70, H. D. 1**, as amended herein and recommends that it pass third reading in the form attached hereto as **H. B. No. 1531-70, H. D. 2**.

Signed by all members of the Committee except Representatives Shigemura and Duponte.

SCRep. 535-70 Judiciary on H. B. No. 1521-70

The purpose of this bill, as amended, is to require the board of paroles and pardons to review and refix the minimum sentences of all prisoners sentenced prior to June 7, 1967, the effective date of Act 264, Session Laws of Hawaii, 1967.

Act 264 authorizes the board to refix, with the governor's approval, the minimum term of imprisonment to be served by a prisoner before he shall become eligible for parole, except when the sentence is for life not subject to parole. The Act also repealed, as to prisoners sentenced after its effective date, certain provisions of the Hawaii Revised Statutes relating to commutation and accumulation of days for good behavior. The purpose of this bill, as originally drafted, was to make it clear that the board is authorized to refix minimum sentences of prisoners sentenced prior to the effective date of Act 264. Your Committee on Public Institutions and Social Services, to which the bill was initially referred, found that there was no ambiguity with respect to Act 264, and that the board is clearly empowered by the Act to refix the minimum sentences of all prisoners, with which your Committee on Judiciary is in agreement.

Your Committee on Public Institutions and Social Services further found, however, that "inequities become evident when the minimum sentences of prisoners sentenced prior to the effective date of Act 264 are compared with the minimum sen-

tences of those sentenced later." It further found:

In recent years the Board of Paroles and Pardons has adopted a modern rehabilitative policy in fixing minimum sentences. Therefore, prisoners sentenced during recent years have as a general rule received substantially shorter minimum sentences than did prisoners sentenced several years ago. For this reason the bill has been amended to require the Board to review and reset the minimum terms of all prisoners sentenced prior to the effective date of Act 264.

The determining of new minimum sentences pursuant to this Act is to be accomplished on a one-time basis. In resetting such minimum sentences, the Board is to treat each prisoner as if he had just been incarcerated and is not to consider his conduct since his incarceration. In no event is the minimum sentence of any prisoner to be increased and, for the purposes of this one-time review and resetting, the determinations of the Board are not to be subject to the Governor's approval. Further, after a minimum sentence is reset pursuant to this Act, it is to be further reduced by the amount of good time earned by the prisoner under the provisions of Sections 353-39, 353-44, 353-45 and 353-46.

Your Committee finds that approval by the Governor of the determinations of the Board has produced significant administrative delays in refixing minimum sentences. The comprehensive review and resetting required by this bill would take an extremely long period of time if the Governor's approval were required. Accordingly, for the purposes of this review only, the determinations of the Board are to be final.

Your Committee on Judiciary is in accord with the aforementioned findings and recommendations, except as to the provision that for purposes of this bill, only, the establishment of minimum sentences by the board of paroles and pardons shall not be subject to the governor's approval. Accordingly, your Committee

recommends deletion of that provision and so amended the amended bill.

Traditionally, the board's authority to reduce the minimum term when it determines the same is warranted and conducive to the rehabilitation of the prisoner, in every case, has been subject to the governor's approval. See section 711-76, Hawaii Revised Statutes.

Notwithstanding that the comprehensive review and refixing required by this bill may take a longer period of time if the governor's approval is required, your Committee believes that deviation from the established standard constitutes a dangerous precedent, particularly where such an exception is made applicable only to those prisoners effected by it, and not to those whose minimum terms have already been refixed subject to the governor's approval, or who are otherwise subject to the provisions of Act 264. In effect, your Committee has weighed the expediency sought to be attained as against the constitutional requirement of equal protection of the law, and gravely concerned with the latter has determined in favor of it.

Therefore, your Committee reinstated the clause "subject to approval of the governor" in line 7 of page 1 of the bill, referring to the review and refixing of minimum sentences of prisoners sentenced prior to the effective date of Act 264; and in order to alleviate some of the administrative delays which admittedly may be produced, your Committee has added a provision authorizing the governor to delegate his authority to the director of social services, as is provided under Act 264. Furthermore, for the sake of consistency, based upon the language contained in other relevant statutes and at the suggestion of the board of paroles and pardons, your Committee substituted the word "refix" in its various forms for the word "reset" in its various forms, throughout.

Your Committee is in accord with the intent and purpose of H. B. No. 1521-70, H. D. 1, as amended herein, and recommends that it pass third reading in the form attached hereto as H. B. No. 1521-70, H. D. 2.

Signed by all members of the Committee except Representatives Baptiste and Duponte.

SCRep. 536-70 Judiciary on H. B. No. 1603-70

The purpose of this bill is to completely revise the present law relating to credit card offenses in order to meet (hopefully) all eventualities involving the use of credit cards to criminally defraud one or more of the parties to a credit card operation.

The present law is limited and considered by law enforcement agencies as inadequate. It deals with theft, forgery, possession and use of such cards; and, stated simply, it is full of "loop-holes". The bill more comprehensively defines various acts of impropriety involving the use of credit cards which are considered sufficiently serious to warrant criminal sanction. It amends chapter 730, Hawaii Revised Statutes, by expanding it to cover criminal activities with credit cards which are not now proscribed, such as obtaining a credit card by false impersonation or false information, false charge vouchers submitted by merchants, use of credit cards to establish false identification, and possession of machinery and plates for the counterfeiting of credit cards. In addition, the bill enumerates more succinctly the activities presently proscribed, and adds certain rebuttable presumptions which naturally flow from the facts giving rise thereto.

The bill provides for two levels of penalties which are related to the severity of the defined offense. The lesser offenses are misdemeanors subject to a maximum penalty of not more than one year in prison or a fine of not more than \$500, or both. The more serious offenses are felonies subject to a maximum penalty of not more than three years in prison or a fine of not more than \$3,000, or both.

The lesser offenses include the following:

(a) Making of a false statement as to identity or financial condition for the purpose of obtaining a credit card.

(b) Taking of a credit card without the consent of the card holder, or receipt of the credit card with knowledge that it has been so taken, with the intent to use it or sell or transfer it to a person other than the issuer or card holder.

(c) Selling or buying of a credit card from a person other than the issuer.

(d) Obtaining or controlling of a credit card as security for a debt with intent to defraud the issuer or a person who provides money, goods, services or other thing of value.

(e) Signing of a credit card with intent to defraud either the issuer or a person providing money, goods, services or other thing of value.

(f) Fraudulent use of a credit card if the value of all money, goods, services or other thing of value obtained through such use does not exceed \$500 in any six month period.

(g) Fraud by a merchant authorized to provide goods and services if the difference between the value of the goods and services claimed to have been supplied and those actually supplied does not exceed \$500 in any six month period.

(h) Receipt of goods obtained by the fraudulent use of a credit card if the person receiving the goods knows of the fraud.

The more serious offenses include the following:

(a) Receipt by a person other than the issuer of credit cards issued in the names of two or more persons with knowledge that such cards were either (i) taken or retained under circumstances which constitute a credit card theft or (ii) issued as a result of a false statement by the applicant with respect to his identity or financial condition or (iii) sold or bought from a person other than the issuer or (iv) obtained as security for debt with intent to defraud the issuer or a person providing money, goods, services or other thing of value.

(b) Fraudulent making or embossing or

uttering of a purported credit card with the intent to defraud a purported issuer or a person providing money, goods, services or other thing of value.

(c) Fraudulent use of a credit card with the intent to defraud the issuer or a person providing money, goods, services or other thing of value if the value of the money, goods, services or other thing obtained exceeds \$500 in any six month period.

(d) Fraud by a merchant authorized by the issuer to furnish money, goods, services or other thing of value with knowledge that the credit card presented to him is stolen, forged or expired, if the value of the goods or services supplied by him exceeds \$500 in any six month period or the fraudulent representation by such merchant to an issuer in writing that he has supplied money, goods, services or other thing of value when in fact the value of money, goods, services or other thing purportedly supplied exceeds the value actually supplied by more than \$500 in any six month period.

(e) The possession by a person other than the card holder of an incomplete credit card with intent to complete it without the consent of the issuer or the possession by the person with knowledge of its character of certain machinery, plates or other contrivance, designed to reproduce instruments purporting to be the credit cards of an issuer who has not consented to the issue of such credit cards.

The bill further provides that the following defenses are not available in prosecution for violation of this Chapter: (a) failure to convict, apprehend or identify a person other than the defendant who also violated the chapter, and (b) occurrence of some of the acts constituting the offense charges outside of the State of Hawaii.

One feature of the bill which makes it particularly effective are the presumptions of "knowledge" and "intent" which flow from the facts giving rise thereto. In other words, if certain circumstances constitute a violation, the fact that a person is in those circumstances raises a rebuttable presumption that he knew of or intended them.

This is not to say that he is guilty simply because the circumstances are shown to exist, but it allows the prosecution to get to the jury with something less than positive proof of a purely subjective standard such as knowledge or intent. The defendant can rebut the presumption and prevail by suggesting a reasonable doubt that he knew of or intended the circumstances.

Presumptions, however, have created insurmountable difficulties for lawyers, courts and juries. Moreover, your Committee feels that the form of the presumptions contained in the bill is objectionable because the establishment of certain facts presumes violation of the entire substantive offense to which the presumption is related rather than (only) as to an element thereof which the facts tend to establish. For these reasons, your Committee substituted the concept of *prima facie* evidence (as hereinafter defined) for the presumptions, and further provided that such evidence is related only to an element of the crime, such as "knowledge" or "intent", and not to the crime itself.

"*Prima facie* evidence" is defined as an amendment to section 730-9, and when established as to a fact, "it is evidence which if accepted in its entirety by the trier of fact, is sufficient to prove the fact, provided that no evidence negating the fact, which raises a reasonable doubt in the mind of the trier of fact, is introduced." This definition, exacted from the Hawaii Penal Code (Proposed Draft) 1970, is said therein to be consistent with the modern rules of evidence; it is intended only to allow the prosecution to get to the jury without necessarily meeting the burden of persuasion as to the defendant's frame of mind, and if "neutralized" by him, requires that the same be established beyond a reasonable doubt.

As re-written:

(a) Possession or control of two or more stolen credit cards is *prima facie* evidence that the defendant knew the credit cards to be stolen, in section 730-3(a).

(b) Possession of two or more falsely made or embossed credit cards is *prima*

facie evidence that the defendant intended to defraud or knew that the cards had been so made or embossed, in section 730-3(f).

(c) Possession of two or more incomplete credit cards is *prima facie* evidence that the defendant intended to complete them without the consent of the owner, in section 730-6.

(d) Possession of three or more tickets for certain transportation services purchased with a stolen or forged credit card is *prima facie* evidence that the defendant knew the tickets had been so obtained.

One presumption, in section 730-3(g), that the possession of two or more credit cards with the signature of the person named thereon forged, which presumes that the defendant forged the signature, was entirely deleted as unnecessary. The receipt of such credit card falls within the proscription of section 730-3(a) and is adequately covered there.

Your Committee also made the following essentially non-substantive amendments: In section 730-2, by adding the phrase "a material fact as to", referring to a false statement of financial condition, the making of which is a violation. In section 730-3(f), by adding the phrase "or possesses such a credit card with knowledge that the same has been falsely made or falsely embossed", thereby so expanding that which constitutes credit card forgery. In section 730-3(g), by substituting the phrase "is guilty of credit card forgery" for "violates this subsection", thereby so defining the offense. In section 730-6, by requiring the possession of only one incomplete credit card with intent to complete it, instead of two cards, in order to constitute a violation. In section 730-7, by adding to the end thereof "if the value of all money, goods, services, and other things of value obtained in violation of this section does not exceed \$500 in any six-month period; and is subject to the penalties set forth in subsection 730-10(b), if the value exceeds \$500 in any six-month period," which was an oversight in the original draft of the bill.

Your Committee finds that with the increased use and acceptance of credit cards has come an increase in the theft of such cards and in the frauds perpetrated upon the issuer, the merchant, and the customer-cardholder. Your Committee on Housing and Consumer Protection, to which this bill was initially referred, having thoroughly inquired into the matter, found that "there has been an alarming increase of instances of theft, fraud, and other abuses of credit cards." These crimes are, in many instances, being perpetrated by the professional and organized criminal element, and, unless laws to curb such crimes are enacted, our citizens stand to be adversely affected, not only by the loss that merchants may be required to share with them, but by direct loss and inconvenience resulting from theft and forgery. This bill provides a comprehensive set of definitions of credit card offenses and appropriate sanctions therefor.

Your Committee is in accord with the intent and purpose of **H. B. No. 1603-70, H. D. 1**, as amended herein, and recommends that it pass third reading in the form attached hereto as **H. B. No. 1603-70, H. D. 2**.

Signed by all members of the Committee except Representatives Baptiste and Duponte.

SCRep. 537-70 Finance on H. B. No. 787

The purpose of this bill is to provide for a complete reorganization of the district courts by (a) establishing a single district court for each county, (b) establishing the district courts as courts of record, thereby eliminating the prior right to trials *de novo* at the circuit court level, (c) providing for appeals from the district court to the supreme court, (d) increasing the civil jurisdiction of district courts to \$5,000, (e) substituting the term "district judge" for that of "district magistrate", and (f) providing that the judges shall serve full time and number as follows: district court of first circuit — ten judges, district court of second circuit — two judges, district court of third circuit — two judges, and district court of fifth circuit — one judge.

Your Committee has amended this bill by:

(1) reducing the number of district court judges authorized for the district court of the first circuit from ten judges to eight judges;

(2) clarifying that the Chief Justice be authorized to appoint additional *per diem* district judges;

(3) retaining the terms of district court judges at four years instead of the six years recommended; and

(4) setting the compensation of district court judges at eighty per cent of the compensation of a circuit court judge.

Your Committee is in accord with the intent and purpose of **H. B. No. 787, H. D. 1**, as amended herein, and recommends its passage on third reading in the form attached hereto as **H. B. No. 787, H. D. 2**.

Signed by all members of the Committee.

SCRep. 538-70 Higher Education on H. R. No. 142

The purpose of **H. R. 142** is to request that the University of Hawaii establish a Center for Ecological Study and to consider the feasibility of establishing ecology as a discipline on its campus.

Environmental problems are ones which cannot be solved in random fashion. Previous history of environmental control, such as with the use of DDT shows that random control has, with the good intent of solving specific problems, indeed furthered environmental disorder by neglecting to consider secondary and tertiary effects of control measures.

With our rapid technological and industrial advances and our urban and population growths, we in Hawaii are beginning to feel the effects of environmental pollution. Yet, here in Hawaii, as is not, unfortunately, the case in other areas of the nation and the world, our problems are

perhaps still manageable and controllable. Research into our specific problems can prevent, as well as cure environmental disorders and thus insure for our citizens a promising future in our state. It behooves us all to formalize and coordinate the needed research into ecology through a Center for Ecological Study. Such a center would provide the needed systematic and comprehensive approach to environmental control and the findings of scholarly deliberations on the impact and effects of proposed legislative control measures.

Your Committee feels that such a center should be a part of the University of Hawaii. The University, with its great intellectual resources, is in the best position to direct and coordinate scholarly activity in this area. In his concurring and supporting testimony to this Committee, President Harlan Cleveland also recognized the University's role in this area. He testified that: "It is fitting that the Legislature should turn to its state university as the logical center for such ecological research. An important part of the mission of the University of Hawaii is to perform community service. The creation of a research center concerned with ecology would tap intellectual resources of the faculty — encouraging some of our best minds to push forward the frontiers of knowledge while at the same time providing practical answers to immediate problems." Research from the University would be not only thorough but also the product of the faculties and facilities of the University's many disciplines and consequently multi-faceted in its point of view. The University is the state's resource for comprehensively considering and combining scientific and conceptual approaches toward providing for the total welfare and quality of life in our state.

The University has already initiated research and advice in environmental problems through the ad hoc Ecology and Man Committee. The existence of this Committee, which is composed of voluntary and interested members of the University faculty and staff, proves the deep commitment that the University has already made toward the welfare of our state. We would like to commend the members of

this committee for the work that they have already done in advising legislation and would like to encourage them to continue in this endeavor to the extent of available funds.

The Committee would like to see the University move toward the formalization and centralization of such energies through the establishment of a Center for Ecological Study. We realize, however, that a Center of such a nature cannot and should not be established overnight. It is important that goals and directions be well established first, in order that time and efficiency, and thoroughness be not sacrificed in the future.

Therefore, the resolution has been amended to provide for the development of a proposal by the University of Hawaii for a Center for Ecological Study. This proposal will be presented to the Legislature 21 days before the opening of the 1971 legislative session. Among other matters of importance, the report shall include:

1. The immediate and long-range purposes and functions of the center in terms of its integration into the existing structure of the University and its relationship to other state offices and agencies. It should define its unique function apart from any other governmental agency such as the proposed Office of Environmental Control;

2. Continued studies of the feasibility of establishing a School of Ecology;

3. The resources which are immediately available to the Center, those which can be obtained from other agencies and offices within the state, and those which will have to be obtained from outside of the state. These resources should be specified in terms of a. administrative personnel, b. research and data gathering staff, c. clerical staff, d. capital equipment, e. other resources;

4. The purpose of the Center translated into proposed programs of research and activity. The rationale for each major program should be stated:

a. It is hoped that the programs of the Center, while perhaps necessarily administrative initially will extend into programs for public education and information relevant to eco-thinking and programs for further intra-discipline study at both the undergraduate and graduate levels of study;

b. It is further hoped that the Center will provide a constant source of advice for the state government;

5. The determination, explanation, and tabulation of the initial cost of establishing the center as well as anticipated incremental costs for the following five years.

The Committee hopes that the above guidelines will not be considered all-inclusive, but that the University will refine and supplement it in its final proposal.

Your Committee is in accord with the intent and purpose of **H. R. 142**, as amended herein, and recommends its referral to your Committee on Finance in the form attached hereto as **H. R. 142, H. D. 1**.

Signed by all members of the Committee.

SCRep. 539-70 Higher Education on H. R. No. 231

The purpose of this resolution is to officially recognize and support the educational and creative efforts of the First National Environmental Teach-In, and to encourage the participation of the University of Hawaii, the Departments of Education, Health, Land and Natural Resources, conservation groups, and mass media in this project.

The word "ecology" has suddenly become a part of our working vocabularies, and our environment, which has so long been unnoticed or taken for granted has suddenly, and rightly become the cause celebre of enlightened people all over the world. Clubs, associations, societies and the like have sprung up all over the country, their spread being as fast or faster than

that of the pollution with which they would deal. Ecology has become a band wagon crusade, of the magnitude of apple pie and the American Flag. This is commendable, and your Committee would of course like to join in the crusade.

There is a grave danger, however, in doing too much too fast, because, in the long run, we may find that we have merely treated a symptom, while the cancerous cause has proliferated unchecked, to rear its Hydra's head in another area. Instead, your Committee would recommend caution; a pragmatic, logical, and systematic study of the problems, their scope, and their alternative solutions. Any complete analysis of the problem must be cross-disciplinary, and must involve all facets of our society. In this context, the environmental teach-in planned for April 22, 1970, can have particular relevance and significance. Education, and the exchange of divergent ideas can be very beneficial in the crucial process of master-planning our environmental salvation.

Your Committee lauds coordinators of this project for taking the initiative to organize this Environmental Teach-In, and wishes the project tremendous success. We strongly urge other organizations and groups not mentioned in this resolution, to lend their support and participation to this worthwhile project.

Your Committee is in accord with the intent and purpose of this resolution, and recommends its referral to the House Committee on Education.

Signed by all members of the Committee.

SCRep. 540-70 Economic Development on H. B. No. 2090-70

The purpose of this bill is to appropriate funds to the University of Hawaii for an exploratory study on energy sources for the State.

A modern society such as Hawaii needs energy to propel our vehicles, illuminate our buildings and operate our machinery. With our growing population, the demand

for electricity on Oahu alone will double within a decade.

However, we suffer from high energy costs — for the gasoline, electricity, fuel oil, etc. that we consume. This contributes to our overall high cost-of-living. Our economic growth is also retarded because high energy costs discourage the start or expansion of industries.

Another problem which we have is that of pollution. At present, virtually all our energy is produced from petroleum products. This is the largest source of air pollution in the State and it is imperative that we develop non-polluting energy sources now if we are to protect our physical environment. If we do not act immediately, the natural beauty and benign surroundings of Hawaii that we enjoy will be lost forever.

Two potential less-polluting energy sources which may be feasible for Hawaii are nuclear power and geothermal power. They offer the possibility of a cleaner environment while still providing abundant power for new industries, the extraction of minerals from the sea, mass transit, electric cars, desalinization of sea water and many other applications. It may well be feasible, in the not-too-distant future to develop a power grid linking together all the islands of the State. This would provide tremendous opportunities for the future of the Neighbor Islands.

Your Committee is very hopeful about these possibilities for the future. We believe that we must be visionary. We must plan and act now if we are to achieve the kind of society we want — not just for next year, not just for ten years hence, but for the year 2000 and beyond. This bill provides the funds with which to begin our quest.

This bill as originally drafted provided an appropriation of \$50,000. Your committee finds that \$50,000 is not adequate and has amended the bill to increase the sum to \$100,000. We have also defined the proposed scope of the study to encompass the feasibility of various alternative energy sources in terms of the technological,

economic, social and environmental aspects of Hawaii's present and future energy requirements. The Center for Engineering Research at the University of Hawaii has also been designated as the responsible agency for this study.

We have not set a specific deadline for the conclusion of this study because of the complexity of the task. However, we do expect the Center for Engineering Research to make a status report to the 1971 Session of the Legislature.

Your Committee is in accord with the intent and purpose of **H. B. No. 2090-70**, as amended herein, and recommends its passage on second reading and its referral to your Committee on Finance in the form attached hereto as **H. B. No. 2090-70, H. D. 1**.

Signed by all members of the Committee.

SCRep. 541-70 Education on H. B. No. 746

The purpose of this bill is to appropriate funds to give teachers in the public schools a daily preparation period of 30 to 45 minutes in length so that they may pursue personally initiated school tasks such as preparation for instruction and reflection.

Your Committee held a joint hearing with the Senate Education Committee, and heard testimonies presented by representatives of the Department of Education, the Hawaii Education Association and its affiliated chapters, the Hawaii Federation of Teachers, the Hawaii Government Employees' Association and numerous individuals. All groups and individuals presenting testimonies agreed on the need for and desirability of having a preparation period for teachers.

The Board of Education, on April 2, 1970, recommended the granting of preparation periods based on a recently concluded study conducted by the Office of Instructional Services of the Department of Education.

The report on the study of preparation periods and duty free lunch periods pre-

pared by the Department of Education suggests a number of alternatives for the installation and funding of preparation periods and duty free lunch periods in our public schools.

To provide teachers with preparation periods and duty free lunch periods and to bring about optimal accomplishment of professional tasks as envisioned by school principals, the total cost comes to \$35,947,201. This decision would permit principals maximum latitude to choose various combinations of teachers and educational assistants. If preparation periods alone were considered, the cost would be \$9,511,702.

Other alternatives discussed including lengthening the teacher's day, shortening the student's day, and increasing the class size. All of these alternatives have the drawback of diluting the quality and quantity of education available to the learner and were, therefore, set aside.

Your Committee feels that the specific recommendation of the Board of Education and the Department of Education is the best possible method to fund and implement preparation periods and duty free lunch periods for teachers in the public schools. This recommended alternative calls for installation in accordance with the following guidelines:

1. For Grades K-3, continue implementation of the 3 on 2 program (including possible modification based on funding) as now planned.
2. For grades 4-6, expanded by 91 assistants the educational assistants program as currently approved (with possible modification such as conversion to general aides).
3. Also for grades 4-6, 211 special subject teachers.
4. For secondary schools, 182 educational assistants.
5. Also for secondary schools, 270 additional teachers.

The total cost for providing preparation periods using educational assistants and teachers may be outlined as follows:

ELEMENTARY:

91 Educational Assistants @ \$4,140 =	\$ 376,740
211 Teachers @ \$7,037 =	1,484,807
Total	\$1,861,547
Fringe Benefits	372,309
TOTAL COST	\$2,233,856

SECONDARY:

182 Educational Assistants @ \$4,140 =	\$ 753,480
370 Teachers @ \$7,037 =	2,603,690
Total	\$3,357,170
Fringe Benefits	671,434
Total Cost	\$4,028,604

Total Cost — Elementary	\$1,861,547
Total Cost — Secondary	3,357,170
Total Fringe Benefits	1,043,743

Total Cost of Proposed Program	\$6,262,460
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This recommended program will provide every teacher with a preparation period except those K-3 teachers not in a 3 on 2 program. These teachers will receive a preparation period as they are phased into the 3 on 2 program. This will, of course, depend upon the pace of continued implementation of the 3 on 2 program. It should also be noted that if modular scheduling is discontinued, additional resources will have to be provided to give teachers preparation periods and duty free lunch periods at schools now enjoying modular scheduling of one kind or other.

The above recommendations are premised on the belief that providing preparation periods in conjunction with scheduling will also result in providing duty free lunch periods for most of the teachers.

The survey demonstrated that schools with additional resources such as 3 on 2 teachers, special subject teachers, and special teacher allocations were better able to adjust teaching schedules to provide preparation periods and duty free lunch periods for their staff members. Therefore, your Committee feels the utilization of this combination of resources will be the best and most effective way to provide preparation periods and duty free lunch periods, and at the same time insure the optimal accomplishment of teaching.

Your Committee has amended the bill to provide the sum of \$6,262,460 necessary to implement provisions of the bill. It is intended that the funds provided for additional teachers and educational assistants in this bill shall be used specifically for the implementation of preparation periods in the public schools throughout the State and not for other programs within the Department.

Your Committee is in accord with the intent and purpose of **H. B. No. 746**, as amended herein, and recommends its passage on second reading in the form attached hereto as **H. B. No. 746, H. D. 1**, and that it be referred to your Committee on Finance.

Signed by all members of the Committee except Representatives Loo, Sakima and Nakama.

SCRep. 542-70 Housing and Consumer Protection on **H. B. No. 43**.

The purpose of this bill is to authorize certain rights of repair of a residential dwelling unit by the tenant at the expense of the landlord, for correction of conditions that constitute violations of state health laws and regulations. The bill would provide the tenant limited protection against retaliatory eviction and rent increase for availing himself of the procedures under the bill.

After further consideration of **H. B. 43, H. D. 1**, your Committee recommends the following amendments:

1. Extend from two weeks or four weeks to thirty days the notification period within which the landlord can remedy the condition of noncompliance with health laws and regulations before the tenant is authorized to repair the condition at the landlord's expense.

2. Provide that if the cost to the landlord of a repair would exceed \$100, the tenant must obtain from the department of health a statement that the condition in fact is in violation of health law or regulation, and provide that a copy of the statement be mailed by the department to the landlord.

3. Where written estimates are provided for, require such estimates from two qualified workmen and require that the work be done pursuant to the lower estimate, unless the landlord required a reasonable substitute.

4. Clarify that the costs to be borne by the landlord through rent withholding are limited to \$100 or one month's rent as the case may be for each project of work to correct an objectionable condition.

5. Specify, under the provisions listing situations in which the landlord is authorized to recover possession or increase the rent, that the landlord may obtain from the department of health certification that a dwelling unit is in compliance with health laws and regulations.

Your Committee is in accord with the intent and purpose of **H. B. No. 43, H. D. 1**, as amended in the form attached hereto as **H. B. 43, H. D. 2**, and recommends that it pass second reading and be placed on the calendar for third reading.

Signed by all members of the Committee accept Representatives Heen, R. Wong, Oda and Saiki.

SCRep. 543-70 Judiciary on **H. B. No. 1294-70**

The purpose of this bill is to amend the laws relating to adverse possession by requiring any person claiming title to realty, at the time he gained possession thereof, to be acting in good faith and with color of title.

As the doctrine of adverse possession is applied by the courts in Hawaii, title vests in the adverse possessor if, at the time he initially entered upon the land, or at some subsequent time, his occupancy was hostile to the owner, and provided that he has actually, openly, notoriously, continuously, and exclusively possessed the realty for a period of ten years. This bill would prevent a person from acquiring good title to realty by way of adverse possession unless in addition to these traditional requirements he entered on to the property with color of title and in good faith.

These two requirements are separable and their effects can best be understood if discussed separately.

“Color of title” is defined as that which on its face professes to convey title but fails to do so because of want of title in the person from whom it comes or the use of some ineffective means in attempting to pass it (3 Am. Jur. 2d. **Adverse Possession**, sec. 105). By its very definition, “color of title” cannot be “good title”.

There are many states, although not a majority, which require color of title as a prerequisite to the establishment of adverse possession. Of the states which do require it, however, many permit adverse possession to be established without it but reduce the time period for its establishment if the claimant had color of title at the time of entry. The State of Washington, for example, requires occupancy for a period of ten years before good title is created by adverse possession, but reduces this period to seven years if the claimant had color of title and paid the taxes on the land during his occupancy.

The statutes of other states which do not define color of title, just as does not **H. B. No. 1294-70**, apparently leave it to the courts to determine what sort of writing is sufficient. The general rule is that it must be writing which is not patently ineffective either as an instrument or method of conveyance.

It should be noted that a majority of states presently require a showing of color of title in cases where an adverse possessor attempts to acquire an entire tract of land after occupying and using only a portion thereof. Thus, the term “color of title” has been the subject of much judicial interpretation, and Hawaii would not be embarking into totally uncharted waters if this requirement were added to the statutes.

With regard to the “good faith” requirement, only a minority of the states which require color of title also require that the purported title be possessed in good faith. In the absence of a statutory provision to that effect, color of title need not be pos-

sessed in good faith, and the trend has been away from requiring it, thereby eliminating “all necessity for judicial investigation into the hidden motives of the entry . . .” (3 Am. Jur. 2d, **Adverse Possession**, sec. 97). Thus, if Hawaii does seek to limit the defense of adverse possession to those claimants who had at least an arguable claim at the time of entry, also requiring that the claimant have entered the land in good faith, it would be in an elite minority of states, particularly if color of title is to be required in all instances of adverse possession, which, of course, is alone not reason for legislatively failing to require it.

Although this measure is addressed to the usual situation where adverse occupancy results from inadvertence, there are those who contend that certain enterprising businesses, notably large agricultural and ranching concerns, have, for years, been embarked upon a systematic and premeditated scheme of encroachment upon the property of others, including the alleged intentional moving of boundary pins. If this is so, the bill remedies that evil; if it is not so, or if it is claimed that it is not so, your Committee refrains, nonetheless, from unnecessary specific indictments in support hereof, because of its effect is general and embraces all who cannot satisfy its requirements.

Your Committee amended the bill to provide that its provisions shall not govern any case or controversy in which a final disposition of the property in dispute has not been made. Your Committee did so not unmindful that accompanying a change to the present law there may arise a problem involving those persons who have occupied land for ten years or more before the effective date of the statute without color of title, and who may attempt to raise a claim of adverse possession subsequent to its effective date. Although your Committee does not believe that stripping them of title to which they had become entitled to rely upon as a defense to ejectment, but which had not yet been adjudicated, is not an impermissible exercise of the State’s right to alter judicial remedies, your Committee is reluctant to interfere with or change any relative rights or relationships between the parties, retroactively.

In drafting the amended version hereof, your Committee eliminated the purpose provision.

Your Committee is in accord with the intent and purpose of **H. B. No. 1294-70** as amended in the form attached hereto as **H. B. No. 1294-70, H. D. 1**, and recommends that it pass second reading and be placed on the calendar for third reading.

Signed by all members of the Committee.

SCRep. 544-70 Judiciary on H. B. No. 1569-70

The purpose of this bill is to clarify the definition of the term "contractor" in section 444-1(2) of the Hawaii Revised Statutes, by adding thereto that the term includes anyone who undertakes to "alter, add to, subtract from, improve, enhance, or beautify any realty".

Under the present law, it is uncertain whether persons engaged in such businesses as landscaping and tree trimming are included therein. By the amendment, these and other activities which involve changes to realty, come under the licensing and control of the contractors license board within the Department of Regulatory Agencies.

Reference to "realty" is necessary because the present definition, when strictly construed, is limited to undertakings involving any "structure, project, development, or improvement". As redefined, the general public is protected, thereby, against possible incompetence by persons performing upon matters to which realty, and structures, projects, developments, or improvements thereon are affixed.

Your Committee converted the form of the bill in compliance with House Rule 24(2).

Your Committee is in accord with the intent and purpose of **H. B. No. 1569-70** as amended in the form attached hereto as **H. B. No. 1569-70, H. D. 1**, and recommends that it pass second reading and be

placed on the calendar for third reading.

Signed by all members of the Committee except Representatives Duponte, Pule, Shigemura, Aduja and Judd.

SCRep. 545-70 Judiciary on H. B. No. 1795-70

The purposes of this Act are (a) to amend the present ground for divorce preceded by a separation for a continuous period of three years, to two years. (b) to permit entry of an absolute decree of divorce where the parties have been separated for six months or more under a decree of separation or separate maintenance, irrespective of the grounds alleged, and (c) to correct a drafting error in Section 580-45, Hawaii Revised Statutes.

Reduction of the period of separation preceding the divorce to two years brings Hawaii in line with mainland jurisdictions, many of which permit divorce even after only one year's separation. The amendment also permits entry of a final rather than an interlocutory decree, notwithstanding that the parties may have children under eighteen years of age.

Act 44, Session Laws of Hawaii 1969, permitting entry of an absolute rather than an interlocutory decree where the parties have been separated for six months or more under a decree of separation or separate maintenance, was, initially, narrowly construed so as to permit entry of an absolute decree only under an allegation of failure to reconcile; however, judicial tendency has been to liberally interpret this provision, and a codification of the same would remove any existing confusion.

Also, Act 44, aforesaid, which reduced the interlocutory period from one year to six months, was inadvertently drafted in failing to modify the provision permitting entry of a final decree "upon all the children of the parties either attaining eighteen years of age, or becoming married, or otherwise emancipated or adopted, or deceased, or upon the decease of either party." This Act corrects the error.

Your Committee corrected an oversight

in the conversion process wherein on page 2 at line 20, in the amendment to subsection 580-41(11) the word "two" preceding the word "years" was put in without first deleting the word "three". Also, the introductory passage, designated "Sec. 580-41" was deleted from the bill, strict compliance with House Rule 24(2) having been waived.

Your Committee is in accord with the intent and purpose of **H. B. No. 1795-70**, as amended in the form attached hereto as **H. B. No. 1795-70, H. D. 1**, and recommends that it pass second reading and be placed on the calendar for third reading.

Signed by all members of the Committee.

SCRep. 546-70 Judiciary on H. B. No. 1224

The purpose of this bill is to expand the extent to which dental hygienists may perform upon teeth by redefining the term "Practice of clinical dental hygiene" in section 447-3, Hawaii Revised Statutes.

Your Committee on Public Health, Youth and General Welfare, to which this bill was originally referred, found that:

Existing law permits dental hygienists to clean teeth, apply chemical agents on the coronal surfaces of teeth and use mouth washes. This description is outmoded and prevents a dental hygienist from treating his patients in the manner he has been taught under the latest techniques. This bill corrects this situation by increasing a dental hygienist's duties to include the removal of hard and soft deposits and stains from the portion of the crown and root surfaces to the depth of the gingival sulcus and polishing natural and restored surfaces of teeth. Flexibility of the law is provided for by allowing the dental hygienist to practice other procedures delegated by the dentist in accordance with rules and regulations of the board of dental examiners.

Your Committee, on Public Health, Youth and General Welfare determined that the provision requiring that the work of dental hygienists be under the "direct

and continuous supervision and inspection by a licensed dentist" would inadvertently prevent the continuation of the Department of Health's Dental Hygiene Program, which, because of its extensive nature, can only be conducted subject to general — not direct and continuous — supervision. Accordingly, it amended the bill by reinstating the present law relating to wherein a dental hygienist may operate, which includes schools, welfare centers, and the like, and provided that if under employment therein, supervision need (only) be "direct or general"; whereas in the private practice of dentistry, the hygienist is required to be under "direct and continuous" supervision and inspection.

Your Committee on Judiciary does not find that such a classification is so arbitrary or discriminatory as to constitute a denial of equal protection under the law because it does not vary the degree of competency relating to standards for licensing or practice. Indeed, any disparity is the product of practical necessity; it is a reflection of the effect of the status of affairs, rather than the cause of it. It is prompted by an overriding and compelling state need.

Your Committee has effected certain non-substantive changes to conform to House Rule 24(2), specifically by properly punctuating and underlining the new materials in the last three lines of section 1 of the bill.

Your Committee is in accord with the intent and purpose of **H. B. No. 1224, H. D. 1**, as amended herein, and recommends that it pass second reading and that it be placed on the calendar for third reading in the form attached hereto as **H. B. No. 1224, H. D. 2**.

Signed by all members of the Committee except Representative Shigemura.

SCRep. 547-70 Judiciary on H. B. No. 1597-70

The purpose of this bill is to provide authorization to make relocation assistance for persons, businesses, firms and non-profit organizations displaced for

airport purposes. Relocation allowances are provided for in Hawaii Revised Statutes in the case of highway projects. The same provisions are provided in cases of airport projects under the provisions of this bill. Additionally, the federal government will also require that provisions be made for relocation on projects funded through federal-aid programs. The present bill will help assure the State's ability to meet its obligations in receiving federal grants on future federal-aid to airport projects.

Your Committee on Harbors, Airports and Transportation has amended the bill as it relates to its effective date. It has made the bill effective upon approval, but has also provided for payments to those individuals that have been displaced at the Honolulu International Airport due to airport expansion. The retroactivity is made effective as of September 1, 1969 for the primary reason that in September, 1969, certain people living on property to be acquired by the Airport Division were informed of the State's plan for expansion and that some of these individuals, in anticipation of the planned acquisition, have expended funds to relocate themselves to other areas. Your Committee concurs with the necessity for amending the effective date of this bill.

Your Committee is in accord with the intent and purpose of **H. B. 1597-70, H. D. 1**, and recommends its passage on third reading.

Signed by all members of the Committee except Representatives Baptiste and Duponte.

SCRep. 548-70 Judiciary on **H. B. No. 1791-70**

The purpose of this bill is to restrict the sale and use in the State of certain compounds which induce an intoxicated condition in the user.

This bill prohibits the use of certain enumerated intoxicant compounds by making it unlawful for a person to breathe,

inhale or drink, the same for the purpose of inducing a condition of intoxication. As referred from your Committee on Public Health, Youth and General Welfare, it prohibits the sale of intoxicant compounds by making it unlawful for any person to sell these compounds to any person under 20 years of age, unless upon written order of such person's parent or guardian.

Certain aerosol paints and compounds containing inhalent chemicals are being abused by minors in this State, and this bill is designed to provide a means to control that abuse. The provision in this bill prohibiting the sale of these intoxicant compounds seems to be the "sticky" issue. However, a member of your Committee is in receipt of a communication from the director of the department of health to the effect that in a recent survey of several hardware and variety stores on Oahu, which revealed that the problem has grown increasingly worse, the managers thereof, who, in some cases expressed fear of reprisals from juveniles to whom they refused to sell, expressed further the hope that government would take some action to control the problem. Admittedly, the department of health can amend its regulations pursuant to the Administrative Procedure Act in order to accomplish this purpose, but that recourse is frequently time consuming; wherefore, the legislature is requested, since it is presently in session, to expedite the long overdue relief.

Your Committee, having considered whether intoxicating liquors fall within the general classification of "any other substance for the purpose of inducing a condition of intoxication . . ." within the meaning of the bill, is satisfied that they do not, neither were they intended to, and, therefore, your Committee did not amend the bill so as to expressly exclude them.

Your Committee, consistent with several other legislative measures referred out by it touching upon the status of minors, recommends that the age provision hereof be lowered to 18 years, and the bill has been so amended.

Your Committee is in accord with the intent and purpose of **H. B. No. 1791-70**,

H. D. 1, as amended herein, and recommends that it pass third reading in the form attached hereto as **H. B. No. 1791-70, H. D. 2**.

Signed by all members of the Committee except Representatives Baptiste and Duponte.

SCRep. 549-70 Finance on H. B. No. 1666-70

The purpose of this bill is to amend Chapter 443, Hawaii Revised Statutes, by replacing the functions of the attorney general as commissioner of the collection agencies and the present collection agencies advisory board with a five-member collection agency board within the department of regulatory agencies. The newly-created board will serve a regulatory, rather than advisory function.

Briefly, the following are the proposed amendments which **H. B. No. 1666-70, H. D. 1**, would cause to the present law:

Section 1: Sec. 443-1(a) is amended so that the definition of the word "board" will mean a collection agency board and not an advisory board.

Section 2: Sec. 443-2 is amended to place the board in the department of regulatory agencies. The members on the board will be appointed by the governor, consisting of two licensees and three non-licensees.

Section 3: Sec. 443-3 is amended to conform with other state boards in regards to organization, record keeping, meetings, quorum, vacancy, etc. This section also provides that members of the board will not receive compensation for their services, except for reimbursements for expenses incurred in the performance of their duties.

Section 4: Sec. 443-4 is amended to spell out the expressed powers and duties of the board. These include: (a) granting licenses to collection agencies, (b) denying, suspending, or revoking licenses or levying a fine, (c) making, amending and repealing of reasonable and necessary rules and regulations, and (d) enforcing Chapter 443 and

its rules and regulations.

Section 5: Sec. 443-5, providing that necessary expenses of the board shall be paid by the state comptroller, is repealed as the board is placed within the department of regulatory agencies.

Section 6: Sec. 443-6 is amended to create a position of executive secretary for handling the board's administrative duties in lieu of the present commissioner of collection agencies. Your Committee on Finance has further amended this section by deleting the position of executive secretary to enable the Director of Regulatory Agencies to provide any assistance to the board from existing personnel.

Section 7: Sec. 443-5(5) is amended by adding that in case of a corporation, no license shall be issued unless one of its officers or directors has resided in the State for more than one year prior to the date of application. This provision seeks to place a corporation on parity with individual or partnership applicants as to residency requirement.

Section 8: Sec. 443-10(b) is amended to provide that application hearings shall be conducted pursuant to the Administrative Procedure Act.

Section 9: Sec. 443-15 is amended to distinguish between "new" and "amended" licenses upon change of business name or removal to a new location, in which case the board shall issue an "amended" license conforming to the facts.

Section 10: Sec. 443-20 is amended by deleting the sentence, "Any statement relative to the financial affairs of any applicant for a license shall not be revealed by the commissioner to any other members of the collection agency advisory board." This portion of the present statute will be rendered inapplicable by virtue of the board's power to grant or deny licenses and hearings conducted pursuant to the Administrative Procedure Act.

Section 11: Sec. 443-21 is amended to allow the board to investigate complaints against a licensee, a function under the

present statute is performed by the commissioner of collection agencies.

Section 12: Sec. 443-23 is amended to eliminate collection fee and attorney's fee or commission; provided, however, attorney's fee or commission may be collected only after filing of suit.

Section 13: Sec. 443-26 is amended to provide that all board actions in denial, suspension or revocation of license or levy of fine shall be conducted in accordance with the Administrative Procedure Act. The board may suspend or revoke a license or levy a fine for violations of Chapter 443 by a simple majority vote, but four members of the board must concur in refusing to grant a license to an applicant.

Section 14: The first two sentences of section 443-27 are amended to provide that the board may appoint a conservator in case of insolvency and allows the licensee to request a hearing if he disagrees with the determination of the board.

Section 15: Sec. 443-30 is amended to provide that monies collected by the board shall be forwarded to the director of finance for deposit in the general fund.

Your Committee noted that although the aforementioned amendments were made to conform to the purpose of this bill, several sections throughout Chapter 443 remain unaffected and contain references to "collection agency advisory board", "commissioner of the collection agencies", or "commissioner". Your Committee therefore, added a new section to the bill providing that the term "board" be substituted throughout.

Your Committee is in accord with the intent and purpose of **H. B. No. 1666-70, H. D. 2** as amended herein and recommends its passage on third reading in the form attached hereto as **H. B. No. 1666-70, H. D. 3**.

Signed by all members of the Committee.

SCRep. 550-70 Select Committee of Kauai Representatives on **H. B. No. 1735-70**

The purpose of this bill is to empower the chief executive officer of each county to appoint the Examiner of Chauffeurs in each county. Under present law the legislative body of the county is empowered to appoint the Examiner of Chauffeurs.

Your Committee concurs with the findings of your Select Committee of Oahu Representatives as stated in **Standing Committee Report No. 295-70**.

Your Committee is in accord with the intent and purpose of **H. B. No. 1735-70, H. D. 1**, and recommends its passage on third reading.

Signed by all members of the Committee.

SCRep. 551-70 Judiciary on **H. B. No. 2135-70**

The purpose of **H. B. No. 2135-70**, as amended herein, is to amend Chapter 754, Hawaii Revised Statutes, to prohibit the intentional or reckless physical obstruction of certain public premises.

Your Committee finds that because public places are commonly available for many activities not ordinarily permitted on private property, physical obstruction of the day to day functions of government in such places cannot be easily controlled. In the past, such obstruction has sometimes been aimed at impeding government functions themselves and sometimes at impeding the use of public facilities by particular persons or groups.

To accomplish the purposes set forth in **H. B. No. 2135-70** as originally drafted, your Committee has amended the bill in the following respects:

1. The bill has been amended to amend Section 754-1 by deleting therefrom all reference to "public" premises. Thus this section has been left to prohibit obstruction on private property only. Also, Section 754-1 has been amended to clarify any ambiguity with respect to the phrase "persons and vehicles". The phrase "persons or vehicles" has been substituted for that phrase.

2. The bill has been further amended to add a new Section to the Hawaii Revised Statutes to be designated Section 754-2. This Section defines the offense of obstruction of a public place.

3. Finally, the bill has been amended to provide that any person violating Sections 754-1 or 754-2 shall be fined not more than \$200.00 or imprisoned not more than six months, or both.

Your Committee is in accord with the intent and purpose of **H. B. No. 2135-70**, as amended herein, and recommends its passage on second reading in the form attached hereto as **H. B. No. 2135-70, H. D. 1**, and that it thereafter be placed on the calendar for third reading.

Signed by all members of the Committee except Representative Bicoy, Duponte, Heen and Shigemura.

SCRep. 552-70 Judiciary on H. B. No. 2152-70

The purpose of this bill is to amend Chapter 485 of the Hawaii Revised Statutes. Specifically, the following purposes are accomplished by the bill:

1. Section 1 of the bill amends Section 485-4 to include as exempt securities any security issued in connection with an employee's stock purchase, savings pension, profit sharing or similar plan. This provision is in the Uniform Securities Act but inadvertently was not included in the Hawaii Act when it was drafted in 1957.

2. Section 2 of the bill amends Section 485-11 to delete the requirement that mutual fund companies file amendatory statements to their registration statements whenever the amount of securities registered with the Securities and Exchange Commission is increased. Mutual fund companies would only be required to renew their registrations annually, as required of other companies, by filing a copy of their latest prospectus as set forth in paragraph (4) of Section 485-11. This amendment will significantly reduce the workload of the Business Registration

Division of the Department of Regulatory Agencies.

3. Section 3 of the bill amends 485-25 (a) to allow the Commissioner of Securities to exempt by rule or order certain classes of sales literature from being filed with his office. Such classes would include sales literature previously filed with the Securities and Exchange Commissioner and/or the National Association of Securities Dealers. The elimination of the filing of such literature will naturally reduce the amount of mail received daily by the Business Registration Division, thereby increasing efficiency in that Division. Many states have such a provision in their securities statutes.

Your Committee is in accord with the purpose and intent of **H. B. No. 2152-70** and recommends its passage on second reading and that it be placed on the calendar for third reading.

Signed by all members of the Committee except Representatives Duponte, Shigemura, Judd and Miho.

SCRep. 553-70 Judiciary on H. B. No. 1202

The purpose of this bill is to amend the charter of the city and county of Honolulu relating to apportionment of the city council.

In conformity with the principle of "one man, one vote" enunciated through decisions of the U.S. Supreme Court, the Hawaii Supreme Court rules in August, 1968, in **Chikasuye, et al. v. Lota**, that the city council of the city and county of Honolulu must, because of disparity with the judicially expressed constitutional standards, be reapportioned. However, the court declined to formulate an apportionment plan, deferring to the city council and thereby allowing it the opportunity of correcting its own malapportionment.

The city council, by resolution No. 310 adopted in August of the following year, proposed an amendment to the charter of the city and county of Honolulu, providing for an expanded eleven member council, six of whom to be elected at-large and five

of whom to be elected from specified districts. This plan was submitted to the voters of the city and county of Honolulu at a special election. The council's proposed plan was defeated by a large margin. The responsibility for reapportioning the city council thereby fell upon the state legislature pursuant to its reserved powers.

Your Select Committee of Oahu Representatives to which was initially referred **H. B. No. 1202** conducted hearings upon it and various other bills introduced to reapportion the city council; and, as did your Committee on Judiciary, received and considered testimonies from Mayor Fasi, several councilmen and many interested citizens. Your Select Committee of Oahu Representatives found that the voters rejected the council's proposed reapportionment plan primarily because it increased the size of the council from nine to eleven members. Said committee further found that the rejection of the council's proposed plan by the voters did not constitute a clear-cut rejection of a council made up of a combination of members elected from districts and members elected at-large. However, finding certain arguments advanced for a nine member council with each councilman elected from a separate district to be "compelling", that committee amended the bill to provide for the city council to be apportioned accordingly. Your Committee on Judiciary was similarly influenced by those arguments, having likewise heard and considered them, they are herein briefly stated as follows:

1. Because the municipal government deals principally and directly with the ever-changing everyday affairs of the people, such as garbage removal, sewers, street maintenance, parks and recreation facilities, police and fire protection, building permits and zoning, it is more convenient and effective for the people to deal directly with a district councilman principally concerned as to their particular needs, complaints and problems.

2. Because there is a closer councilman-citizen relationship, there is an increasing responsiveness of the councilman to the political views and the needs, complaints

and problems of the voters in his district.

3. Because of the foregoing, there is a higher representative visibility and a greater degree of political accountability of councilmen to the people.

4. Because there is a broader cross section of citizens represented on the council, there is a greater chance of ethnic and socio-economic minorities to be represented on the council.

The major argument against a council made up entirely of councilmen elected from districts seems to be that they inherently possess a narrow, parochial viewpoint and cannot have the best interests of the county as a whole when considering legislative issues. Your Select Committee of Oahu Representatives submitted that this argument is "somewhat fallacious", because "a councilman representing a large area which includes [a substantial number of] registered voters will have difficulty favoring one community over another." That Committee concluded by expressing its confidence that "the voters of the city and county of Honolulu would elect as councilmen men of integrity and broad rather than parochial viewpoint", and accordingly it amended the bill to provide for a nine member city council with each councilman from one of the nine councilmanic districts.

Your Committee on Judiciary, although it had before it only **H. B. No. 1202, H. D. 1**, received and considered testimonies both in favor thereof and in opposition thereto proposing instead a combination at-large and district plan or an all at-large plan. After careful deliberation, however, your Committee on Judiciary finds itself in accord with your Select Committee of Oahu Representatives.

The councilmanic districts proposed are described in terms of the new districts and precincts therein, as set forth in the governor's proclamation issued May 2, 1969, which were created by an amendment to Article XVI of the Hawaii State Constitution, ratified by the electorate in the 1968 general election. The registered voters figures represent registration level after

purging from the voter list of those who failed to vote in the 1968 elections, increased by the number of voters thereafter registering on Oahu as of January 1, 1970. Of the 186,477 voters registered, strict adherence to the "one-man, one-vote" principle would require 20,716 voters in each of the districts.

Under the bill, as amended, the actual number of voters in each of the nine councilmanic districts is as follows:

District	Registered	Deviation	
	Voters	Number	Per cent
I	20,559	-157	-0.8%
II	20,799	+83	+0.4%
III	20,849	+133	+0.6%
IV	20,855	+139	+0.7%
V	20,572	-144	-0.7%
VI	20,628	-88	-0.4%
VII	20,653	-63	-0.3%
VIII	20,852	+136	+0.7%
IX	20,680	-36	-0.2%

All deviations are less than one percent, and the average deviation is on the order of 0.0 percent.

Your Select Committee of Oahu Representatives amended the bill by deleting the requirement in section 3-102 of the charter that the term of office of the councilmen be coterminous with the term of mayor. However, it was further provided that the last sentence of the section thereby amended shall not take effect until January 1, 1972, and, therefore, those councilmen elected in 1970 shall serve a two-year term of office beginning at twelve o'clock meridian on the second day of January, 1971.

Your Select Committee of Oahu Representatives further amended the bill to provide for reapportionment of the city council by the same reapportionment commission established by the 1968 constitutional convention to handle legislative reapportionment. This amendment is designed to assure that the apportionment of the city council will be reviewed at least once every eight years by an impartial body whose function is to consider and resolve problems of apportionment rather than every 16 years by the charter review commission established by section 13-105 of the charter of the city and county of Honolulu.

Your Committee on Judiciary further

amended the bill to effect amendments to other sections of the charter affected by the amendment caused by the bill:

1. In section 3-104, relating to qualifications of councilmen, by deleting the phrase "to be eligible for election or appointment from a district must also have been a resident of such district for at least one year immediately preceding his election or appointment," and substituting therefor "shall be a qualified voter of the council district from which he seeks to be elected." This amendment is necessitated to reflect the all-district plan, and allows persons to be eligible for election to the council if a qualified voter in the district from which he seeks election.

2. In section 3-105(b), relating to vacancy in office, by deleting the phrase "city or, should the vacant office by that of a district councilman, the electors," thereby deleting any reference to distinction between at-large and district councilmen.

3. In section 3-108.1, relating to organization of the council, by deleting the phrase "at-large" with reference to the status of the councilmen to be elected as chairman and vice-chairman.

Your Committee corrected an obvious typographical error in section 2 of the bill amending section 3-103 of the charter, defining Council District IV. As drafted, part of that district consisted of all of the first, second, third, and fifth precincts of the twenty-third representative district, which is repeated in Council District III. On the other hand, these precincts of the ninth representative district were not mentioned in the bill. Therefore, your Committee amended the bill to achieve the desired technical accuracy by substituting the word "ninth" for the word "twenty third" in line 3 of page 3 of H. D. 1.

Your Committee on Judiciary is in accord with the intent and purpose of H. B. No. 1202, H. D. 1, as amended in the form attached hereto as H. B. No. 1202, H. D. 2, and recommends that it pass third reading.

Signed by all members of the Committee except Representative Shigemura.

SCRep. 554-70 Judiciary on H. B. No. 2162-70

The purpose of this bill is to provide uniform procedures throughout the several counties by which amendments to their respective general or master plans or zoning ordinances which conform to and implement the same may be accomplished.

Since the adoption of their general plans, the several counties have, from time to time, in order to accommodate rapidly changing patterns of social and economic behavior and governmental conditions and trends, amended their respective general or master plans, upon the assumption that such plans, as amended, were expressive of the long-range, comprehensive policy of the counties' legislative policy for the physical development of such county.

However, substantial doubt has been cast upon the validity of amendments made to these plans because of the recent decision of the Hawaii Supreme Court in *Dalton v. City and County of Honolulu*, No. 4852, decided November 26, 1969, holding that "the safeguard specified by the charter as applicable to the adoption of the general plan must be followed in altering the general plan," and that the "general power to amend ordinances is not applicable to the general plan."

Your Committee concurs that in order for any general or master plan to be effective it must be long-range and comprehensive, as must be every amendment made thereto, otherwise the effectiveness thereof will be compromised. On the other hand, your Committee is in sympathy with the motives of the several county legislative bodies which have attempted to accommodate changing conditions, and which, notwithstanding the *Dalton* case, will be required to accommodate future changes within the framework of procedures necessary to accomplish that purpose, which this bill, as amended by your Committee on Federal-State-County, provides. Any successful general or master plan requires (1) that the same be identified

at all times as a policy expression of the legislative body, (2) that "comprehensiveness" as related to that policy expression means that it must deal in the opinion of the legislative body with all significant physical elements, (3) that though the term "long-range" portends of future goals to be achieved over an infinite period of time, in fact the policy expression by the legislative body of those goals speaks as of a given moment of time, (4) that studies to support any policy expression should be restricted to those which the legislative body finds to be relevant, (5) that the plan must be kept amendable so as to remain at all times as an expression of the best current judgment of the legislative body, and (6) that the plan and all amendments thereto be made available and kept understandable to the public and planning commission.

As amended, your Committee believes that **H. B. No. 2162-70** achieves these tenants. As referred to your Committee, this bill provides for:

(1) A uniform means of obtaining modifications or amendments to the legislative body's policy expression for the long-range, comprehensive, physical development of a county. Changes may be initiated by either the planning director, the legislative body, or an interested citizen. Safeguards are provided by requiring at least one public hearing and findings by the legislative body (a) that its policy as modified or amended, is based upon relevant data and studies, and (b) that the amendment has been related to all significant physical, social and economic factors and governmental conditions and trends within the county that reasonably affect or are affected by the amendment.

(2) A uniform means of obtaining zoning changes, including planned developments, to conform with and implement the general or master plan.

(3) A requirement that no proposed amendment which remains partially processed at the time of the enactment of this bill shall be adopted without the legislative body making the same required findings for a change in its policy.

(4) A requirement that the planning director keep the planning commission of the county fully advised as to all pending matters and studies within his department to the end of making more meaningful the recommendations of the planning commission to the legislative body.

(5) A requirement that all studies and pending amendments within the office of the planning director shall be considered as public records and available for inspection; further, that the planning director shall be responsive to all inquiries respecting the status of studies being undertaken by him and on proposed zoning and general or master plan changes.

Your Committee on Federal-State-County achieved the aforementioned, essentially, by adding hereto the substance of **H. B. No. 2117-70**, adding thereto the provisions for (1) means whereby interested citizens may initiate amendments, (2) requiring the same procedural steps for an amendment to the general or master plan as to the adoption of amendments to zoning ordinances which conform to and implement the general plan, and (3) requiring the planning commission to keep abreast of pending matters and providing the public with a ready means of obtaining information on the planning process and the studies in support thereof.

Your Committee on Judiciary, in accord with the foregoing, undertook to review the charters of the several counties and the provisions of chapter 46, Hawaii Revised Statutes, and is satisfied that this bill, as amended, is not in conflict with any of the provisions therein contained and, instead, compliments through uniformity, existing legislation.

The purpose of any general plan as enunciated in the several county charters is basically the same though the language which is used may differ slightly.

The charter for the City and County of Honolulu provides: "The plan . . . shall be designed to assure the coordinated development of the city and to promote the general welfare and prosperity of its people."

Maui county provides: "[The general plan shall] guide the development of the county by district or districts."

The Hawaii charter states: "[The general plan] shall be designed to assure the coordinated development of the county and to promote the general welfare and prosperity of its people."

The Kauai charter provides: "The general plan shall serve as a guide to all future council action concerning land use and development regulations, urban renewal programs and expenditures."

In each instance the key thought is "guidance" through means of a policy expression by the council. Such expression permits the council to view each specific project upon which it must act against a framework of reference. It enables the council to communicate with the executives of government and with civic and business organizations. It enables the council to receive and review proposals for change in an understandable form. It permits citizen participation through understanding.

Your Committee is in accord with the intent and purpose of **H. B. No. 2162-70**, **H. D. 1**, and recommends that it pass third reading.

Signed by all members of the Committee except Representatives Shigemura and Duponte.

SCRep. 555-70 (Majority) Judiciary on H. B. No. 1861-70

The purpose of this bill is to make foreign dental graduates eligible to take the Hawaii licensure examination for the practice of dentistry.

Existing law allows only United States citizens graduating from approved American dental colleges to take the dental examination. This requirement is premised on the fact that American dental training is the best in the world and that clinical instruction given in other countries simply does not parallel in quality that of dental colleges of the United States.

Your Committee on Public Health, Youth and General Welfare, to which this bill was initially referred, found:

Granting the fact that American dental training is unparalleled and the envy of the world, then it must follow that other countries would be imitative of American dental training and techniques. And such is the fact. Take the Philippines as an example. Philippine dental practitioners use equipment, instruments and dental material imported from the United States. Philippine dental schools use American textbooks. The curriculum in Philippine dental schools is practically the same as in American dental schools. Further, the licensure examination in the Philippines is given in the English language, not the national language.

Because most countries follow and adopt American dental training and techniques, your Committee believes that foreign dental graduates should become eligible to take the Hawaii licensure examination. Your Committee stresses the point that the foreign dental graduates become eligible to take the examination — not that they become licensed to practice dentistry. Dental standards in the licensure examination are another matter. Your Committee believes in upholding the quality of dental care in this State and is unalterably opposed to any lowering of standards. To this end, your Committee has amended this bill to set forth rigorous standards expected of foreign dental graduates: a theory examination and demonstrations of skills in prosthetic dentistry, in diagnosis-treatment planning and in restorative technique and operative dentistry.

Your Committee on Judiciary appreciates as well the distinct difference between eligibility to take the examination and dental standards in the licensure examination. Toward both ends, your Committee has amended the bill as follows:

1. As an eligibility standard, requiring that the foreign dental school shall achieve

the status of being recognized and approved by the board of dental examiners only after a public hearing upon that subject in conformity with chapter 91, the Administrative Procedure Act. Thus, the requirement that the foreign dental school be listed by the World Health Organization was deleted.

2. As a licensure standard, by requiring that in addition to satisfactory completion of the standards established by your Committee on Public Health, Youth and General Welfare, as hereinabove enumerated, that the applicant shall have completed at least one year of internship in a hospital or other institution approved by the board or under the direct and continuous supervision and inspection of a licensed preceptor, satisfactorily.

Your Committee is in accord with the intent and purpose of **H. B. No. 1861-70, H. D. 1**, as herein amended, and recommends that it pass third reading in the form attached hereto as **H. B. No. 1861-70, H. D. 2**.

Signed by all members of the Committee. Representatives Shigemura and Judd did not concur.

SCRep. 556-70 Judiciary on H. B. No. 1601-70

The purpose of this bill, as amended herein, is to extend dower and curtesy interests in real property to leasehold interests. Presently, a husband or wife is entitled to one-third part of all property owned by the predeceased spouse during the marriage in fee simple or in freehold only, which represents the common law concept whereby dower and curtesy rights obtain only as to property interests which either spouse owned during the marriage in fee.

In Hawaii, where it is not uncommon for property to be "owned" in leasehold, it is considered by your Committee to be in the best interests of the community to allow the survivor among them to assert his or her dower or curtesy interest therein. In its original form, the bill provided for dower and curtesy in leasehold interest so long as 15 years of the term of the lease

remained unexpired. Your Committee, upon reconsideration of the matter, believes that all leases of whatever term remaining should be covered. Accordingly your Committee has enlarged the coverage of the bill to apply to all leasehold interests.

Your Committee is in accord with the intent and purpose of **H. B. No. 1601-70** and recommends that it pass third reading in the form attached hereto as **H. B. No. 1601-70, H. D. 1.**

Signed by all members of the Committee except Representatives Shigemura and Duponte.

SCRep. 557-70 Judiciary on H. B. 1908-70

The purpose of this bill is to validate amendments to the general plan of any county adopted by ordinance, notwithstanding that the amendment process may not have complied with pertinent and relevant requirements of the county charter.

In *Dalton v. City and County of Honolulu*, No. 4852, decided November 26, 1969, the Supreme Court of Hawaii in holding that "the safeguards specified by the charter as applicable to the adoption of the general plan must be followed in altering the general plan," and thereby concluding that "the city's general power to amend ordinances is not applicable to the general plan," has cast considerable doubt upon the validity not only of ordinances which of themselves amend the general plan, but of ordinances which permit subsequent ordinances amending it.

Pursuant to section 201-23, Hawaii Revised Statutes, the general plan originates with the director of planning and economic development, and the county sections thereof, or amendments thereto, become effective when enacted by an ordinance of the respective county. "The county may after consulting with the director amend the general plan by ordinance."

Relevant provisions of the charter of the city and county of Honolulu are as follows: Sec. 5-503 requires that the planning director "(a) Prepare a general plan . . . for the development of the city," and "(c) Prepare

zoning ordinances . . . and any amendments . . . thereto." Sec. 5-505 states that the planning commission shall "(b) Review the general plan . . . and modifications thereof . . . [which it] shall transmit . . . with its recommendations thereon through the mayor to the council . . ." and "(c) Review . . . zoning ordinances and amendments thereto . . ." in like manner. Sec. 5-509 provides: "The general plan shall . . . [be] long-range, comprehensive . . ." and Sec. 5-512.2 prohibits adoption of a zoning ordinance "unless it conforms to and implements the general plan." Sec. 5-512.4 states: "Any . . . change in the general plan proposed by the council shall be referred by resolution to the planning director or the planning commission for their recommendation . . . [which if] the commission disapproves . . . the council may nevertheless adopt . . . by the affirmative vote of at least two-thirds . . ." Sec. 5-515.1 states: "Prior to adoption of the general plan . . . and zoning ordinances, or any amendments thereto, the council may hold a hearing thereon . . ." and Sec. 5-515.2 states: "Prior to recommending the adoption of the general plan . . . or zoning ordinance or any amendments thereto . . . the planning commission shall hold a public hearing thereon . . ."

In *Dalton*, the council had amended the general plan (actually, had enacted ordinances permitting subsequent ordinances amending the plan) based upon its general power to revise or repeal ordinances set forth in Sec. 3-204 of the charter. The court, following a lengthy review of the legislative history of Sec. 5-515, concluded that "the amendment process must meet certain strict procedural hurdles," and further that:

"[T]he better and correct interpretation of [Sec.] 5-515 requires that in the process of amending the general plan, not only a public hearing is necessary but the council, the planning commission and the planning director are required to follow a course of conduct consistent with the safeguards that were required in the initial adoption of the general plan. This interpretation will not only meet the spirit of the law but fulfill the true intent of the laws covering the general plan."

The court goes on to suggest that “if the city believes the general plan . . . is obsolete, then comprehensive updating . . . is in order.”

The court, in reversing the trial court’s grant of summary judgment for defendant and remanding for entry of judgment for plaintiffs, did so, in effect, by granting the latter’s prayer for relief that the particular ordinances in question be declared null and void.

Therein, your Committee believes, is the real justification for **H. B. No. 1908-70, H. D. 1**. The **Dalton** case is not a judicial pronouncement of broad application; it is limited to particular ordinances permitting subsequent ordinances rezoning a particular parcel of land. It does not nullify all ordinances or any other ordinance for that matter not enacted in compliance with the “procedural hurdles” prescribed therein; neither does it recognize that the composite of all amendments to the general plan since its adoption by all of the ordinances adopted to date, taken together, constitute a “comprehensive updating” of the general plan expressive of the council’s policy for the “long-range, comprehensive physical development of the city”. Instead, the **Dalton** case is concerned with a single, and when so segmented, fragmented, amendment thereto.

Moreover, your Committee believes, that the various counties, unless otherwise expressly provided, were entitled to rely upon their general power to amend ordinances, including the general plan, by ordinance, to effect necessary changes, particularly where, from time to time, rapidly fluctuating patterns of social and economic behavior and governmental conditions and trends have required accommodation. Having done so, in compliance within the framework of procedures patently available to it, notwithstanding the additional procedural steps introduced by the **Dalton** case, your Committee believes that the proper attack open to those who assert standing should be upon the resultant general plan, as amended, as a whole, as to its long-range factor and comprehensiveness. In the absence of any showing that any zoning ordinance does not

“conform to and implement” the general plan respecting these standards, your Committee is not satisfied that the present form of any general plan should be “scrapped” merely because the ordinances amending it did comport with the procedural requirements of **Dalton**, where it is not shown that the general plan, as amended, does not set forth the council’s policy for long-range, comprehensive physical development.

H. B. No. 1908-70, H. D. 1, therefore, validates all amendments to the general plan of any county adopted by ordinance, thereby validating the general plan, as amended, notwithstanding **Dalton**.

Your Committee is not unmindful that there are those who contend that it is within the province of the legislature only to pronounce for the future what the law shall be, and not what the law is; that the latter is an unconstitutional encroachment upon the judicial branch of government. Your Committee is satisfied that the bill does not and is simply intended to “meet the needs and demands of changing times” . . . [because] there are gaps in [the] substantive law. . . .” *Bissen v. Fujii*, Supreme Court of Hawaii, No. 4846, decided March 12, 1970.

Prospective plaintiffs are not ousted by the bill. Instead, persons alleging to be aggrieved by amendments to the general plan, which are validated thereby, must demonstrate their standing and show something more than mere non-compliance with the procedural requirements of **Dalton**.

Your Committee amended the bill, as amended, by deleting the phrase “notwithstanding the fact that the amendment process may not have complied with pertinent and relevant requirements of the Charter of the county affected by such general plan amendments,” and substituting therefor the phrase “whenever the amendment thereto was adopted by ordinance pursuant to the requirements of the amending procedure for the general plan, notwithstanding such ordinance was not adopted pursuant to the requirements for adoption of the general plan,” in section 1, referring to that which irrespective of, the amendments

shall be valid. Your Committee deleted all of section 2 referring to which general plan amendments the bill operates to validate as redundant because the same is covered by the effective date provision of the bill, substituting therefor a severability clause.

Your Committee is in accord with the intent and purpose of **H. B. No. 1908-70, H. D. 1**, as amended herein, and recommends that it pass third reading in the form attached hereto as **H. B. No. 1908-70, H. D. 2**.

Signed by all members of the Committee except Representatives Bicoy, Duponte, Heen and Shigemura.

SCRep. 558-70 Judiciary on H. B. No. 1311-70

The purpose of this bill is to prevent public employees from operating government-owned motor vehicles which are deemed to be unsafe.

This bill provides that if an employee is assigned to a motor vehicle which he considers unsafe, he or his employee representative and a representative of the employer shall get together and appoint a qualified third party to inspect the motor vehicle. If the third party decides that the vehicle is unsafe to operate, then another vehicle must be assigned to the employee. If, on the other hand, the third party says that the vehicle is safe to operate, the employee must operate the vehicle originally assigned to him.

Your Committee is in accord with the intent and purpose of **H. B. No. 1311-70, H. D. 1**, and recommends that it pass third reading.

Signed by all members of the Committee except Representatives Duponte, Heen and Shigemura.

SCRep. 559-70 Judiciary on H. B. No. 1776-70

The purpose of this bill is to permit persons age 65 or older to catch mullet during the closed season.

The intent of this bill is to grant more fishing opportunities to our senior citizens since such activity is a healthful and recreational outlet. Your Committee on Lands has amended the provisions of the bill to allow the Department of Land and Natural Resources to promulgate regulations as it relates to senior citizens fishing for mullet. The reason for the amendment is to provide flexibility in regulating fishing activities by controlling or eliminating abusive practice. Further, a need may arise requiring restriction such as the use of fishing gears and bag limits.

Your Committee is in accord with the intent and purpose of **H. B. No. 1776-70, H. D. 1**, and recommends that it pass third reading.

Signed by all members of the Committee except Representatives Duponte and Shigemura.

SCRep. 560-70 Judiciary on H. B. No. 1623-70

The purpose of this bill, as amended, is to provide for county charter amendment and revision at minimum prescribed intervals, and further to provide that county officers shall be empowered to and shall promulgate rules and regulations relating to performance of their duties.

Your Committee is of the opinion that the county charters, because the county governments are concerned principally and directly with the ever-changing everyday affairs of the people, must be revised at prescribed intervals, certainly not to exceed the period for review of the state constitution as provided therein. Your Committee finds that it is both desirable and necessary to provide for periodic re-examination of county charters, and has, therefore, provided for a procedure of allowing the county councils to submit the question to the electorate, in the absence of which, after any ten-year period, the county clerk shall certify the question.

Further, it is the opinion of your Committee that because of variations in the minimum terms set for mandatory charter

review, occasioned by the question of whether or not a review can be made by a charter commission at any time prior to the minimum term set by the charter provisions, this procedure will resolve that question and tend toward a degree of uniformity among the counties. Thus, the amendment to section 50-11 does not preempt the counties from providing the means by which their charters shall be amended, but it does prescribe the minimum term for certification of the question while allowing for interim review.

With regard to the provision that county officers shall be empowered to and shall promulgate rules and regulations relating to the performance of the duties of their office, it is the opinion of your Committee that because of uncertainty as to which of the various county agencies are or are not empowered so to act, that an enabling statute is necessary to remove any doubt that all agencies, by their respective administrative officers, are so empowered.

The problem area lies in the definition of the term "agency", which under section 91-1 (1) means ". . . each state or county board, commission, department, or officer **authorized by law to make rules . . .**" (emphasis added). Frequently, this has been held to mean an agency which is authorized by statute. See, e.g., Faust, **Compliance of County Agencies with the Hawaii Administrative Procedure Act**, University of Hawaii, Legislative Reference Bureau Report No. 3 (1968) pp. 2-3.

In this regard, the bill provides that all county department heads and administrative officers, and their subordinates, are empowered thereby, as an enabling measure, to promulgate rules and regulations, which shall have the force and effect of law, and that they shall so promulgate relating to the powers, duties, and functions of their office, whether by statute, charter or rule or order of the council.

Your Committee, not unmindful that there are several other measures presently pending before the legislature concerned with amendments to county charters in various regards, specifically, (a) reapportionment of the City Council of the City

and County of Honolulu, (b) procedures for amendments to general plans, and (c) composition of zoning boards of appeal, to mention a few, has, in recommending passage hereof, undertaken to review the bill's provisions in the light of broad examination of all statutory and charter provisions generally so as to minimize the possibility of conflict with any fragmentary legislation which may otherwise result.

Your Committee is in accord with the intent and purpose of **H. B. No. 1623-70**, **H. D. 1**, and recommends that it pass third reading.

Signed by all members of the Committee except Representatives Duponte and Shigemura.

SCRep. 561-70 Judiciary on H. B. No. 1931-70

The purpose of **H. B. No. 1931-70**, as amended, is to require drivers of taxicabs in counties with a population in excess of 100,000 to deliver to any person who sustains or complains of injury while a passenger, a written statement setting forth the names and addresses of the driver and registered owner of the taxicab. The bill specifies penalties to be imposed when a driver fails to furnish such a statement.

Your Committee is aware that there have been instances in which taxicab passengers who have sustained injury have experienced difficulty in obtaining information from the driver which is required in order to assert a claim for damages. This bill will eliminate the problem by requiring the driver to immediately furnish the passenger with a written statement setting forth his name and address, and the name and address of the registered owner of the taxicab. Such a written statement will provide the passenger with all the information he needs if he desires to institute proceedings because of his injuries. Whenever a taxicab driver fails to furnish the required statement, both he and the owner of the taxicab may be fined not more than \$1000, or imprisoned for more than one year, or both.

The bill gives the Public Utilities Com-

mission the power to administer, execute and enforce the act and to prescribe rules, regulations and procedures for its administration. Under existing law, the Public Utilities has jurisdiction over taxicabs with respect to safety matters. Although this bill certainly is related to the safety of taxicab passengers, it has been amended in the interests of clarity to specifically set forth the authority of the Commission.

Section 2 of the bill was amended by your Committee on Public Utilities to provide that the written statement need not contain the name and address of the liability insurer of the taxicab. Your Committee on Judiciary agrees that the inclusion of such information might tend to encourage fraudulent claims.

Section 3 of the bill was also amended to delete the provisions calling for suspension and revocation of the business license of a taxicab operator whenever multiple violations of this act occur which involve taxicabs owned by the same person. Your Committee on Judiciary agrees that such provisions are extremely harsh and place an unreasonable burden on taxicab operators.

Your Committee is in accord with the intent and purpose of **H. B. 1931-70**, **H. D. 1**, and recommends that it pass third reading.

Signed by all members of the Committee except Representatives Bicoy, Duponte, Heen and Shigemura.

SCRep. 562-70 Judiciary on **H. B. No. 1965-70**

H. B. No. 1965-70 amends Chapter 347, Hawaii Revised Statutes, which relates to the blind and visually handicapped, in several respects. The bill accomplishes the following purposes:

1. Under the bill blind and otherwise physically disabled persons are entitled to equal privileges on common carriers and within other places to which the general public is invited. Further, the bill provides that the blind shall have the right to be accompanied by a guide dog in such places

without being required to pay an extra charge for the dog.

2. The bill provides that any driver who fails to take precautions for the protection of a blind or physically handicapped person, who is carrying a white cane or who is accompanied by a guide dog, shall be liable for any injury caused to such disabled person.

3. The bill provides that a blind or physically handicapped pedestrian carrying a white cane or using a guide dog in any public place shall have all of the rights and privileges conferred by law upon other persons. Further, the failure of a blind or physically handicapped pedestrian to carry a cane or to use a guide dog shall not be held to constitute nor be evidence of contributory negligence.

4. Finally, the bill requires the Governor to proclaim and make special notice of April 15th as "WHITE CANE SAFETY DAY".

Your Committee finds that **H. B. No. 1965-70** is a significant step toward insuring the complete integration of the blind and visually handicapped into the economic and social life of the State.

Your Committee is in accord with the intent and purpose of **H. B. No. 1965-70** and recommends that it pass third reading.

Signed by all members of the Committee except Representatives Duponte and Shigemura.

SCRep. 563-70 Judiciary on **H. B. No. 2003-70**

The purpose of this bill is to clarify the intent of Act 261, Session Laws of Hawaii, 1959 (charter of the City and County of Honolulu), by expressly providing that the Mayor shall have no power to withhold allocation of budgeted funds to the Council. **H. B. No. 2003-70** provides that the Council may expend funds after the budget ordinance has been enacted and after it has submitted an expenditure schedule of its own budget, which is part of the ordinance, to the budget director. Further, said

schedule need not be approved by the Mayor and cannot be altered by him.

Your Committee believes that the City Charter intended that the Council exercise full power over its own funds, including the right to provide funds for staff. To allow the Mayor blanket budgetary controls over the Council's own expenditures, which were approved as part of the budget ordinance, would frustrate the principle of the separation of legislative and executive powers as set forth in the Charter. **City Council of the City and County of Honolulu vs. Frank F. Fasi**, No. 4945, April 3, 1970. The "strong mayor" system does not mean that the Mayor can cut off any and all funds to the Council by use of the power to allocate. If this contention were correct, the Mayor could refuse to allocate any funds to the Council and thus stifle the Council's power to legislate effectively. The Charter intended that the Council fully and independently exercise its legislative powers. In order to do so, it should not be subject to the whims of the executive as to whether the Council may or may not expend its funds.

Your Committee on Judiciary is in accord with the intent and purpose of **H. B. No. 2003-70**, and recommends its passage on third reading.

Signed by all members of the Committee except Representatives Duponte and Shigemura.

SCRep. 564-70 Judiciary on H. B. No. 1944-70

The purpose of **H. B. No. 1944-70, H. D. 1**, is to provide for the establishment and composition of a classification committee for Hawaii State correctional facilities. The committee shall classify inmates with respect to their assignment to the various programs and facilities within the correctional system.

Your Committee finds that modern rehabilitative policies can be best implemented in Hawaii through the establishment of a classification committee composed of all of the various specialists concerned with the rehabilitation and reinte-

gration of prisoners. The committee established by this bill will consist of a parole officer, a probation officer, a vocational counselor, the superintendent of prisons, a representative of Hoomana School, and a member of the mental health team for courts and corrections of the Mental Health Division of the Department of Health. Further, an inmate's counselor at the correctional facility is to be a member of the committee for purposes of classifying that inmate. All of these people can and should be included in making determinations toward the rehabilitation of prisoners. Further, since the designated persons are best equipped to assist the prisoners involved, their determination should not be subject to review by any higher authority.

Your Committee is in agreement with the findings, recommendations and amendments made by your Committee on Public Institutions and Social Services.

Your Committee is in accord with the intent and purpose of **H. B. No. 1944-70, H. D. 1**, and recommends its passage on third reading.

Signed by all members of the Committee except Representative Duponte.

SCRep. 565-70 Government Efficiency and Public Employment on H. B. No. 540

The purpose of this bill is to increase the annual post-retirement allowance of pensioners so that they may keep up with the increased cost of living.

The bill proposes to increase the allowance from the present one and one-half per cent annual increase to three per cent annual increase. Your Committee recommends an annual benefit increase of two and five-tenths per cent. To increase the benefit to two and five-tenths per cent would require an additional \$4.1 million for the fiscal year 1971-1972.

Your Committee amended Section 1 of **H. B. No. 540** by citing the updated version of the "post-retirement allowance" section as contained in the Hawaii Revised Statutes: specifically, section 88-90, HRS.

Your Committee felt that both employee and government contributions to the post-retirement fund necessarily must be increased to cover the cost of the post-retirement benefit increase. The employee's contribution was increased from one-half of one per cent to one and eight-tenths per cent. The government's contribution was increased from one-half of one per cent to two and five-tenths per cent. Accordingly, your Committee recommended the amendment of the relevant, updated sections in the Hawaii Revised Statutes, namely Section 88-45 and Section 88-115.

Upon consideration of this bill your Committee has changed the effective date to read "July 1, 1970".

Your Committee has converted the form of the bill to comply with House Rule 24(2).

Your Committee is in accord with the intent and purpose of **H. B. No. 540, H. D. 1**, as amended herein, and recommends its passage on second reading and be placed on the calendar for third reading in the form attached hereto as **H. B. No. 540, H. D. 2**.

Signed by all members of the Committee except Representatives Alcon and Baptiste.

SCRep. 566-70 Finance on H. B. 412

The purpose of this bill is to provide to the user a refund of all fuel taxes paid on liquid fuel in excess of one cent per gallon when such fuel is not used to operate a motor vehicle or motor vehicles upon the public highways of the State. The refund will be provided if the user can show to the satisfaction of the Department of Taxation that the fuel was not used on the public highways of the State.

Your Committee has amended this bill by:

(a) limiting refunds only when the user shows that the fuel was used for agricultural equipment and was not used to operate a motor vehicle upon the public highways of the State;

(b) requiring the Department of Taxation to prescribe rules and regulations for the administration of such refunds; and

(c) converting the form of the bill in accordance with House Rule 24(2).

Your Committee is in accord with the intent and purpose of **H. B. No. 412**, as amended herein, and recommends its passage on second reading in the form attached hereto as **H. B. No. 412, H. D. 1**, and that it be placed on the calendar for third reading.

Signed by all members of the Committee.

SCRep. 567-70 Finance on H. B. No. 1341-70

The purpose of this bill is to amend several sections of Chapter 202, Hawaii Revised Statutes, which covers manpower and full employment. The bill was drafted to implement some of the specific recommendations on manpower made by the Joint House-Senate Interim Committee on Labor established pursuant to **H. C. R. No. 101**, 1969 Session, to study the State's manpower needs.

It provides as follows:

(1) Enlarging the membership of the State advisory commission on manpower and full employment from 11 to not less than 12 members and not more than 18 members.

(2) Designating the commission as the responsible body for planning, reviewing and evaluating all State and federal manpower programs and requiring it to submit an annual statewide manpower plan.

(3) Transferring the commission from the Department of Planning and Economic Development to the Governor's Office.

(4) Changing the name and composition of the present committee which serves in an advisory capacity to the commission and also serves as an interdepartmental liaison and coordinating body.

(5) Transferring the secretariat of the State comprehensive manpower study plan committee to the advisory commission on manpower and full employment in line with the interim committee recommendation that the "State C.A.M.P.S. process and staff" be officially made a responsibility of the commission.

Your Committee has amended this bill by limiting the commission's exempt staff to the executive secretary only and deleting the appropriations.

Your Committee is in accord with the intent and purpose of **H. B. No. 1341-70, H. D. 1**, as amended herein, and recommends its passage on third reading in the form attached hereto as **H. B. No. 1341-70, H. D. 2**.

Signed by all members of the Committee.

SCRep. 568-70 Finance on H. B. No. 2138-70

The purpose of this bill is to appropriate the sum of \$1,227,215 for economic assistance to indigents and medical indigents.

Act 154, Session Laws of Hawaii, 1969, appropriated a designated sum to provide payments to indigents and medical indigents for medical services and financial assistance. That Act funded the Department of Social Service's Economic Assistance Program for the fiscal year beginning July 1, 1969 and ending June 30, 1970. Your Committee finds that the amount appropriated by Act 154 is insufficient to carry out the purposes of the Economic Assistance Program for the entire year. The Department is attempting to operate within the amount appropriated but is experiencing caseloads and patient loads in excess of estimates arrived at prior to the adoption of Act 154. Further, higher costs for patient care are being experienced. If a breakdown in services is to be avoided, additional monies must be appropriated.

Your Committee is in accord with the intent and purpose of **H. B. No. 2138-70**

and recommends its passage on third reading.

Signed by all members of the Committee.

SCRep. 569-70 Finance on H. B. No. 1751-70

The purpose of this bill is to appropriate funds to establish and administer a program for the treatment and care of persons suffering from chronic renal disease.

Chronic renal disease is a disease of the kidney. A person suffering from this disease has an accumulation of waste products, normally excreted in the urine, which makes him ill and, if not treated, causes his death. A method of treatment called hemodialysis has been developed to remove these substances from the body and thus sustain life.

The renal disease patients cannot by themselves pay for hemodialysis treatment. The majority of patients are those who can afford normal living expenses but are unable to pay for this expensive treatment. They are not indigents. However, under present Department of Social Services rules, financial support can be given only to those qualifying as indigents and medical indigents — in effect, forcing these patients to liquidate their personal assets to qualify for assistance. This causes a loss of incentive for rehabilitation and employment, resulting ultimately in a greater financial burden for the State.

Your Committee has amended this bill by reducing the appropriation to \$300,000, which we feel will provide a good start in this program. It is the intent of your Committee that adequate provisions be made to insure that dialysis machines purchased through State funds remain a property of the State for continued use in this program.

It is intended that the patients shall have free choice of hospitals under this program.

The effective date of this bill has been changed to July 1, 1970. Other amend-

ments have been made for purposes of clarity.

Your Committee is in accord with the intent and purpose of **H. B. No. 1751-70**, as amended herein, and recommends its passage on third reading in the form attached hereto as **H. B. No. 1751-70, H. D. 1**.

Signed by all members of the Committee.

SCRep. 570-70 Public Health, Youth and General Welfare on H. B. No. 1291-70

The purpose of the bill is to add a penalty provision to the water pollution law, allowing the Department of Health to enforce penalties for water pollution violations. Under this bill any person who willfully violates the water pollution law would be fined not more than \$500, each day of violation constituting a separate offense.

This bill would provide the necessary flexibility in dealing with polluters, allowing penalties to be assessed in accordance with the gravity of the offenses. On the one hand, it would provide the means to deal effectively with the larger polluters such as corporations. If there were a single fine of \$500 for a water polluter's offense, big corporations may find it less expensive to pay the fine or may employ delaying court techniques rather than construct water pollution control facilities to avoid future offenses. This problem can be avoided by the provision in this bill making each day of violation a separate offense. On the other hand, this bill has the means to protect the lesser violator. Intent must be shown before a penalty can be imposed. If a penalty is found to be assessable, then the fine can be scaled down to fit the offense.

Your Committee has amended so much of **H. D. 2** as reads:

"Any person who willfully violates this section or any of the rules and regulations promulgated by the department shall be fined not more than \$500."

to read:

"Any person who willfully violates this section or any of the rules and regulations promulgated under this section shall be fined not more than \$500."

Chapter 321 already contains a penalty for violation of any rules or regulations promulgated by the department pursuant to a separate section. By confining the penalty under this bill to apply to violations of rules or regulations promulgated under Section 321-16, a double penalty is avoided.

Your Committee is in accord with the intent and purpose of **H. B. No. 1291-70, H. D. 2**, as amended herein and recommends its passage on third reading in the form attached hereto as **H. B. No. 1291-70, H. D. 3**.

Signed by all members of the Committee.

SCRep. 571-70 Printing and Revisions

Informing the House that **Standing Committee Report Nos. 518-70 to 570-70, House Resolution Nos. 291 to 314, House Concurrent Resolution Nos. 106 to 108 and Standing Committee Report No. 572-70** have been printed and distributed.

Signed by all members of the Committee.

SCRep. 572-70 Lands on S. B. No. 1706-70

The purpose of this bill is to raise annual income qualifications of persons qualifying for residential leases of state lands from \$6,500 a year income, including the income of the spouse, to a more realistic figure of \$15,000 per year.

Your Committee is in accord with the intent and purpose of **S. B. No. 1706-70, S. D. 1**, and recommends that it pass second reading and be **recommended** to your Committee on Lands.

Signed by all members of the Committee.

SCRep. 573-70 Government Efficiency and Public Employment on **H. B. No. 1187**

Your Committee on Government Efficiency and Public Employment is in accord with the intent and purpose of **H. B. No. 1187**, **H. D. 1**, and recommends it be referred to your Committee on Finance.

Signed by all members of the Committee except Representatives Alcon, Baptiste and R. Wong.

SCRep. 574-70 Finance on **H. B. No. 1597-70**

The purpose of this bill is to provide authorization to make relocation assistance for persons, businesses, firms and non-profit organizations displaced for airport purposes. Relocation allowances are provided for in Hawaii Revised Statutes in the case of highway projects. The same provisions are provided in cases of airport projects under the provisions of this bill. Additionally, the federal government will also require that provisions be made for relocation on projects funded through federal-aid programs. The present bill will help assure the State's ability to meet its obligations in receiving federal grants on future federal-aid to airport projects.

Your Committee on Harbors, Airports and Transportation has amended the bill as it relates to its effective date. It has made the bill effective upon approval, but has also provided for payments to those individuals that have been displaced at the Honolulu International Airport due to airport expansion. The retroactivity is made effective as of September 1, 1969 for the primary reason that in September, 1969, certain people living on property to be acquired by the Airport Division were informed of the State's plan for expansion and that some of these individuals, in anticipation of the planned acquisition, have expended funds to relocate themselves to other areas. Your Committee concurs with the necessity for amending the effective date of this bill.

Your Committee is in accord with the intent and purpose of **H. B. No. 1597-70**,

H. D. 1, and recommends its passage on third reading.

Signed by all members of the Committee.

SCRep. 575-70 Select Committees of Oahu, Hawaii, Kauai and Maui on **H. B. No. 2103-70**

The purpose of this bill is to provide multi-use of off-street parking facilities to include off-street parking, commercial, residential and other uses of space above or below off-street parking facilities.

Your Committees find that off-street parking facilities, because of their locational characteristics and high cost factors, should be optimally developed for all such uses which serve the public interest.

Your Committees are in accord with the intent and purpose of **H. B. No. 2103-70**, and recommend its passage on third reading.

Signed by all members of the Committee.

SCRep. 576-70 Select Committees of Maui, Hawaii, Kauai and Oahu on **H. B. No. 1882-70**

The purpose of this bill is to enable the subdivider, who is required under present law to dedicate land in a subdivision to the counties for parks and playgrounds to pay monies and dedicate land the combined value of which would be equal to the value of the land and facilities which the subdivider would otherwise have had to dedicate. The bill further provides that a subdivider may receive credit for privately owned park and recreational areas in which are provided for the benefit of the people residing in the subdivision. Your Committees find that this bill provides an added flexibility to the counties as well as to the subdividers.

Your Committees have amended section 1 of the bill which would permit by ordinance for the subdivider to convey the land to be set aside for park and recreation facilities to a non-profit association duly

incorporated by the home owners residing within the subdivision. The association would own, construct, maintain and manage such facilities.

Your Committees have amended **H. B. No. 1882-70** to conform with the provisions of House Rule 24(2).

Your Committees are in accord with the intent and purpose of **H. B. No. 1882-70**, as amended herein, and recommend its passage on second reading in the amended form attached hereto as **H. B. 1882-70, H. D. 1**, and that it thereafter be placed on the calendar for third reading.

Signed by all members of the Committees.

SCRep. 577-70 Finance on H. B. No. 1281-70

The purpose of this bill is to lengthen the minimum agricultural land dedication period from ten years to fifteen years, and also to extend the advance notice period from five years to ten years.

The current law allows a landowner to dedicate his land for a specific ranching or other agricultural use and have his land assessed at its value in such use. Such dedication upon approval by the Director of Taxation places the land in reserve and cannot be withdrawn for a minimum period of ten years. However, either the owner or the Director of Taxation can cancel such dedication by advance notice of five years any time after the first five years.

By extending the dedication period as well as the advance notice requirement for cancellation, the bill will discourage those landowners who may dedicate their lands for the purpose of taking advantage of the tax savings provided under this program.

Your Committee is in accord with the intent and purpose of **H. B. No. 1281-70, H. D. 1**, and recommends its passage on third reading.

Signed by all members of the Committee.

SCRep. 578-70 Finance on H. B. No. 1938-70

The purpose of this bill is to amend the chapter on deposits of public funds in banks by permitting the deposit of State funds in trust companies doing business under the laws of the State or in savings and loan associations insured by the Federal Savings and Loan Insurance Corporation (FSLIC).

Such deposits shall be subject to the same conditions as are required of deposits of State moneys in banks. Section 38-2, Hawaii Revised Statutes, requires certain securities to be deposited with the director of finance for the protection of funds deposited under the provision of this chapter. With these measures available to the State, your Committee feels that deposit of State funds in trust companies doing business in Hawaii and in savings and loan associations insured by the FSLIC is warranted.

Your Committee has amended this bill by making changes to other sections of Chapter 38 necessary to effectuate the purpose of this bill.

Your Committee is in accord with the intent and purpose of **H. B. No. 1938-70**, as amended herein, and recommends its passage on third reading in the form attached hereto as **H. B. No. 1938-70, H. D. 1**.

Signed by all members of the Committee except Representatives Minn, Kondo, R. Wong and Devereux.

SCRep. 579-70 Finance on H. B. No. 1688-70

The bill is intended, in short, to put some teeth into the law relating to disposition of abandoned vehicles, initially enacted in 1949 and amended on at least three subsequent occasions.

The bill authorizes:

(a) the counties to increase the annual motor vehicle registration fee up to fifty cents to provide for highway beautification

projects and the disposal of abandoned cars.

(b) the police department to take into custody any vehicle found abandoned on public and private property and may employ its own personnel and equipment for that purpose.

(c) a public auction of vehicles after notification by registered mail to the last known registered owner and all lien holders of record.

(d) garage keepers to dispose in accordance with the provisions of this Act vehicles left on their premises for more than ten days.

(e) certain procedures for the disposal of vehicles to demolishers.

Your Committee has amended this bill by authorizing in every county a highway beautification and disposal of abandoned cars fund instead of a disposal fund. This fund is replenished by proceeds from the sales of abandoned cars and by an additional motor vehicle registration charge of up to fifty cents. The \$30 "bounty" per abandoned vehicle and the appropriation have been deleted. The title of the bill has been amended to reflect the changes made herein.

Your Committee is in accord with the intent and purpose of **H. B. No. 1688-70, H. D. 1**, as amended herein, and recommends its passage on third reading in the form attached hereto as **H. B. No. 1688-70, H. D. 2**.

Signed by all members of the Committee.

SCRep. 580-70 Finance on H. B. No. 1900-70

The purpose of this bill is to provide acoustic noise control techniques to existing classrooms, libraries and other educational facilities, as well as to new school facilities to be built in areas which are affected by disturbing noises that impede the learning process.

The human ear ranks second only to the eye as a corridor to the mind. Therefore, the acoustical environment of the school assumes cardinal importance in the learning situation. Unwanted and disturbing sounds must be kept to a minimum in order to provide a desirable learning environment. The main purpose of noise control in the classroom is to provide those conditions which make it possible to hear with distinctness, with ample loudness, and with sufficient accuracy of the material delivered at the source. If a student must defend himself against unwanted and disturbing noises, he must divert energy from the learning process to the listening process, thereby, lessening his capacity for learning. In some classroom situations, it is a common experience to have syllables, words, or even whole sentences drowned out by aircraft, traffic or other noise, thereby resulting in annoyances, loss of efficiency, auditory fatigue, and sometimes partial loss of hearing.

Your Committee agrees that it is time for an establishment of some kind of public policy to minimize the harmful effects of aircraft, traffic and other noise on the learning process.

Your Committee has amended this bill by:

(a) providing that Chapter 103 of the Hawaii Revised Statutes is being amended; and

(b) by deleting the interim criteria from the bill itself. Your Committee feels that interim standards which can be superseded by administrative standard do not belong in the statutes. Unless otherwise provided, however, the Department of Education and the State Comptroller shall adhere to the criterion that the sound levels in a classroom shall not exceed 55 dBA more than ten per cent of the class time where the sound originates outside the affected classroom, and that the sound level shall not exceed 65 dBA more than ten per cent of the class time from class activities within the classroom. Unless otherwise provided by the Department of Education and the State Comptroller, the advice of a qualified acoustical consultant shall be accepted as

adequate support for the incorporation of acoustic noise control components and air conditioning in new and existing facilities.

Your Committee is in accord with the intent and purpose of **H. B. No. 1900-70, H. D. 1**, as amended herein, and recommends its passage on third reading in the form attached hereto as **H. B. No. 1900-70, H. D. 2**.

Signed by all members of the Committee.

SCRep. 581-70 Finance on H. B. No. 922

The purpose of this bill is to repeal the provision of the retirement law providing that any benefit paid by the State or county under the provisions of the Workmen's Compensation Law on account of disability or death shall be offset against any pension of the System on account of the same disability or death. This amendment would allow the beneficiary to receive both the pension and the Workmen's Compensation benefits at the same time, rather than waiting until Workmen's Compensation payments have been exhausted in order to receive the full pension payment.

Your Committee is in accord with the intent and purpose of **H. B. No. 922, H. D. 1**, and recommends its passage on third reading.

Signed by all members of the Committee.

SCRep. 582-70 Finance on H. B. No. 1313-70

The purpose of this bill is to limit liability for damages caused by a public officer or employee to government property while performing work within the scope of his employment.

Under existing law, an employee may be held liable for reimbursing the government in part, or in whole, for any damages incurred to government property if he were found to be negligent. However, your Committee has been advised that this practice is not uniformly applied at the present time throughout the government. This bill

is designed to establish uniform and equitable treatment to all public employees in reference to damages incurred to government property where the employee has been found to be at fault.

Your Committee has amended this bill by specifying that the exception shall be for cases of wilful and wanton misconduct which your Committee feels is a more generally accepted standard.

Your Committee is in accord with the intent and purpose of **H. B. No. 1313-70, H. D. 1**, as amended herein, and recommends its passage on third reading in the form attached hereto as **H. B. No. 1313-70, H. D. 2**.

Signed by all members of the Committee.

SCRep. 583-70 Finance on H. B. No. 2046-70

The purpose of this bill is to expand the Department of Health's rule-making power to include such as are necessary to prohibit or control excessive noise.

Under this bill, the Department of Health would make such rules and regulations, including standards of excessive noise for different areas of the State, as are necessary to prohibit or control excessive noise caused by any person. The Department may also organize a county advisory excessive noise control association which would study excessive noise problems of the county and advise the Department of Health regarding these problems. The Department of Health may institute a civil action for injunctive relief to prevent any violation of the provisions of this bill. Any person guilty of making any excessive noise would be guilty of a misdemeanor.

Your Committee has amended this bill by:

(1) authorizing county advisory noise control **committees** composed of not more than seven members.

(2) deleting the authorization for the

department to issue variances.

(3) by clarifying that laws and county ordinances shall be superseded when inconsistent with this part.

Your Committee is in accord with the intent and purpose of **H. B. No. 2046-70, H. D. 2**, as amended herein, and recommends its passage on third reading in the form attached hereto as **H. B. No. 2046-70, H. D. 3**.

Signed by all members of the Committee.

SCRep. 584-70 Lands on H. B. No. 1541-70

The purpose of this bill is to permit the catching of oopus from any waters within the jurisdiction of the state only by rod and hook. Further, the bill makes it unlawful for any person to sell or offer for sale any of the fish known as oopus.

Of the freshwater fishes presently found in the Hawaiian Islands, the recorded five or so species of oopus are the only variety of freshwater fishes native to the islands. Your committee finds that conservation measures are necessary at this time to insure the continued growth and development of the oopu. Catching of this delicacy should be controlled to accomplish conservation measures and the time has come for protective restrictions.

It is the opinion of your committee that the taking of oopus should be regulated to prevent its extinction; further, that the sale of oopus for commercial purposes should be prohibited. The taking of oopus should be strictly for home consumption and as a recreational outlet.

Your Committee has converted the form of this bill in compliance with House Rule 24(2).

Your Committee is in accord with the intent and purpose of **H. B. No. 1541-70** and recommends that it pass second reading in the form attached hereto as **H. B. No. 1541-70, H. D. 1**, and that it thereafter be placed on the calendar for third reading.

Signed by all members of the Committee.

SCRep. 585-70 Select Committee of Kauai Representatives on H. B. No. 2005-70

The purpose of this bill is to amend the Hawaii Revised Statutes by adding a new chapter which creates a separation of functions by providing for the election of prosecuting attorneys in counties with a population of less than 500,000. The bill provides for the prosecuting attorney's term of office, qualifications, removal and that compensation be established by ordinance. It further establishes the powers, duties and functions of the prosecuting attorney.

Your Committee is in accord with the intent and purpose of **H. B. No. 2005-70** and recommends its passage on third reading.

Signed by all members of the Committee.

SCRep. 586-70 Judiciary on H. B. No. 528

The principal purpose of this bill is to amend the Retail Installment Sales Act to provide that the entire amount of payments made pursuant to the terms of a retail installment sales contract shall be applied toward purchases made previous to the time of the payment on a first purchased-first paid for basis.

In keeping with this concept, the bill further provides for termination of the security interest in goods which are the subject matter of the retail installment sale to the extent that such purchases are paid for. The bill further provides that payments received by the seller on a revolving charge account are to be applied first to the payment of finance charges in the order of their entry to the account, and then to the payment of purchases in the order in which the entries to the account showing that purchases were made. The bill further requires the holder of a retail installment contract to mail to the buyer, upon payment of all sums for which the buyer is obligated, good and sufficient instruments to indicate payment in full and to release all security in the goods and

cancelled negotiable instruments evidencing the indebtedness.

Upon consideration of this bill, your Committee on Housing and Consumer Protection amended section 2 thereof to provide that in the case of payment for purchases made after the consolidation of retail installment contracts or for any purchase upon a revolving charge account in which a security interest in the goods purchased was retained by the seller, the holder of the contract shall mail to the buyer notice to indicate payment in full of the purchase and release of all security in the goods purchased. The purpose of this amendment is to minimize the expense of preparing documentation and receipts for purchases upon a revolving credit plan when a security interest is not established.

The bill was also amended by adding a new section thereto which provides that the debtor shall have the right to refinance the amount of any balloon payment which is more than twice as large as the average of earlier scheduled payments without penalty and upon terms which are no less favorable to the debtor than the terms of the original loan.

Your Committee on Judiciary is in accord with the intent and purpose of **H. B. No. 528, H. D. 1**, and recommends that it pass third reading.

Signed by all members of the Committee except Representatives Duponte, Heen and Shigemura.

SCRep. 587-70 Government Efficiency and Public Employment on H. B. No. 1618-70

The purpose of this bill is to amend the Workmen's Compensation Law to provide compensation benefits for persons performing service for the state or any county in voluntary or unpaid capacities under the authorized direction of public officers or employees.

The Workmen's Compensation Law presently provides full benefits, including dependents' benefits, for members of public boards and commissions who are injured in the performance of service as

members of said boards or commissions. Others who also serve the state in voluntary or unpaid capacities, however, are not afforded such protection. They are only provided hospital and medical benefits if they are injured while serving the state or any county.

A recent case where a Honolulu reserve policeman was killed in the performance of duty as a policeman emphasized the present inequity in the law. There appears to be no reason why a reserve policeman, for example, or any other person who contributes valuable services to the state or counties should not be entitled to the same protection as members of public boards and commissions.

Your Committee is in accord with the intent and purpose of **H. B. No. 1618-70, H. D. 1** and recommends its passage on third reading.

Signed by all members of the Committee except Representatives Alcon, Devereux and Oda.

SCRep. 588-70 Printing and Revisions

Informing the House that **Standing Committee Report Nos. 573-70 to 587-70, House Resolution Nos. 315 to 317, House Concurrent Resolution Nos. 109 and 110 and Standing Committee Report Nos. 589-70 to 593-70** have been printed and distributed.

Signed by all members of the Committee except Representative Oshiro.

SCRep. 589-70 Economic Development on H. C. R. No. 51

The purpose of **H. C. R. No. 51** is to request Hawaii's Congressional Delegation to make every effort to obtaining passage of S. 3176 in the United States Congress so that federal funds may be obtained for the development of Central and Western Pacific skipjack tuna resources.

Your Committee finds that the skipjack tuna resources of the Pacific presently are completely undeveloped. The development of these resources will serve to broaden the economic basis of Hawaii,

Guam, American Samoa and the Trust Territories of the Pacific. Moreover, there is a strong and increasing market for tuna in the United States and throughout the World. The development of this resource will revitalize the fishing industry within Hawaii.

Senators Fong and Inouye have jointly sponsored S. 3176 which provides for a 3.5 million dollar appropriation for research and development of technology necessary for the exploitation of tuna resources. This Concurrent Resolution lends support to Hawaii's Congressional Delegation in its efforts to obtain the passage of that bill.

Your Committee is in accord with the intent and purpose of **H. C. R. No. 51** and recommends its adoption.

Signed by all members of the Committee.

SCRep. 590-70 Economic Development on H. R. No. 141

The purpose of **H. R. No. 141** is to request Hawaii's Congressional Delegation to make every effort to obtaining passage of S. 3176 in the United States Congress so that federal funds may be obtained for the development of Central and Western Pacific skipjack tuna resources.

Your Committee finds that the skipjack tuna resources of the Pacific presently are completely undeveloped. The development of these resources will serve to broaden the economic basis of Hawaii, Guam, American Samoa and the Trust Territories of the Pacific. Moreover, there is a strong and increasing market for tuna in the United States and throughout the World. The development of this resource will revitalize the fishing industry within Hawaii.

Senators Fong and Inouye have jointly sponsored S. 3176 which provides for a 3.5 million dollar appropriation for research and development of technology necessary for the exploitation of tuna resources. This Resolution lends support to Hawaii's Congressional Delegation in

its efforts to obtain the passage of that bill.

Your Committee is in accord with the intent and purpose of **H. R. No. 141** and recommends its adoption.

Signed by all members of the Committee.

SCRep. 591-70 Economic Development on H. C. R. No. 66

The purpose of **H. C. R. No. 66** is to request Hawaii's Congressional Delegation, the President of the United States, the Secretary of the Interior, Congresswoman Julia Butler Hansen and the Bureau of Commercial Fisheries to make every effort to prevent any reduction in appropriations for the Bureau of Commercial Fisheries and to obtain the release of funds placed on budgetary reserve for the Bureau.

Your Committee finds that the development of skipjack tuna resources in the Central and Western Pacific will serve to broaden the economic base not only of Hawaii, but of Guam, American Samoa, and the Trust Territories of the Pacific. Skipjack resources can provide a large and dependable source of food and can result in the revitalization of Hawaii's fishing industry.

Your Committee further finds that any reduction in the budget of the Bureau of Commercial Fisheries will greatly hinder development of tuna resources and will mean that progress now being made in this regard will come to a halt. This Resolution will serve to encourage those officials responsible to prevent any reduction in the Bureau's budget and to obtain the release of funds placed on budgetary reserve for the Bureau.

Your Committee is in accord with the intent and purpose of **H. C. R. No. 66** and recommends its adoption.

Signed by all members of the Committee.

SCRep. 592-70 Government Efficiency and Public Employment on S. B. No. 1252-70

The purpose of this bill is to set the minimum step of SR-25 as the maximum salary rate for computing premium overtime pay of time and one-half.

Under existing law, the maximum salary rate set for overtime pay is set at SR-20-B (\$4.09 per hour) and will increase to \$4.51 per hour beginning July 1, 1970. Employees whose salary range is between SR-20-C and SR-28-L3 inclusive, are paid time and one-half of the minimum of salary range 20 (SR-20-B) for all overtime worked.

Your Committee feels that the limitations of SR-20-B in many cases is inequitable because certain employees find that even though they are actually working overtime, they receive less than their regular hourly rate; for example, overtime pay computed at the rate of one and one-half of \$4.09 (SR-20-B), is equal to \$6.135 per hour. On the other hand, if an employee's regular pay is equivalent to \$6.99 per hour, the maximum rate that he may receive working overtime would be \$6.135 or 85.5 cents less for each hour overtime than the regular hourly rate of \$6.99. As a result, the inequity discourages certain employees from working overtime, or, if they prefer to take compensatory time off rather than taking overtime pay.

Your Committee recommends that salary range 25-B (\$5.22 per hour), which will increase to \$5.75 per hour beginning July 1, 1970, be selected as the ceiling on which overtime may be paid because it approximates the maximum pay of top-level production workers (SR-20-G) in the State and compares with the maximum overtime rate of GS-9 in the federal service.

Your Committee finds that the time and a half provision should also be made applicable to student hires who are presently ineligible for overtime pay. Student hires should be treated like regular employees and be paid overtime rates.

Your Committee has also amended the effective date to read "July 1, 1970".

Your Committee has converted the form of this bill to comply with House Rule 24(2).

Your Committee is in accord with the intent and purpose of **S. B. No. 1252-70, S. D. 2, H. D. 1**, as amended herein, and recommends its passage on second reading and be placed on the calendar for third reading in the form attached hereto as **S. B. No. 1252-70, S. D. 2, H. D. 2**.

Signed by all members of the Committee except Representatives Alcon and Baptiste.

SCRep. 593-70 Government Efficiency and Public Employment on **S. B. 1255-70**

The purpose of this bill is to provide pay differential for employees who work on split shifts or at nights.

Under existing law, employees who work on split shifts get a pay differential of nine cents per hour. Employees who are on scheduled work during the hours of 6:00 in the evening to 6:00 in the morning receive night shift pay differential of ten cents (Act 11, Session Laws of Hawaii 1968) for each hour of actual work performed.

Your Committee finds that the above pay differential for split shifts and night work do not adequately compensate the employees for the inconvenience and the sacrifice of family life. Your Committee further reports that a survey made by the Hawaii Employers' Council of 278 firms in March, 1968, revealed that private industry provides night shift differential ranging from nine cents to thirty-five cents per hour with the majority paying their employees about fourteen cents per hour. As for split shifts, the Hawaii hotel industry represented by approximately twenty hotels pay a flat \$1.25 premium to employees who work a split-shift. The Hawaiian Telephone Company pays their split-shift telephone switchboard operators a pay differential of thirty cents per hour.

Your Committee also finds that during the calendar year 1969, the State paid out of the general fund the sum of \$93,855 for night-shift differentials and the sum of \$8,974 for split-shift differentials. Payment from special funds for night shift differentials amounted to \$11,294, and for split-shift differentials the sum of \$5.

Senate Draft 1 of this bill increases the split-shift differential and the night-shift differential to fifteen cents per hour. Your Committee estimates that for fiscal year 1970-71 the additional cost taking into account Act 127 (pay increase) and increments are as follows:

(1) General fund: \$59,214 for night-shift differentials and \$6,137 for split-shift differentials; and

(2) Special fund: \$25,553 for night-shift differentials.

Your Committee, upon consideration of this bill, recommends the following amendments:

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000 or so much thereof as may be necessary, to be expended by the department of budget and finance for the purpose of this Act.

SECTION 4. This Act shall take effect on July 1, 1970.

Your Committee feels that all departments concerned make every effort to use salary savings first, and if these cannot cover the cost, to use funds appropriated to the department of budget and finance for the purpose of this Act.

Your Committee has converted the form of the bill to comply with House Rule 24(2).

Your Committee on Government Efficiency and Public Employment is in accord with the intent and purpose of **S. B. No. 1255-70, S. D. 1, H. D. 1**, as amended herein, and recommends its passage on second reading and be placed on the calendar for third reading in the form attached hereto as **S. B. No. 1255-70, S. D. 1, H. D. 2**.

Signed by all members of the Committee except Representatives Baptiste and Alcon.

SCRep. 594-70 Printing and Revisions

Informing the House that **House Resolution Nos. 318 to 323, House Concurrent**

Resolution No. 111 and Standing Committee Report Nos. 595-70 to 607-70 have been printed and distributed.

Signed by all members of the Committee.

SCRep. 595-70 Select Committee of Oahu Representatives on **H. C. R. No. 37**

The purpose of this Concurrent Resolution is to request the Legislative Auditor to conduct a study of the feasibility of a State Building and Zoning Code to be applied uniformly to all Counties. Your Committee has amended the title and body of **House Concurrent Resolution No. 37** to reflect the fact that each of the Counties has enacted the Uniform Building Code by ordinance. Your Committee has amended the title of the Concurrent Resolution to read **HOUSE CONCURRENT RESOLUTION REQUESTING A FEASIBILITY STUDY OF STATE-WIDE ZONING CODES**. Your Committee has deleted the third Whereas clause which refers to restraints imposed on new materials and technological innovations by present county building codes. Your Committee has further deleted references to building codes throughout the Concurrent Resolution.

Your Committee is in accord with the intent and purpose of **H. C. R. No. 37** as amended herein, and recommends that it be referred to your Select Committee of Hawaii Representatives in the form attached hereto as **H. C. R. No. 37, H. D. 1**.

Signed by all members of the Committee.

SCRep. 596-70 Judiciary on **H. C. R. No. 50**

The purpose of this concurrent resolution is to request Congress to initiate an amendment to the United States Constitution which would establish without question the immunity of State and local government securities from federal income taxation.

• Municipal bonds (the bonds issues by states, their political subdivisions, and their instrumentalities) have been historically and are currently exempt from federal taxation. Such exemption has permitted state and local governments to borrow funds at a substantially lower rate than would otherwise be the case if their securities were taxed by the federal government.

For some years there has been a widespread misunderstanding of the basis of the tax-exempt status of municipal bonds. A great many persons connected with the municipal bond market as issuers, dealers and investors have been under the impression that there is express language in the United States Constitution exempting municipal bonds from taxation. This is not true. The tax-exempt status of municipal bonds is derived in part from the United States Supreme Court decision in *McCulloch v. Maryland* (4 Wheat 316, 431) which delineated the dual sovereignty of the federal and state governments and enunciated the doctrine that the power to tax involves the power to destroy. More closely related to the tax exemption question is the decision in *Pollack v. Farmers Loan & Trust Co.*, decided in 1895 (157 U.S. 429). The court in that case struck down a congressional act attempting to tax the interest on state and municipal bonds on the basis that the proposed tax constituted a "tax on the power of the States, and on their instrumentalities to borrow money, and consequently repugnant to the Constitution."

These decisions have never been overruled. However, there have been continuous attempts by Congress and the U.S. Department of Treasury to alter or end the tax exemption of municipal bonds. By forcing another confrontation in the Supreme Court on the constitutional reciprocal tax-immunity question, those who would strip state and local bonds of tax exemption hope that the court will now reverse the old decisions.

Unless some definite, affirmative action is taken expressly to affirm the principal of inter-governmental tax immunity, a cloud will continue to hang over the ability

of the state and local governments to borrow money. The danger and the disastrous effects which such a condition poses to state and local government financing were demonstrated during the past year. Last fall, in the latest move against municipal bonds, Congress proposed to alter drastically the tax-exempt status of such bonds. While no legislation was passed, the mere threat of such action was sufficient to disrupt the municipal bond market. Many governmental units found themselves paying interest rates far beyond what they would normally have paid. Others with interest rate ceilings, like the State of Hawaii, found themselves unable to enter the municipal bond market altogether. A constitutional amendment is the way open to the states to bring to an end the recurring attacks on the tax-exempt financing by state and local governments for necessary capital improvements and other programs. Through such an amendment, the state and local governments would be guaranteed a stable market from which financing may be secured and assured in the years ahead.

Support for passage of the resolution in all fifty states is being sponsored by the Local Government Section of the American Bar Association, the Municipal Finance Officers Association, and the Investment Bankers Association. Presumably, if a sufficient number of states file petitions, Congress will view them as evidence of widespread grass-roots support for the amendment proposed and will respond with amendment initiation action.

Your Committee is in accord with the intent and purpose of **H. C. R. 50** and recommends its referral to the Committee on Finance for further consideration.

Signed by all members of the Committee except Representative Shigemura.

SCRep. 597-70 Education and Higher Education on **H. R. No. 143**

The purpose of this Resolution is to request the University of Hawaii to assist the Diocesan Board of Education of the Catholic Church in its development of a master plan for Catholic education in the State of Hawaii.

The University of Hawaii, as the major institution of higher learning in the State, has the resources and the expertise to be of assistance to the Diocesan Board of Education in its planning effort. The University of Hawaii is, therefore, being encouraged to respond to any reasonable request for assistance. Dr. Richard Kosaki, Vice President at the University of Hawaii, testified that the University will respond to any reasonable request of this type.

Your Committees are in accord with the intent and purpose of **H. R. No. 143** and recommend its referral to your Committee on Finance.

Signed by all members of the Committees.

SCRep. 598-70 Harbors, Airports and Transportation on H. R. No. 258

The purpose of **H. R. No. 258**, as amended herein, is to request the Department of Transportation to study the feasibility of refunding licensing fees paid for the privilege of stationing rental vehicles at neighbor island airports when such vehicles are taken out of service.

Your Committee finds that the Department of Transportation presently imposes a licensing fee of \$45 per vehicle per year for the privilege of stationing rental vehicles at neighbor island airports. Under existing policies of the Department, when such vehicles are taken out of service during the year no refund is made. It would seem equitable and fair to make such refunds where the privilege of using airport facilities is no longer being exercised.

Your Committee is aware, however, that there may be significant problems of administration in making such refunds if the number of vehicles in service changes frequently. At Honolulu International Airport, for example, car rental operators pay a percentage of their gross receipts rather than a set fee for the privilege of using airport facilities. Therefore, the Resolution has been amended to request the Department to study the feasibility of refunding such licensing fees at neighbor

island airports. The Resolution has also been amended to request the Department to report the results of its study in this regard to the Legislature 20 days prior to the convening of the Regular Session of 1971.

Your Committee is in accord with the intent and purpose of **H. R. No. 258**, as amended herein, and recommends its referral to your Committee on Finance in the form attached hereto as **H. R. No. 258, H. D. 1.**

Signed by all members of the Committee.

SCRep. 599-70 Judiciary on S. B. No. 1772-70

The purpose of this bill is to provide legal representation to a fireman at the expense of the city or county government whenever he is prosecuted for any crime for acts done in the performance of his duty as a fireman, or any traffic violation while in the course of operating any firefighting apparatus or other authorized emergency vehicle of the fire department, or sued in any civil cause for acts done in the performance of his duty as a fireman.

Policemen are presently eligible to receive legal counsel in both criminal and civil matters under section 52-3 of the Hawaii Revised Statutes. In civil actions, the corporation counsel or county attorney, as the case may be, acts as legal advisor, while in criminal matters a policeman is entitled to have an attorney employed and paid for him by the county in which he is serving. There is no comparable provision in the Hawaii Revised Statutes covering members of the fire department, and this bill rectifies that inequity.

Your Committee is in accord with the intent and purpose of **S. B. No. 1772-70** and recommends that it pass second reading and be placed on the calendar for third reading.

Signed by all members of the Committee except Representatives Baptiste and Duponte.

SCRep. 600-70 Judiciary on S. B. No. 1676-70

The purpose of this bill is to reduce the age requirement whereby a person is permitted to be or remain in or about any premises wherein licensed billiard or pool tables are had or operated, from 18 years to 15 years, without accompaniment of spouse, parent or guardian.

For several years previous hereto, persons under the age of 18 years were absolutely prohibited from frequenting such establishments. However, Act 66, Session Laws of Hawaii 1968, authorized such persons to be present if accompanied by spouse, parent or guardian. Your Committee finds that this represents an inroad toward a re-evaluation of the game, the recent widespread popularity of which is pursued not in "pool halls" but in "billiard parlors."

In recent years, this game has become a form of family recreation, conducted upon premises resembling a family play room or living room. This measure, therefore, is the next logical step in availing this pastime to young teenagers, which is suited both to them as well as to adults.

Your Committee is not unmindful that there are in every community premises within which the game of pool continues to be played in an environment which produces the stigma it has traditionally borne, and that because these businesses fall within the same licensing requirements as the modern day billiard parlor, and because they are otherwise essentially similarly situated and are entitled to equal protection of the laws, the bill cannot cause a differentiation in status as between them. Critics hereof will allude to 15 year olds frequenting such establishments. Of this, your Committee has taken account; but, attributing to those affected, the sense of judgment necessary to remain away from such places, accordingly endorses the amendment.

Although the title of this bill relates to billiards and **bowling alleys**, it is so only because section 445-52 which the bill amends relates to county licenses for both

establishments, although, because there are no age restrictions upon persons who may frequent bowling alleys, the bill has no substantive affect upon them.

Your Committee did not convert the form of this bill in conformity with House Rule 24(2) because it did not affect amendments thereto, otherwise than to have conformed it with House Rule 24(2).

Your Committee on Judiciary is in accord with the intent and purpose of **S. B. No. 1676-70** and recommends that it pass second reading and be placed on the calendar for third reading.

Signed by all members of the Committee except Representatives Pule, Shigemura and Heen.

SCRep. 601-70 Judiciary on S. B. No. 1203-70

The purpose of this bill is to permit voluntary admission of mentally retarded adults to the Waimano Training School and Hospital while commitment there is being processed but is not yet completed, thereby expediting treatment and care in emergency situations.

The practice presently, purely because of necessity, is to use the Hawaii State Hospital as a "holding" facility during the interim period. The objection to this practice is that the patient is not suffering from a mental disease of such a nature that the State Hospital is equipped or intended to treat, and, therefore, there is a reluctance to accept him. In addition, adjustment and readjustment are difficult for both the patient and his family, and it is reported that runaways and discharges against advice are frequent. This bill, then, is intended to reduce and hopefully eliminate many of these difficulties now being experienced concerning retarded adults.

Your Committee is in accord with the intent and purpose of **S. B. No. 1203-70**, and recommends that it pass second reading and be placed on the calendar for third reading.

Signed by all members of the Committee

except Representatives Heen, Pule and Shigemura.

SCRep. 602-70 Judiciary on S. B. No. 1168-70

The purpose of this bill is to prohibit any business scheme which disposes or distributes property in such a manner as permits a participant, upon payment of a valuable consideration, the chance to receive compensation for inducing others to join in the scheme.

Under present law, an unfair or deceptive practice in the conduct of any trade or commerce is made unlawful; however, the implementation of the broad terms of the law requires litigation and precedence established by the courts in order to specifically define wherein such methods are subject to sanction.

Your Committee is in agreement that there has been a proliferation of business referral schemes permeating promotional business operations with the result that honest but naive citizens have been induced into investing their money upon the promise of lucrative returns by bringing in other participants. This bill will expressly outlaw such schemes.

Your Committee on Judiciary is in accord with the intent and purpose of S. B. No. 1168-70, and recommends that it pass second reading and be placed on the calendar for third reading.

Signed by all members of the Committee except Representatives Heen, Pule and Shigemura.

SCRep. 603-70 Finance on S. B. No. 1200-70

The purpose of this bill is to amend the dates relating to the assessment of golf courses to provide uniformity with the new real property tax due dates as provided in Act 170, Session Laws of Hawaii 1969, which are effective on July 1, 1970.

Under existing law, the real property tax assessment period for golf courses is based on the calendar year while, pursuant to

Act 170, the real property tax due dates for real property assessments is based on the fiscal tax year. Your Committee finds that the existing law is superseded by the tax due dates of Act 170, and therefore, should be amended to conform therewith.

Your Committee is in accord with the intent and purpose of S. B. No. 1200-70, and recommends its passage on second reading and that it be placed on the calendar for third reading.

Signed by all members of the Committee.

SCRep. 604-70 Finance on S. B. No. 1169-70

The purpose of this bill is to amend provisions of the Hawaii Revised Statutes relating to ages of dependent children eligible for public assistance so that such provisions will conform with Federal law.

The 1965 amendments to the public assistance title of the Social Security Act provided assistance for needy children between the ages of 18-21 who are regularly attending high school, enrolled in an organized program of vocational or technical training, or enrolled in a college or university. The existing Hawaii law makes no provision for such children. This bill will make it possible for such dependent children to take advantage of educational and training opportunities and will allow the State to claim additional Federal matching funds for their assistance.

The amendment will encourage and enable needy children in their formative years to take advantage of educational opportunities and thus improve their preparation for self-support. Additional assistance will enable children of this age group to continue in school. Children with potential will be helped to return to school or to take advantage of further educational opportunities.

Your Committee has amended this bill to clarify that the child must be regularly attending school in order to qualify for public assistance.

Your Committee has further amended this bill by converting it to comply with House Rule 24(2).

Your Committee is in accord with the intent and purpose of **S. B. No. 1169-70**, as amended herein, and recommends its passage on second reading in the form attached hereto as **S. B. No. 1169-70, H. D. 1**, and that it thereafter be placed on the calendar for third reading.

Signed by all members of the Committee.

SCRep. 605-70 Finance on S. B. No. 1550-70

The purpose of this bill is to appropriate monies to be expended by the Department of Land and Natural Resources for the development of bait-seining methods for the harvest of skipjack tuna in Hawaiian waters. The sum so appropriated will be subject to matching funds from private industry.

Your Committee finds that in the last decade aku fishery in Hawaii has steadily declined in the number of vessels and fishermen participating in the fishery. Part of the decline stems from the fact that operating costs have increased to a greater extent than financial returns and there hasn't been any material increase in the average catch of the vessels to offset the rising costs. The point has been reached where drastic action is now necessary to reverse this continuing decline if the fishery is to survive.

The purse-seine net method, which requires a system of locating the tuna school and setting the net around the school, has proven to be successful in the Eastern Pacific tuna fishery; so successful in fact that the Hawaiian fishing industry feels the same method, with appropriate modifications, would produce greater harvests of skipjack tuna in Hawaiian waters.

Your Committee has amended this bill by:

(1) increasing the sum of \$60,000 to be appropriated out of the general revenues

of the State to \$62,500;

(2) clarifying that the Department of Land and Natural Resources may contract for services without regard to chapters 76 and 77, Hawaii Revised Statutes, but such contractual services shall not involve more than \$62,500 in State funds;

(3) recognizing as a legitimate cost of the projects, the cost of the plane used to spot schools of fish;

(4) deleting the provisions for the establishment of a committee to guide the bait-seining experiment;

(5) deleting the request that the Bureau of Commercial Fisheries cooperate in the experiment since the bill authorizes the Department of Land and Natural Resources to cooperate fully with governmental and private interests;

(6) requesting the Department of Land and Natural Resources to report on the experiment to the Legislature no later than October 1, 1970; and

(7) changing the language of the bill for technical reasons without affecting the substance as indicated above.

Your Committee is in accord with the intent and purpose of **S. B. No. 1550-70, S. D. 2**, as amended herein, and recommends its passage on second reading in the form attached hereto as **S. B. No. 1550-70, S. D. 2, H. D. 1**, and that it thereafter be placed on the calendar for third reading.

Signed by all members of the Committee.

SCRep. 606-70 Finance on S. B. No. 1170-70

The purpose of this bill is to establish the State Foundation on Culture and the Arts on a permanent basis.

Your Committee believes that after five years of existence in the Governor's office, the Foundation should be given permanent status and placed in one of the existing departments. Accordingly, your Commit-

tee has placed the Foundation in the Department of Budget and Finance.

Your Committee is in accord with the intent and purpose of **S. B. No. 1170-70, S. D. 1**, as amended herein, and recommends its passage on second reading in the form attached hereto as **S. B. No. 1170-70, S. D. 1, H. D. 1**, and that it be placed on the calendar for third reading.

Signed by all members of the Committee.

SCRep. 607-70 Finance on S. B. No. 1177-70

The purpose of this bill is to amend Section 235-62, Hawaii Revised Statutes, "Return and payment of withheld taxes", by substituting the last day of the month for the twentieth day of the month as the period for which the director may extend the time for making returns. This is to conform this provision with the amendments made by Act 19, Session Laws of Hawaii 1966, so that all monthly returns will have a common due date.

Your Committee is in accord with the intent and purpose of **S. B. No. 1177-70**, and recommends its passage on second reading and that it be placed on the calendar for third reading.

Signed by all members of the Committee.

SCRep. 608-70 Select Committee of Oahu Representatives on H. C. R. No. 105

The purpose of this concurrent resolution is as reflected in its title.

Your Committee finds that there is presently a pedestrian overpass on the H-1 freeway located adjacent to the Alvah E. Scott elementary school in Aiea, Oahu. This commuting overpass will be used very imminently by these students of elementary school age when the final phase of construction is completed.

Your Committee also finds that the present wire railing reaches a height of only forty-two (42) inches. Appreciating the

propensities of children of tender years to do the obvious, namely, climbing over such fence, and also recognizing that such accessible height by these youngsters may well serve as an attractive nuisance to the possible liability of the State, your Committee concludes that remedial construction is necessary in this instance.

In discussing this problem with the Alvah E. Scott elementary school parents-teachers organization, it was concluded that an over-all height of sixty (60) inches would be most desirable in order to achieve the degree of safety for these youngsters, and thereby subserve the best interest of the public.

Your Committee is not unmindful that there is involved the question of aesthetics. However, in weighing aesthetics as against the potential dangers to these youngsters, your Committee is inclined to favor the latter.

Because of the immediate potential hazards involved, your Committee further concludes that such remedial construction be accomplished with maximum dispatch by the department of transportation.

Your Committee is in accord with the intent and purpose of **H. C. R. No. 105**, and accordingly recommends its adoption.

Signed by all members of the Committee.

SCRep. 609-70 Select Committee of Oahu Representatives on H. C. R. No. 47

The purpose of this Concurrent Resolution is to request the United States Soil Conservation Service to undertake a study of Aiea Stream above Moanalua Road for the purpose of flood control. Your Committee finds that flooding from Aiea Stream has caused the people in the area and the taxpayers of the State a significant amount in property damage and interruption of transportation and communication. The legislature in 1969 appropriated \$300,000 to the City & County of Honolulu to supplement federal and county funds for construction of a reinforced concrete channel from Pearl Harbor to Moanalua Road for

the purpose of flood control of Aiea Stream. However, the portion of Aiea Stream above Moanalua Road was not included in the project. It is necessary, at this time, in order to safeguard residents in the area against loss of life and property institute a flood control project for Aiea Stream above Moanalua Road. The technical assistance of the United States Soil Conservation Service is necessary to accomplish this flood control project.

Your Committee is in accord with the intent and purpose of **H. C. R. No. 47** and recommends that it be adopted.

Signed by all members of the Committee.

SCRep. 610-70 Harbors, Airports and Transportation on H. C. R. No. 104

The purpose of this Concurrent Resolution is to request Hawaii's Congressional Delegation to use its utmost efforts in obtaining federal funds to aid the State in developing a deep water harbor at Barbers Point, Oahu, Hawaii. Private and public studies indicates that there is a great need for a new deep water harbor and a major industrial area outside of downtown Honolulu. The State and other private agencies have been proceeding for a number of years in planning for a deep water harbor at Barbers Point. Recently, the United States Senate had approved the sum of \$1,000,000.00 to commence work on the Barbers Point project but a joint United States Senate-House Committee has recently failed to approve the funds for the project.

Your Committee is in accord with the intent and purpose of **H. C. R. No. 104** and recommends its adoption.

Signed by all members of the Committee.

SCRep. 611-70 Judiciary on H. C. R. No. 36

The purpose of this House Concurrent Resolution is to request the Department of Regulatory Agencies to make a study of the feasibility and desirability of estab-

lishing a system whereby applications to the Public Utilities Commission are heard in the first instance by examiners who can take necessary evidence and make findings and recommendations to the commission. The Resolution requests the Department to report its findings in this regard to the Legislature ten days prior to the convening of the Regular Session of 1971.

Your Committee is informed that during recent years the workload and responsibilities of the Public Utilities Commission have greatly increased. The increase has produced delays in Commission action because under existing law the Commission itself must process and conduct hearings on all applications. Such delays are costly to applicants and are detrimental to the public interest.

Your Committee further believes that the interests of the people of Hawaii will be better served if applications to the Commission are first heard by hearings examiner who can receive evidence and make findings and recommendations to the Commission. A study of the ramifications and feasibility of establishing such a system should be accomplished prior to the enactment of specific legislation.

Your Committee is in accord with the intent and purpose of **H. C. R. No. 36**, and recommends its adoption.

Signed by all members of the Committee except Representatives Morioka, Pule and Shigemura.

SCRep. 612-70 Agriculture on S. C. R. No. 65

The purpose of this Concurrent Resolution is to request the agriculture coordinating committee to conduct a study on the procedures being utilized by the State department of taxation in arriving at the valuation of agricultural lands with special emphasis on lands for diversified crop-farming, pomology and floriculture. Inasmuch as the topic of land and land tax involves two departments, the agriculture coordinating committee is further requested to work in cooperation with the State department of taxation and the

department of land and natural resources; and to report its findings and recommendations to the Legislature, not later than twenty days prior to the convening of the Sixth Legislature, Regular Session of 1971.

Your Committee finds that land and capital have been and continue to be two of the most important resources for the production of agricultural products. However, the graded rate structure of the Hawaii Real Property Tax Law, the so called "Pittsburgh Law", provides for a gradual increase in tax burden on land and a gradual decrease in tax burden on buildings **in districts other than agriculture and conservation**. In effect, the Law has two discriminatory results which are detrimental to and inhibit the sound, desired development of Hawaiian agriculture.

First, since buildings in agricultural zones are specifically excluded from the regressive tax structure for buildings, farmers are discouraged from making capital improvements. Second, and more important, there comes a time when the decrease in tax on buildings and other structures will be more than the increase in tax on land if the agricultural zoned land is rezoned to urban use. Therefore, the Pittsburgh Law encourages farmers who use their land intensively and who invest in such capital improvements as crop shelters, barns, and other structures, to eventually rezone the land from an agricultural to an urban land use district. These two results are not consistent with State goals.

Consequently, your Committee feels that a study is in order to re-evaluate the appraisal method presently being used in arriving at real property tax assessments and to determine an equitable method of determining tax assessments on agricultural land for use by the department of taxation. However, this request should not be construed to mean a complete investigation of the Hawaii Real Property Tax Law but rather to mean a study of limited scope and coverage whereby adjustments and amendments to the Property Tax Law could be made to incorporate equitable considerations for agricultural endeavors.

Your Committee on Agriculture is in

accord with the intent and purpose of **S. C. R. No. 65** and recommends its adoption.

Signed by all members of the Committee.

SCRep. 613-70 Finance on H. R. No. 226

The purpose of this Resolution as introduced is to request a study of the possibility of granting rebates to persons for parking expenses incurred while on jury duty or paying taxes.

Your Committee has amended this Resolution by requesting the Department of Accounting and General Services instead of the Department of Taxation to conduct the study and by requesting the Department to consider providing free parking for these purposes throughout the State. The title of the Resolution has been amended to reflect the changes herein.

Your Committee is in accord with the intent and purpose of **H. R. No. 226**, as amended herein, and recommends that it be adopted in the form attached hereto as **H. R. No. 226, H. D. 1**.

Signed by all members of the Committee.

SCRep. 614-70 Harbors, Airports and Transportation on H. R. No. 287

The purpose of this Resolution is to commend the Department of Transportation, Highway Division, and the Cement and Concrete Products Industry of Hawaii for their contribution to the safety of our State highway system by designing concrete-median barriers that provides the ultimate in safety by preventing head-on collisions on our highways.

Your Committee is in accord with the intent and purpose of **H. R. No. 287** and recommends its adoption.

Signed by all members of the Committee.

SCRep. 615-70 Harbors, Airports and Transportation on H. R. No. 274

The purpose of this Resolution is to support construction of bikeways and other related facilities on the Island of Oahu. The Department of Transportation is requested to make a study of the possibility of constructing bikeways which will connect residential areas with centers of activities to encourage the use of bikes instead of cars. Additionally, bikeways could be constructed on scenic routes. The Department of Transportation is requested to report its findings to the Legislature 20 days before the convening of the Regular Session of 1971.

Your Committee has amended the Resolution by adding that bicycles are being used in an increasing number as a mode of transportation at the University of Hawaii due to the enlargement of campus facilities. Additionally, your Committee has been informed that there is a Oahu bikeway council which has been working together with the Department of Parks and Recreation, the Honolulu Police Department, and the Department of Traffic, City and County of Honolulu. The Oahu bike council and the various City and County of Honolulu Departments will begin a pilot project in the near future at Ft. Weaver Road, Ewa, Oahu. This pilot project would involve a bikeway. Your Committee realizing the existence of the Oahu bikeway council has amended the Resolution to reflect the activities of the council and the pilot project. Further, your Committee has amended the Resolution by requesting the Department of Transportation to consult with the Oahu bikeway council; the Department of Park and Recreation, the Honolulu Police Department, the Department of Traffic, City and County of Honolulu; and the ASUH. Your Committee has also amended the Resolution in order that duly certified copies of this Resolution be transmitted to those individuals that the Department of Transportation is requested to consult with.

Your Committee is in accord with the intent and purposes of **H. R. No. 274**, as amended herein, and recommends its adoption in the form attached hereto as **H. R. No. 274, H. D. 1**.

Signed by all members of the Committee.

SCRep. 616-70 Housing and Consumer Protection on H. C. R. No. 86

The purpose of this house concurrent resolution is to request the Office of Consumer Protection to conduct a feasibility study on the adoption of a state seal of approval and to report its findings and recommendations to the legislature twenty days before the convening of the 1971 Regular Session.

Your Committee finds that a state seal of approval, which could be issued by the Office of Consumer Protection to those businesses, shops and services which have provided satisfactory evidence of fair practice to the Office of Consumer Protection, may be of great benefit to the consumers of the State of Hawaii. Your Committee recommends that the Director of Consumer Protection consult with the Retail Board, Chamber of Commerce, the Hawaii Better Business Bureau, and other interested parties as to ways and means of implementing the purpose of this concurrent resolution.

Your Committee is in accord with the intent and purpose of **H. C. R. No. 86** and recommends that it be adopted.

Signed by all members of the Committee.

SCRep. 617-70 Housing and Consumer Protection on H. R. No. 228

The purpose of this house resolution is to request the Office of Consumer Protection to conduct a feasibility study on the adoption of a state seal of approval and to report its findings and recommendations to the legislature twenty days before the convening of the 1971 Regular Session.

Your Committee finds that a state Seal of approval, which could be issued by the Office of Consumer Protection to those businesses, shops and services which have provided satisfactory evidence of fair practice to the Office of Consumer Protection, may be of great benefit to the consumers of the State of Hawaii. Your Committee recommends that the Director of Consumer Protection consult with the Retail

Board, Chamber of Commerce, the Hawaii Better Business Bureau, and other interested parties as to ways and means of implementing the purpose of this resolution.

Your Committee is in accord with the intent and purpose of **H. R. No. 228** and recommends that it be adopted.

Signed by all members of the Committee.

SCRep. 618-70 Housing and Consumer Protection on H. R. No. 82

The purpose of this Resolution is to express the support of the Legislature for legislation proposed by Representative Patsy T. Mink enabling groups of consumers to bring class action lawsuits against deliberate fraud, deception or other improper merchandising.

Your Committee finds that such class-action litigation should be allowed and encouraged to contest such practices as that of the General Motors Corporation in requiring automobile heaters in all 1970 models. Such equipment is useless in Hawaii, and therefore adds an unnecessary additional cost to consumers of this state. Act 263, Session Laws of Hawaii 1969, prohibits manufacturers from delivering cars with options which have not been ordered by the buyer. The decision of General Motors to make heaters standard equipment would effectively subvert the intent and purpose of Act 263. The Hawaiian consumer is left with no remedy against purchase of the unwanted and unnecessary equipment. Therefore your Committee finds that another remedy should be fashioned. Representative Mink's proposed legislation would provide a remedy in the form of a class-action lawsuit against General Motors. Your Committee recommends that the Legislature go on record as supporting this proposed legislation.

Your Committee on Housing and Consumer Protection is in accord with the intent and purpose of **H. R. No. 82** and recommends its adoption.

Signed by all members of the Committee.

SCRep. 619-70 Housing and Consumer Protection on H. R. No. 253

The purpose of this resolution is to request the Governor and the Hawaii Housing Authority to study the feasibility of allowing tenants at Kuhio Park Terrace to purchase their dwelling units.

Your Committee finds that many of the residents of Kuhio Park Terrace, which is a low income housing project administered by the Hawaii Housing Authority, have expressed an interest in owning their dwelling units. It is quite likely that ownership by the residents of Kuhio Park Terrace of their dwelling units would instill in such residents a sense of pride in their surroundings and thus improve living conditions within the project.

Your Committee is in accord with the intent and purpose of **H. R. No. 253** and recommends that it be adopted.

Signed by all members of the Committee.

SCRep. 620-70 Housing and Consumer Protection on S. C. R. No. 5

The purpose of this concurrent resolution is to request the Governor and the Mayors of each county to use their administrative authority to reduce, as much as possible, the amount of time it takes to process construction applications.

The intent of this concurrent resolution is not to suggest that the government departments and agencies surrender their function of checking and approving plans, but rather to expedite the approval of construction plans so that no unnecessary costs result from governmental delays in processing of said plans.

Your Committee on Housing and Consumer Protection is in accord with the intent and purpose of **S. C. R. No. 5** and recommends its adoption.

Signed by all members of the Committee.