

**SCRep. No. 772-72 Finance on H. R. No. 362**

The purpose of this resolution is to request the University of Hawaii to conduct a comprehensive study of its financial aid program, including, but not limited to, outright scholarships, grants, loans and employment opportunities, and report to the Legislature at the 1973 session.

This study would include an evaluation of the goals, effectiveness, and efficiency of all present programs. The resolution also requests that undergraduate and graduate student groups be consulted in the planning and conducting of the study. It is estimated by your Committee on Higher Education reporting hereupon in **Stand. Com. Rep. No. 696-72**, "that if these programs were systematically reviewed and recommendations made to their overall adequacy, that coordinated guidelines more appropriate to the University of Hawaii's needs might be made apparent."

Your Committee on Finance concurs with the intent and purpose of **H. R. No. 362** and recommends its adoption.

Signed by all members of the Committee.

**SCRep. No. 773-72 Finance on S. C. R. No. 30**

The purpose of the concurrent resolution is to request the Governor to establish a Temporary Visitor Industry Council to coordinate and implement public policy for the visitor industry. This council would report its preliminary findings with recommendations to the Legislature twenty days before the convening of the Regular Session of 1973 to be followed by a full report to the Regular Session of 1974.

The Commission on Manpower and Full Employment in its 1972 **Report on Coordination and Human Resources Planning in the Visitor Industry** described and analyzed the visitor industry as it affects the State. The report noted that there is a lack of a coherent program and of communication in the visitor industry and consequent fragmentation of policy and implementation in the field. The Commission recommended the establishment of a Visitor Industry Council consisting of representatives of the visitor industry, of the public, of the counties and of the State to work together to propose public policy and

coordinate policy implementation in the visitor industry.

Your Committee on Finance concurs with the intent and purpose of **S. C. R. No. 30** and recommends its adoption.

Signed by all members of the Committee.

**SCRep. No. 774-72 Finance on S. C. R. No. 46**

The purpose of this Concurrent Resolution is to acknowledge receipt and approve reports relating compensation plan submitted to the Legislature.

Sections 77-4 and 77-5 of the Hawaii Revised Statutes require the directors of personnel services of the state and the counties to submit, through the Office of the Governor, to the Legislature the compensation plan for public employees. Upon approval, the plan shall become effective on July 1, 1972 and be in force for two years.

Your Committee on Finance concurs with the intent and purpose of **S. C. R. No. 46** and recommends its adoption.

Signed by all members of the Committee.

**SCRep. No. 775-72 Finance on H. R. No. 378**

The purpose of this resolution is to request that the University of Hawaii and the Department of Education work jointly to develop a systematic and coordinated program plan and budget for a governmental processes program, geared specifically to Hawaii State interest.

Your Committee finds that there exist several kinds of executive and legislative programs in which students and/or interns are involved, and believes that these programs provide the basis for generating newer ideas on how the legislative and executive processes might be made a more vital part of our younger citizenry. With the recent enactment of Act 2, Session Laws of Hawaii, 1972, the lowering of the age of majority to 18 years, your Committee finds this more imperative and adopts the findings and recommendations stated in **Standing Committee Report No. 699-72** by your Committee on Higher Education.

Your Committee on Finance concurs with the intent and purpose of **H. R. No. 378** and recommends its adoption.

Signed by all members of the Committee.

**SCRep. No. 776-72** Finance on **H. R. No. 380**

The purpose of this Resolution is to establish an interim committee to study the effect and implementation of Act 85, Session Laws of 1970, with particular reference to the grandfather clause on the licensure qualifications, and to make appropriate recommendations on whether the Act should be amended or repealed.

Act 85, Session Laws of 1970, required the registration and licensing of landscape architects along with the engineers, architects, and surveyors. However, problems have arisen with regard to the implementation of Act 85. The interim committee shall be charged with the responsibility of studying the effects of these problems.

Your Committee on Finance concurs with the intent and purpose of **H. R. No. 380** and recommends its adoption.

Signed by all members of the Committee.

**SCRep. No. 777-72** Finance on **S. C. R. No. 17**

The purpose of this concurrent resolution is expressed in its title; to wit, to request the U.S. Congress to allocate funds for the planning and construction of water resource facilities at Kokee, Kauai.

The natural environment of the island of Kauai ought to be taken advantage of. The island abounds with foliage, open space, sandy beaches, and people possessing a rich quality of life. To perpetuate the enjoyment of the beauty of Kauai, the outdoor opportunities must be maintained and further developed.

Your Committee on Finance concurs with the intent and purpose of **S. C. R. No. 17** and recommends its adoption.

Signed by all members of the Committee.

**SCRep. No. 778-72** Finance on **S. C. R. No. 26**

The purpose of this Concurrent Resolution is to request the Progressive Neighborhood Office under the Governor, to coordinate a feasibility study looking towards providing shelter care for youth.

The need for adequate and appropriate residential or shelter care facilities and programs has long been a prime concern of child welfare workers, mental health personnel, court workers and numerous other people who deal with the multiple problems of young adults, adolescents and younger children. These people all agree that the community needs a varied and balanced system of shelter care facilities and programs in order to cope with a variety of behavioral and environmental problems, and with specific needs characteristic of males and females and of certain age groups. There are, on the other hand, differences of opinions in the kinds and types of shelter care facilities and programs needed.

Your Committee on Finance concurs with the intent and purpose of **S. C. R. No. 26, S. D. 1** and recommends its adoption.

Signed by all members of the Committee.

**SCRep. No. 779-72** Finance on **S. C. R. No. 59**

The purpose of this resolution is to request your Committee to recommend a program structure for higher education.

## BACKGROUND

The current higher education program structure, which the administration proposes to use for submission of the budget for the next fiscal biennium, is based on a structure developed by the Western Interstate Commission for Higher Education (WICHE). The structure was developed by WICHE primarily to provide a standard framework to facilitate comparison of data among higher education institutions.

The joint interim committee on planning-programming-budgeting has reported to this session of the legislature that the WICHE classification structure is inappropriate as a program structure (and as an appropriations structure) for two basic reasons: (1) the major focus is on organizations rather than the programs of higher education; and (2) it does not lend itself to viewing and analyzing higher education as a system. The joint com-

mittee recognized the value of common classification for data collection but pointed out that this in no way means that such classifications must therefore be the basis for legislative program decisions. The committee also observed that WICHE itself, in its latest draft structure, emphasized that its classifications can be reorganized in a structure that is compatible with the specific higher education objectives of institutions and that programs may be aggregated in one way for institutional purposes and in another for external purposes. These considerations led the joint committee to request the University of Hawaii, in consultation with the Department of Budget and Finance, to develop an alternative program structure and to submit the alternative structure to the appropriate committees of the legislature.

### THE ALTERNATIVE PROGRAM STRUCTURE

The framework for an alternative program structure has been received and reviewed by your Committee. In conducting its review, your Committee consulted with the Director of Finance and his staff, University of Hawaii officials, and the Office of the Legislative Auditor. There is general agreement that the framework for the alternative structure has potential for program planning and decision-making and that it should be further developed.

Table I displays the framework for the alternative program structure. It differs from the manner in which higher education programs have been planned, programmed and budgeted (and appropriated) in at least two important respects:

(1) The structure descends to a much more meaningful level of detail than is shown today by the conventional budget categories. For example, under the instruction program, the discipline groupings would show up as programs. Under research, the distinction is made between basic and applied research, and the disciplinary areas in which research is to be conducted would be identified.

(2) The structure is oriented to degrees in the disciplines. The degree-granting program, a bachelor's degree in chemistry, for example, would be a fundamental element in planning, programming and budgeting. Thus, the structure recognizes the student with a degree in a discipline as the program output. Under this approach, planning, pro-

gramming and budgeting will revolve around students and their degree objectives, rather than around departments and the courses that they offer. Viewing higher education in this fashion places the emphasis on the goals and objectives of the students—which is where the emphasis should properly belong.

Your Committee finds that the framework for the alternative structure has great merit in terms of its program planning potential for the university as well as its utility for legislative decision-making. However, your Committee also finds that the structure cannot be incorporated into the current program planning cycle of the executive branch for two basic reasons: (1) the structure is still in skeletal form; (2) cost data have not yet been collected and analyzed for all degree-granting programs.

Given these circumstances, your Committee believes that a reasonable course of action would be for the university to meet the executive branch requirements and timetable for submitting the budget and program and financial plans under the WICHE structure. At the same time, the university should complete the development of the alternative program structure as represented to your Committee. In addition, to subject the structure to an actual test, the university should present to the 1973 session of the legislature a financial display for the biennium and a multi-year financial plan which follows the alternative structure and which converts to that structure the higher education expenditure recommendations of the governor as reflected in the 1973-75 executive budget and the approved program and financial plans.

Following such a course of action, the timetable for the university's budget submissions to the Department of Budget and Finance will not be disturbed. Meanwhile, work can proceed to complete the proposed structure, and with the conversion of financial data to the new structure, the 1973 session of the legislature will be able to have a firmer basis for determining its suitability as an appropriations structure.

### RECOMMENDATION

Your Committee believes that inasmuch as the planning, programming and budgeting for higher education is a matter of concern to

the entire legislature, it would be desirable for the findings and course of action proposed by your Committee to be summarized in a form appropriate for adoption by both houses of the legislature.

Table 1

**PROPOSED ALTERNATIVE  
PROGRAM STRUCTURE  
FOR HIGHER EDUCATION**

LEVEL I	LEVEL II	LEVEL III	LEVEL IV	LEVEL V	LEVEL VI
Formal Education					
Higher Education					
Instruction					
Career					
Vocational					
Para Professional					
Professional					
General					
Humanities					
Associate Program					
Baccalaureate Program					
Graduate Program					
Social Sciences					
Natural Sciences					
Mathematical Sciences					
Arts					
Etc.					
Research					
Basic					
Humanities					
Social Sciences					
Natural Sciences					
Mathematical Sciences					
Arts					
Etc.					
Applied					
Agriculture					
Education					
Environment					
Medicine					
Etc.					
Public Service					
Instructional					
Community Service					
Institutional Service					
Academic Services					
Student Services					
Administrative Services					
Executive Management					
Fiscal Operations					
General Admin. Services					
Etc.					

Your Committee on Finance concurs with the intent and purpose of **S. C. R. No. 59** and recommends its adoption.

Signed by all members of the Committee.

**SCRep. No. 780-72 Finance on S. C. R. No. 53**

The purpose of this Concurrent Resolution is to request the State Board of Examiners to propose a plan for the training of mobile intensive care paramedics.

Your Committee agrees with your Committee on Public Health, Youth and General Welfare that there currently exists a critical shortage of professionally trained medical personnel for the delivery of fast and efficient care during emergencies. Improving emergency service can reduce the mortality rate during the first critical moments following an accident. Utilization of paramedics can substantially improve emergency service.

Your Committee on Finance concurs with the intent and purpose of **S. C. R. No. 53** and recommends its adoption.

Signed by all members of the Committee.

**SCRep. No. 781-72 Finance on H. R. 379**

The purpose of this Resolution is to request that representatives of the Manoa Campus administration, Faculty Senate, and A.S.U.H. formulate a program of earning academic credit for A.S.U.H. positions including, but not limited to, elected or appointed offices.

A.S.U.H. representatives presently are accorded neither pay nor any form of academic credit by the University of Hawaii for their participation in A.S.U.H. affairs. The participation of these representatives is vital to the effectiveness of the administrative committees of which they are members. Allowing academic credit for such activity would do much to lessen the burden of attendance.

Your Committee on Finance concurs with the intent and purpose of **H. R. No. 379** and recommends its adoption.

Signed by all members of the Committee.

**SCRep. No. 782-72 Education on H. R. No. 278**



The purpose of this Resolution is to request the Department of Education to provide for horizontal grouping of three on two classes in addition to the present vertical grouping.

The three on two program is an organizational pattern which consists of a plan whereby three teachers are assigned to two classrooms representing a combination of two grade levels.

The **Three on Two Evaluation Report 1968-70** prepared by the Department of Education contains analyses of pupil achievement in the three on two program. One portion of the analyses computed for single grade levels seemed to indicate that the younger children in the two grade level combination setting achieved higher ratings than the older children in the same group.

In order to insure that the achievement of the older children, by being grouped with younger children, is not being stymied, your Committee recommends that the Department also provide for horizontal grouping of three on two classes and conduct a comparative analysis of the achievement of children in these two groups. Accordingly, your Committee has amended **H. R. No. 278** to conform to its recommendations.

Your Committee on Education concurs with the intent and purpose of **H. R. No. 278**, as amended herein, and recommends that it be referred to the Committee on Finance in the form attached hereto as **H. R. No. 278, H. D. 1**.

Signed by all members of the Committee except Representative Chong.

**SCRep. No. 783-72 Finance on H. R. No. 236**

The purpose of this resolution is to request the College of Education at the University of Hawaii to develop a pilot program in the elementary schools for teaching the metric system as the primary language of measurement; and to request that in developing the program, the United States Department of Commerce National Bureau of Standards report, **A Metric America, A Decision Whose Time Has Come**, be consulted.

Your Committee has been enlightened that the United States is the **only** country in the world that has not converted to the metric

system of measurement. This has a tremendous effect on our economy and technology, especially here in Hawaii where we already conduct much trade and have the potential for conducting even greater trade with the countries of Asia who have all converted to the metric system. According to your Committee on Higher Education reporting hereupon in **Stand. Com. Rep. No. 620-72**, George Mattimoe, Division of Weights and Measures, State Department of Agriculture, has testified to the effect that the lack of a common system of measurement severely hampers the import and export of the many measurement sensitive products, in that we cannot directly exchange products without first adjusting them to the very different measuring system of the other.

Your Committee notes that the International Organization for Standardization has set the metric system as the internationally recognized standard measure. The United States is a member of this organization and is the only one not to comply with establishing that standard.

Along educational lines, the National Education Association has stated that a carefully planned effort to convert to the metric system is essential to the future of American industrial and technological development. The College of Education at the University of Hawaii has pioneered in many curriculum efforts with the Department of Education, and your Committee recommends that relevant personnel from its Curriculum and Instruction Department and Department of Education Curriculum personnel be consulted in planning this program. Attempts should also be made to consult educational plans of other states - even if they are in process - and of other countries, especially those on the continent and in Japan.

Your Committee on Finance concurs with the intent and purpose of **H. R. No. 236** and recommends its adoption.

Signed by all members of the Committee except Representative Chong.

**SCRep. No. 784-72 Finance on H. C. R. No. 44**

The purpose of this concurrent resolution is to request the United States Congress to adopt the metric system as the primary measurement language of the nation.

Apparently, a consensus of the recent study conducted by the National Bureau of Standards at the behest of the United States Congress revealed that the use of the Metric System of measurement is rapidly increasing in the United States. Those questioned generally agreed that conversion to the Metric System was in the best interest of our nation, and it is believed that the optimum length of time to effect the conversion was ten years.

Also, a consensus of the increase in the export of measurement sensitive products would approximate \$600 million more by 1975, had our nation converted to Metric, and our balance of payments is inseparably linked to our balance of trade. Nonetheless, we stand alone as users of our antiquated, cumbersome measurement system. Your Committee believes that the time for a change has perhaps arrived.

Your Committee on Finance concurs with the intent and purpose of **H. C. R. No. 44** and recommends its adoption.

Signed by all members of the Committee except Representative Chong.

**SCRep. No. 785-72 Finance on S. C. R. No. 51**

The purpose of this concurrent resolution is to request the governor to transfer the comprehensive health planning functions now under the department of health to the executive office of the governor. In addition, additional functions consistent with federal enabling legislation would be invested in the comprehensive health planning office.

Because of the expanding view of comprehensive health planning, there has been a trend among other states in the union to transfer such health planning functions from various governmental agencies to the office of the governor. The transferral of the comprehensive health planning functions to the office of the governor would aid in the development of a comprehensive health planning program for the State of Hawaii.

Your Committee on Finance concurs with the intent and purpose of **S. C. R. No. 51** and recommends its adoption.

Signed by all members of the Committee except Representative Chong.

**SCRep. No. 786-72 Higher Education on H. R. No. 349**

The purpose of this resolution is to commend the Hawaii Environmental Simulation Laboratory for its initial efforts to establish effective connections between research on State environmental matters and State and City and County policy makers. The intent of the resolution is further qualified by a request for extension and expansion of operations as rapidly as is possible.

Your Committee finds that the Environmental Simulation Laboratory has been established to serve the entire community and to assist governmental decision makers, i.e., agencies such as the State Department of Economic and Planning and the City and County Planning Department. The Laboratory also works jointly with University personnel and members of its Advisory Council.

Your Committee further finds that, according to Tom Dinnell, Pacific Urban Studies and Planning Program Director, the Center is intended to apply research to practical, concrete circumstances. This is especially necessary in a field which is interdisciplinary by its very nature, and oriented toward benefiting people. There is also a need to plan—and to specify these plans so that they do not **remain** theoretical. The mission of the Laboratory is thus to apply what might be called general planning.

It is the contention of your Committee that as the State grows and becomes part of an urban complex, many determinations must be made. And, in order that these decisions be made wisely, planning must be done. It is this kind of planning—State-wide and general, yet very specific in its parameters—which is of use to the decision-maker. And, it is through these decisions that policies pursuant to the State's land use, housing priorities, and transportation methods can be formulated. Moreover, it is this method or way of planning through which people can be accommodated—and cared for.

Your Committee therefore takes especial note of the fact that the results of the Laboratory's research should prove useful to legislators, and in this aspect of the intent and purpose of the resolution we heartily concur. Numerous bills are introduced annually into the State Legislature—on the environment and related matters—and these need more than genuflection and practical,

political consideration before they take concrete form. There is need for empirical data; there is need for information based on viable models; there is need for simulation translated into specific terms—and into which various planning agencies have contributed. In short, there is need for the Hawaii Environmental Simulation Laboratory.

It is because of this sincere interest in planning—on a systematic basis—that your Committee believes both in the commendation and the explicit request for expansion of the Environmental Simulation Laboratory. According to Tom Dinnell, federal and private financial support for the Laboratory is forthcoming from the National Science Foundation and Ford Foundation. No internal University or State funds are presently needed or anticipated.

Accordingly to project director Doak Cox, the Resolution would be helpful in convincing others concerned with the environment that Hawaii was paying heed to planning matters. Dinnell concurs that Hawaii's would be a pioneer effort. Furthermore, he reports that the masters program in Pacific and Urban Planning has reached its final approval stages, and that graduate students in this program would furnish the manpower necessary for the Laboratory.

Your Committee wishes to add only one minor change in the original draft of the resolution, and that is to correct, albeit pedagogically, the spelling of "further" in the last be it further resolved clause.

Your Committee on Higher Education concurs with the intent and purpose of **H. R. No. 349**, as amended herein, and recommends its adoption in the form attached hereto as **H. R. No. 349, H. D. 1**.

Signed by all members of the Committee.

**SCRep. No. 787-72 Finance on S. C. R. No. 54**

The purpose of this concurrent resolution is to request the governor to provide for all executive offices and agencies to contract with the organization in charge of the governance of public television, when established, for the production and presentation of information programs to the general public on the governmental services and agencies available to them.

The recommended broad policy objective for public television is "to enlighten all the citizens of Hawaii regardless of income or station". Therefore, allowing executive offices and agencies to contract with the organization in charge of the governance of public television in order to provide informational programs which acquaint the general public with the nature of and the services performed by various governmental agencies is one means of implementing the broad policy objective of public television.

Your Committee on Finance concurs with the intent and purpose of **S. C. R. No. 54** and recommends its adoption.

Signed by all members of the Committee except Representative Chong.

**SCRep. No. 788-72 Finance on H. R. No. 357**

The purpose of this resolution is to request the Industrial Relations Center of the University of Hawaii to conduct a comprehensive review of the collective bargaining law.

The Legislature has declared its support for the right of public employees to organize for the purpose of collective bargaining by enacting Act 171, Session Laws of Hawaii, 1970. However, during the two years the law has been in effect, a number of problems have arisen with respect to its proper interpretation and application.

Your Committee is concerned that the bills introduced this session to amend various sections of Chapter 89, Hawaii Revised Statutes, show an apparent legislative concern for improving the collective bargaining law. It appears to your Committee that a comprehensive review regarding various aspects of the law is more advisable at this time rather than amending the law in a piecemeal fashion. Having inquired into the matter, your Committee is satisfied that the Industrial Relations Center of the University of Hawaii is the most appropriate resource agency, with adequate personnel and library facilities, capable of carrying out such a comprehensive review.

It is hereby resolved that the review of the collective bargaining law, include (1) clarification of definitions contained in the existing law; (2) determination of appropriate measures for determining reasonable service fees; (3) clarification of the rights, if any, of rival

unions; (4) clarification of Section 89(6)(c), Hawaii Revised Statutes, dealing with persons excluded from coverage under the law; (5) clarification of Section 89(9), Hawaii Revised Statutes, dealing with the scope of negotiations; and (6) evaluation of the impasse procedure.

It is further resolved that the review shall be conducted in the following phases: (1) initial review of the present law by the Industrial Relations Center in consultation with the parties affected by Chapter 89; (2) submission of a preliminary report to the Legislature twenty days prior to the convening of the Regular Session of 1973; and (3) submission of the final report of the findings and recommendations to the Legislature twenty days prior to the convening of the Regular Session of 1974.

Your Committee on Finance is in accord with the intent and purpose of **H. R. No. 357**, and recommends its adoption.

Signed by all members of the Committee except Representative Chong.

**SCRep. No. 789-72 Judiciary on H. R. No. 340**

The purpose of this Resolution is to request the President of the United States to exempt Hawaii from the mandatory oil import quota program. As stated in the text of the Resolution, "Hawaii is wholly dependent upon petroleum products for its energy" so that there is no other alternative but to pay the going, inflated rates. Moreover, as a state not having any oil producing industry to benefit from such a quota, there are simply no positive upshots to this program. Indeed, "to maintain the price of petroleum products at high levels" means lessening "the normal forces of competition by discouraging new entrants in the petroleum products market in Hawaii."

Your Committee concurs with the intent and purposes of **H. R. No. 340** and recommends its adoption.

Signed by all members of the Committee except Representatives Carroll and Sakima.

**SCRep. No. 790-72 Judiciary on H. R. No. 341**

The purpose of this Resolution is to request the President and Congress to revise or

repeal the foreign oil import quota program. Established more than a decade ago with the rationale that it would enhance and safeguard national security, the import quota program is now viewed as somewhat of an anachronism. The effect of artificially high prices for petroleum products is criticized as a nationwide injustice, and the Hawaiian economy, more than that of other states, has borne the burden of these high costs.

Your Committee concurs with the intent and purpose of **H. R. No. 341** and recommends its adoption.

Signed by all members of the Committee except Representatives Carroll and Sakima.

**SCRep. No. 791-72 Public Institutions on S. C. R. No. 19**

The purpose of this concurrent resolution is to request the Department of Social Services and Housing, in conjunction with the University of Hawaii Graduate School of Social Work, to conduct a study to determine the feasibility of:

1. Identifying with some validity the ingredients in the child's developmental period that are necessary for maximal functioning as adults;
2. Developing a measuring instrument that can be used to determine the extent to which ingredients that will result in children attaining maximum functioning as adults may be present or absent in an ADFC family;
3. Developing indicators for identifying those families best able to utilize help in improving the developmental care of children; and
4. Curtailing social work efforts in relieving "crisis" situations resulting from the behavior of welfare recipients so that staff time can be diverted to more productive activities.

There is reason to believe that more effective results can be achieved by concentrating social work efforts in preventive services, such as working with children especially during crucial developmental years, and that the current "band-aid" efforts to relieve situational problems leave little or no lasting results and, further, allow little time for helping recipients with basic problems. Thus your Committee is of the opinion that a substantial

change in the delivery of services, and possibly in kinds of services, may be necessary in order for the State to receive maximum benefits from its welfare programs. Further, your Committee feels that any study recommending changes in programs should include input from community welfare groups.

Your Committee on Public Institutions concurs with the intent and purpose of **S. C. R. No. 19** and recommends its adoption.

Signed by all members of the Committee.

**SCRep. No. 792-72 Finance on H. R. No. 402**

The purpose of this resolution is to request that employers of officers and employees excluded from collective bargaining to make every effort permissible under present laws to minimize the disparity of benefits which may arise between excluded and bargaining unit employees.

Presently, approximately 1,700 state officers and employees are excluded from the opportunity to enjoy the same benefits which may be granted to bargaining unit employees. These excluded employees should be entitled to equal consideration from their employers with respect to their compensation, hours, terms and conditions of employment.

Your Committee on Finance concurs with the intent and purpose of **H. R. No. 402** and recommends its adoption.

Signed by all members of the Committee.

**SCRep. No. 793-72 Finance on S. C. R. No. 48**

The purpose of this concurrent resolution is to provide the legislative reference bureau and the legislative auditor with timely reports so that they may fulfill their duty to provide technical support for the legislature.

These legislative service agencies have not, in the past, been included in the distribution of reports submitted to the legislature.

Your Committee on Finance concurs with the intent and purpose of **S. C. R. No. 48** and recommends its adoption.

Signed by all members of the Committee.

**SCRep. No. 794-72 Judiciary on H. R. No. 401**

The purpose of this resolution is to add to the House Rules a new "Rule 37-A" covering disclosures and punishment of members.

The new rule requires the filing of disclosure of financial interest and any deletion, addition, transfer or termination thereof with the Ethics Commission, all as prescribed by law.

In case the need for legislative action shall arise before a member has had the opportunity to file disclosures on a matter of legislative action affecting the member's undisclosed interest, the rule requires that the member shall, before voting on such legislative matter, make oral disclosure of his interest to be followed by a written disclosure according to law. This minimizes any restraint on the legislator in the exercise of his legislative functions. And if any member has filed a disclosure as required under the rule, he need not make any further oral disclosure on the House floor of any interest so filed.

Under this new rule, all disclosures filed with the Speaker shall be reasonably available for examination by the public under standard procedures prescribed by the Speaker. It is the intent of your Committee that the Speaker of the House is not authorized to prohibit any individual from access to the disclosures if such individual is in compliance with the standard procedures prescribed by the Speaker; such standard procedures are applicable to all individuals equally; and that the Speaker may not deter any individual by asking him why he wishes access to the disclosures.

Such standard procedures shall include, but are not limited to, the determination of the place where, times during which, and the manner in which, the disclosures shall be made reasonably available to the public.

Finally, the rule provides that the Speaker may under the provisions of House Rule 15 (1) (b) appoint a special committee to investigate a member for misconduct, disorderly conduct, neglect of any duty or violation of Chapter 84, Hawaii Revised Statutes or Rules of the House, and that the House may punish a member for misconduct, disorderly conduct, neglect of any duty or violation of Chapter 84 Hawaii Revised Statutes or its

Rules by censure or, by a two-thirds vote, suspend or expel a member.

Your Committee believes that this new rule, by its requirements of public disclosure and provisions for punishment for violation thereof, greatly strengthens the ethics for good government.

Your Committee on Judiciary concurs with the intent and purpose of **H. R. 401** and recommends its adoption.

Signed by all members of the Committee except Representative Carroll.

## CONFERENCE COMMITTEE REPORTS

### Conf. Com. Rep. 1 on H. B. No. 20

The purpose of this bill is to effect the first complete reorganization of the criminal law of the State of Hawaii by a redefinition of criminal offenses, elimination of inconsistencies, modernization of language, logical rearrangement of the criminal provisions, and amendment of the substantive criminal law. The bill, originally drafted by the Committee on Penal Law Revision of the Judicial Council of Hawaii and a derivative of the Model Penal Code as recommended by the American Law Institute, is designed to update the criminal law and to ease the growing public feeling of dissatisfaction with a body of criminal law that is still largely uncoded. Your Committee notes that it has taken seven years of research and study to prepare the Code as herein provided.

The following is a detailed treatment of those topics and sections which your Committee has agreed to and recommends for adoption.

#### Section 104: Principles of construction

Your Committee has agreed to amend Section 104, to limit the scope of the fair import principle contained within that section. Your Committee finds that the broad wording of Section 104, in **H. B. 20, H. D. 1, S. D. 1**, would subject the code to unwarranted argument and wishes to avoid this possibility through a revision of the entire section, as provided herein. It is the intent of the Committee that the definitions of crimes are to be strictly construed.

#### Section 105: Effect of commentary

Your Committee has agreed to amend Section 105. It is the Committee's recommendation that the commentaries accompanying the Judicial Council of Hawaii's proposed draft of the Hawaii Penal Code (1970) be revised and published with this Code. The Committee has also agreed that these commentaries may be used as an aid in understanding the provisions of this Code, rather than as evidence of legislative intent. The Committee further recommends that an attorney be hired to update and to revise the commentaries including the citations in con-

formity with the amendments made to **H. B. 20**, and to delete historical and general information where not relevant.

#### Section 114: Proof beyond a reasonable doubt

Your Committee has agreed to amend subsection (2) by replacing the word "assumed" with the word "presumed". Your Committee finds that use of the word "assumed" in this manner is novel and prefers the term "presumed" since it has a definite meaning in jurisprudence.

#### Sections 218 and 220: Ignorance or mistake of law

Your Committee has agreed to amend Section 218 and to delete Section 220(1) to eliminate ignorance or mistake of law as a defense in certain instances, thereby avoiding a major dilemma with respect to enforcement of provisions of this Code. The defenses of ignorance of the law afforded by Sections 218 and 220 would have been available, to a degree, under any given set of circumstances and as such would have constituted a major encumbrance to enforcement of the substance and spirit of the Code.

#### Section 234: Consent to bodily injury

Your Committee has agreed to amend Section 234 by deleting Section 234(1). The Committee finds that the law should not permit the defense of consent to have such a broad application as contemplated in this Code and that the subsection should not permit, by consent, the type of conduct which would result in bodily injury and disruption of our social fabric.

#### Section 236: De minimis infractions

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Your Committee has agreed to add a new Section to Chapter 7 retaining the crime of incest. Your Committee finds that sexual intercourse with another who is within the degrees of consanguinity or affinity within which marriage is prohibited by Hawaii Revised Statutes Section 572-1 should be prohibited for the reasons such marriages are prohibited.

#### **Section 816: Trespass defense**

Your Committee has agreed to add a new section to retain present law in the area of trespass. The addition provides that traveling to or from the beach over government land does not constitute trespass and is a defense to Sections 814 and 815.

**Section 831: Theft**

Your Committee has agreed to decrease the minimum dollar amount of first degree theft from \$500 to \$200 because the \$500 figure is unwarranted, especially in light of the present Hawaii Law relating to larceny and to cover shoplifting and cattle rustling.

**Sections 840 and 841: Robbery**

Because of the serious danger which the act of robbery poses to the physical being of the victim, your Committee has agreed that robbery while armed with a dangerous instrument should be a Class A felony rather than a Class B felony. Accordingly, robbery in the second degree is revised, and robbery in the third degree is deleted.

**Sections 858, 859 and 860: Credit cards**

Your Committee has agreed to the deletion of the credit card provisions in **H. B. 20, H. D. 1, S. D. 1** and to retain the present statutes of Hawaii relating to credit card offenses because your Committee finds the present law affords a more comprehensive and established treatment of credit card offenses.

**Section 903: Persistent nonsupport**

Your Committee has agreed to the deletion of the words "medical attention" as a requisite of the term "support" in order to avoid penalizing the free exercise of certain religions.

**Sections 1020, 1022, 1023, 1024, 1025, 1029, 1070, 1074 and 1075: Interfering with custody and the judicial process**

Your Committee has agreed to amend **H. B. 20, H. D. 1, S. D. 1** by increasing the penalties in certain sections relating to unlawful influencing of the jury and offenses related to custody because of the central role which the judicial process and custody administration serves in the preservation of society. Your Committee has further agreed to the insertion of the words "correctional or" before the word "detention" in Sections 1020, 1021, 1022 and 1023 in order to clarify that offenses enumerated in those sections apply to existing diagnostic and rehabilitation programs as well as detention facilities.

**Sections 1041 through 1044, and Part V of Chapter 10 Sections 1050 and 1051: Corrupt influence and abuse of public office**

Your Committee has agreed to the deletion of the sections pertaining to corrupt influence and abuse of public office believing separate legislation would allow more comprehensive, systematic and appropriate treatment of the type of misconduct covered in these sections.

**Section 1064: Retraction**

Your Committee has agreed to delete Section 1064(2) of **H. B. 20, H. D. 1, S. D. 1**, because, as a defense, it may provide too many avenues to avoid prosecution for perjury or any related offenses.

**Sections 1101 and 1107: Disorderly conduct and loitering**

Your Committee has agreed to amend Section 1101 on disorderly conduct by deleting Section 1101(1)(c) of **H. B. 20, H. D. 1, S. D. 1** because of the unconstitutional vagueness of the phrase "which serves no legitimate purpose of the actor" and accordingly, to insert a new Section 1101(1)(c), as provided herein, based on a study and recommendation on the matter by the department of the attorney general of the State of Hawaii. The Committee has further agreed on the deletion of the entire Section 1107 on loitering because of the unconstitutional vagueness of this section. Since under constitutional standards a valid arrest must be supported by probable cause, a State cannot enforce a statute which legitimizes arrest for mere suspicion. Moreover, no statute can unreasonably interfere with a person's freedom to move about or standstill. **People v. Beltrand**, New York County Criminal Court 9/15/70, and **State v. Grahovac**, Hawaii Sup. Ct., No. 5025, 2/1/71.

**Section 1110: Cruelty to animals**

Your Committee has agreed to the amendments, provided herein, as Sections 1109 and 1110 relating to cruelty to animals which retains the substance of provisions in our present cruelty to animals statutes with some modification updating the provisions. The Committee feels the single section in **H. B. 20, H. D. 1, S. D. 1** is too vague to prevent some types of mistreatment of animals now prohibited by law.

**Sections 1220 through 1230: Gambling**

The basic thrust of gambling offenses of **H. B. 20, H. D. 1, S. D. 1** is to impose heavy penalties on various forms of institutional-

ized gambling and at the same time to recognize that society no longer condemns as criminal, casual gambling in a social context. Your Committee has agreed to the amendment in Section 1220(8) of the definition of the term "player" to prevent professional gamblers from avoiding penal liability by claiming status as a "player". Penal liability may only be avoided if the game is social and the "player" is over the age of majority. It is the intent of your Committee that the revised definition precludes a nightclub, hotel, bar, restaurant, or any other business in interstate commerce from providing any accommodation for the promotion of any form of gambling.

#### Sections 1240 through 1256: **Drugs and intoxicating compounds**

Your Committee has agreed to the amendment of Sections 1240 through 1256, as provided herein. The revisions recommended incorporate schedules of drugs, marijuana and marijuana concentrates into **H. B. 20, H. D. 1, S. D. 1's** approach of distinguishing the severity of offense on the basis of the amount of the substance possessed or dispensed. The placing of drugs into several schedules is based on the enactment of the "Comprehensive Drug Abuse Prevention and Control Act of 1970" (Public Law 91-513). Your Committee anticipates the State of Hawaii adopting schedules as proposed in the Uniform Controlled Substances Act to achieve uniformity between Hawaii's criminal and health laws and those of the Federal Government to enable government at all levels to control more effectively the drug abuse problem. Your Committee also has agreed to the inclusion of criminal provisions on the abuse of intoxicating compounds which are presently found in Chapter 328 of the Hawaii Revised Statutes relating to the regulatory control of drug abuse.

The amendments agreed to are directed at the illegal trafficker who either possesses large amounts of dangerous, harmful or detrimental drugs or who distributes it in any amount. Severest penalties are given to the person who distributes to a minor who is at least three years his junior.

One area on which the Committee spent a considerable period of study was the disposition of marijuana. Your Committee finds the present sections in Hawaii are inconsistent with the philosophy of this Code to penalize according to the degree of social harm. Your

Committee finds there is good reason to moderate present punitive statutes so that penalties are more in keeping with what is now known about the potential for abuse and social harm involved.

Your Committee notes a growing trend towards expanding the methods of controlling drug use beyond the law enforcement approach and recommends that new education and rehabilitation programs be explored.

#### Chapter 13: **Repeal and recodification provisions**

Your Committee has agreed to amend Chapter 13 the Repeal and Recodification Provisions to encompass those laws enacted since 1969 that pertain to the Code and to conform these provisions to amendments made within the Code.

#### **Effective date**

Your Committee has agreed to change the effective date of the Code from July 1, 1972 to January 1, 1973, to give the public, private and government agencies the opportunity to study and digest this massive legislation. Section 100 is amended accordingly.

#### **Minor amendments**

Your Committee has agreed to amend **H. B. 20, H. D. 1, S. D. 1** to correct technical errors, mechanical errors, and to clarify wordings in the following sections not previously mentioned or, related to those already discussed: 605(1), 605(3), 608, 609, 610, 611, 624(2)(g), 661, 662(4)(b), 662(4)(c), 667(2), 668(2), 669(1), 671(1) and 672(1), 700(11), 801(2)(a), 843, 850(8), 850(9), 1010, 1021(1), 1076(1)(a), 1077(3)(a), 1108, 1109, 1200, 1221(1)(b), and 1223(1)(b).

Finally, to conform the style of the Hawaii Penal Code as near as may be to that of the Hawaii Revised Statutes, the revisor of statutes may redesignate as Articles those subdivisions of the Code designated in this Act as Chapters and may make changes in references to agree with such redesignated subdivisions.

Your Committee on Conference is in accord with the intent and purpose of **H. B. 20, H. D. 1, S. D. 1** as amended in the form attached hereto and recommends its passage on final reading.

Representatives O'Connor, Kawakami, Kimura, Roehrig, Judd and Yamada. Managers on the part of the House. Representative Judd did not concur.

Senators Ushijima, Kawasaki, Kuroda, Yamasaki, Forbes and Lum. Managers on the part of the Senate.

**Conf. Com. Rep. No. 2 (Majority) on H. B. No. 20**

In addition, your Committee has agreed to minor amendments to **H. B. No. 20, H. D. 1, S. D. 1, C. D. 1**, to correct clerical omissions.

(1) In Section 704, subsection (3) is added to read, "(3) Negligent homicide in the second degree is a misdemeanor." in order to provide the omitted penalty.

(2) In Section 1300, subsection (4)(d) is added to read, "(d) sections 275-1 through 275-5, and 275-8 are repealed;". This matter, already covered in the Code by section 1111 was a clerical oversight in the Judicial Council of Hawaii's proposed draft of the Hawaii Penal Code.

The purpose of this bill is to effect the first complete reorganization of the criminal law of the State of Hawaii by a redefinition of criminal offenses, elimination of inconsistencies, modernization of language, logical rearrangement of the criminal provisions, and amendment of the substantive criminal law. The bill, originally drafted by the Committee on Penal Law Revision of the Judicial Council of Hawaii and a derivative of the Model Penal Code as recommended by the American Law Institute, is designed to update the criminal law and to ease the growing public feeling of dissatisfaction with a body of criminal law that is still largely uncoded. Your Committee notes that it has taken seven years of research and study to prepare the Code as herein provided.

The following is a detailed treatment of those topics and sections which your Committee has agreed to and recommends for adoption.

**Section 104: Principles of construction**

Your Committee has agreed to amend Section 104, to limit the scope of the fair import principle contained within that section. Your Committee finds that the broad wording of

Section 104, in **H. B. 20, H. D. 1, S. D. 1**, would subject the Code to unwarranted argument and wishes to avoid this possibility through a revision of the entire section, as provided herein. It is the intent of the Committee that the definitions of crimes are to be strictly construed.

**Section 105: Effect of commentary**

Your Committee has agreed to amend Section 105. It is the Committee's recommendation that the commentaries accompanying the Judicial Council of Hawaii's proposed draft of the Hawaii Penal Code (1970) be revised and published with this Code. The Committee has also agreed that these commentaries may be used as an aid in understanding the provisions of this Code, rather than as evidence of legislative intent. The Committee further recommends that an attorney be hired to update and to revise the commentaries including the citations in conformity with the amendments made to **H. B. 20**, and to delete historical and general information where not relevant.

**Section 114: Proof beyond a reasonable doubt**

Your Committee has agreed to amend subsection (2) by replacing the word "assumed" with the word "presumed". Your Committee finds that use of the word "assumed" in this manner is novel and prefers the term "presumed" since it has a definite meaning in jurisprudence.

**Sections 218 and 220: Ignorance or mistake of law**

Your Committee has agreed to amend Section 218 and to delete Section 220(1) to eliminate ignorance or mistake of law as a defense in certain instances, thereby avoiding a major dilemma with respect to enforcement of provisions of this Code. The defenses of ignorance of the law afforded by Sections 218 and 220 would have been available, to a degree, under any given set of circumstances and as such would have constituted a major encumbrance to enforcement of the substance and spirit of the Code.

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tercourse with another who is within the degrees of consanguinity or affinity within which marriage is prohibited by Hawaii Revised Statutes Section 572-1 should be prohibited for the reasons such marriages are prohibited.

#### Section 816: **Trespass defense**

Your Committee has agreed to add a new section to retain present law in the area of trespass. The addition provides that traveling to or from the beach over government land does not constitute trespass and is a defense to Sections 814 and 815.

#### Section 831: **Theft**

Your Committee has agreed to decrease the minimum dollar amount of first degree theft from \$500 to \$200 because the \$500 figure is unwarranted, especially in light of the present Hawaii Law relating to larceny and to cover shoplifting and cattle rustling.

#### Sections 840 and 841: **Robbery**

Because of the serious danger which the act of robbery poses to the physical being of the victim, your Committee has agreed that robbery while armed with a dangerous instrument should be a Class A felony rather than a Class B felony. Accordingly, robbery in the second degree is revised, and robbery in the third degree is deleted.

#### Sections 858, 859 and 860: **Credit cards**

Your Committee has agreed to the deletion of the credit card provisions in **H. B. 20, H. D. 1, S. D. 1** and to retain the present statutes of Hawaii relating to credit card offenses because your Committee finds the present law affords a more comprehensive and established treatment of credit card offenses.

#### Section 903: **Persistent nonsupport**

Your Committee has agreed to the deletion of the words "medical attention" as a requisite of the term "support" in order to avoid penalizing the free exercise of certain religions.

#### Sections 1020, 1022, 1023, 1024, 1025, 1029, 1070, 1074 and 1075: **Interfering with custody and the judicial process**

Your Committee has agreed to amend **H. B. 20, H. D. 1, S. D. 1** by increasing the

penalties in certain sections relating to unlawful influencing of the jury and offenses related to custody because of the central role which the judicial process and custody administration serves in the preservation of society. Your Committee has further agreed to the insertion of the words "correctional or" before the word "detention" in Sections 1020, 1021, 1022 and 1023 in order to clarify that offenses enumerated in those sections apply to existing diagnostic and rehabilitation programs as well as detention facilities.

#### Section 1041 through 1044, and **Part V of Chapter 10** Sections 1050 and 1051: **Corrupt influence and abuse of public office**

Your Committee has agreed to the deletion of the sections pertaining to corrupt influence and abuse of public office believing separate legislation would allow more comprehensive, systematic and appropriate treatment of the type of misconduct covered in these sections.

#### Section 1064: **Retraction**

Your Committee has agreed to delete Section 1064(2) of **H. B. 20, H. D. 1, S. D. 1**, because, as a defense, it may provide too many avenues to avoid prosecution for perjury or any related offenses.

#### Sections 1101 and 1107: **Disorderly conduct and loitering**

Your Committee has agreed to amend Section 1101 on disorderly conduct by deleting Section 1101(1) (c) of **H. B. 20, H. D. 1, S. D. 1** because of the unconstitutional vagueness of the phrase "which serves no legitimate purpose of the actor" and accordingly, to insert a new Section 1101(1) (c), as provided herein, based on a study and recommendation on the matter by the department of the attorney general of the State of Hawaii. The Committee has further agreed on the deletion of the entire Section 1107 on loitering because of the unconstitutional vagueness of this section. Since under constitutional standards a valid arrest must be supported by probable cause, a State cannot enforce a statute which legitimizes arrest for mere suspicion. Moreover, no statute can unreasonably interfere with a person's freedom to move about or standstill. **People v. Beltrand**, New York County Criminal Court 9/15/70, and **State v. Grahovac**, Hawaii Sup. Ct., No. 5025, 2/1/71.

**Section 1110: Cruelty to animals**

Your Committee has agreed to the amendments, provided herein, as sections 1109 and 1110 relating to cruelty to animals which retains the substance of provisions in our present cruelty to animals statutes with some modification updating the provisions. The Committee feels the single section in the **H. B. 20, H. D. 1, S. D. 1** is too vague to prevent some types of mistreatment of animals now prohibited by law.

**Sections 1220 through 1230: Gambling**

The basic thrust of gambling offenses of **H. B. 20, H. D. 1, S. D. 1** is to impose heavy penalties on various forms of institutionalized gambling and at the same time to recognize that society no longer condemns as criminal, casual gambling in a social context. Your Committee has agreed to the amendment in Section 1220(8) of the definition of the term "player" to prevent professional gamblers from avoiding penal liability by claiming status as a "player". Penal liability may only be avoided if the game is social and the "player" is over the age of majority. It is the intent of your Committee that the revised definition precludes a nightclub, hotel, bar, restaurant, or any other business in interstate commerce from providing any accommodation for the promotion of any form of gambling.

**Sections 1240 through 1256: Drugs and intoxicating compounds**

Your Committee has agreed to the amendment of Sections 1240 through 1256, as provided herein. The revisions recommended incorporate schedules of drugs, marijuana and marijuana concentrates into **H. B. 20, H. D. 1, S. D. 1's** approach of distinguishing the severity of offense on the basis of the amount of the substance possessed or dispensed. The placing of drugs into several schedules is based on the enactment of the "Comprehensive Drug Abuse Prevention and Control Act of 1970" (Public Law 91-513). Your Committee anticipates the State of Hawaii adopting schedules as proposed in the Uniform Controlled Substances Act to achieve uniformity between Hawaii's criminal and health laws and those of the Federal Government to enable government at all levels to control more effectively the drug abuse problem. Your Committee also has agreed to the inclusion of criminal provisions on the abuse of intoxicating compounds which are pres-

ently found in Chapter 328 of the Hawaii Revised Statutes relating to the regulatory control of drug abuse.

The amendments agreed to are directed at the illegal trafficker who either possesses large amounts of dangerous, harmful or detrimental drugs or who distributes it in any amount. Severest penalties are given to the person who distributes to a minor who is at least three years his junior.

One area on which the Committee spent a considerable period of study was the disposition of marijuana. Your Committee finds the present sanctions in Hawaii are inconsistent with the philosophy of this Code to penalize according to the degree of social harm. Your Committee finds there is good reason to moderate present punitive statutes so that penalties are more in keeping with what is now known about the potential for abuse and social harm involved.

Your Committee notes a growing trend towards expanding the methods of controlling drug use beyond the law enforcement approach and recommends that new education and rehabilitation programs be explored.

**Chapter 13: Repeal and recodification provisions**

Your Committee has agreed to amend Chapter 13, the Repeal and Recodification Provisions, to encompass those laws enacted since 1969 that pertain to the Code and to conform these provisions to amendments made within the Code.

**Effective date**

Your Committee has agreed to change the effective date of the Code from July 1, 1972 to January 1, 1973, to give the public, private and government agencies the opportunity to study and digest this massive legislation. Section 100 is amended accordingly.

**Severability**

Your Committee has agreed to amend the bill by inserting a severability clause to provide that valid provisions stand even after any invalid ones have fallen.

**Minor amendments**

Your Committee has agreed to amend **H. B. 20, H. D. 1, S. D. 1, C. D. 1**, to correct

technical errors, mechanical errors, and to clarify wordings in the following sections not previously mentioned, or, related to those already discussed: 605(1), 605(3), 608, 609, 610, 611, 624(2) (g), 661, 662(4) (b), 662(4) (c), 667(2), 668(2), 669(1), 671(1) and 672(1), 700(11), 801(2) (a), 843, 850(8), 850(9), 1010, 1021(1), 1076(1) (a), 1077(3) (a), 1108, 1109, 1200, 1221(1) (b), and 1223(1) (b).

Finally, to conform the style of the Hawaii Penal Code as near as may be to that of the Hawaii Revised Statutes, the revisor of statutes may redesignate as Articles those subdivisions of the Code designated in this Act as Chapters and may make changes in references to agree with such redesignated subdivisions.

Your Committee on Conference is in accord with the intent and purpose of **H. B. 20, H. D. 1, S. D. 1, C. D. 1**, as amended in the form attached hereto as **H. B. 20, H. D. 1, S. D. 1, C. D. 2**, and recommends its passage on final reading.

Representatives O'Connor, Kawakami, Kimura, Roehrig, Judd and Yamada.  
Managers on the part of the House.

Senators Ushijima, Kawasaki, Kuroda, Yamasaki, Forbes and Lum.  
Managers on the part of the Senate.  
Senate Forbes did not concur.

**Conf. Com. Rep. No. 3 on S. B. No. 310**

The purpose of this bill is to revise the existing drug laws of the State of Hawaii in order to provide strong, clear, regulatory drug laws by: (1) classifying all dangerous substances into five schedules according to criteria that reflect the relative danger of a substance, and by providing a mechanism for continuous review and addition, deletion or rescheduling of all dangerous substances based upon new scientific findings; (2) requiring legitimate handlers of controlled substances to register with the State Department of Health, maintain records, and submit periodic inventories of designated controlled substances; and (3) defining and codifying prohibited acts involving controlled substances regulation and penalties therefor.

The original of this bill was drafted and adopted by the National Conference of Commissioners on Uniform State Laws in August, 1970, and recommended for adoption by the 50 states to achieve uniformity between the drug laws of the several states, on the one hand, and of the federal government,

on the other. This bill is complementary to the new Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91-513, enacted by the United States Congress on October 27, 1970 which went into effect on May 1, 1971.)

Your Committee is advised that as of November 15, 1971, 25 states, the Commonwealth of Puerto Rico, the Virgin Islands, and the Island of Guam have enacted some form, in varying degrees of modification, of the Uniform Controlled Substances Act. The states that have enacted the act to said date are: Arkansas, Idaho, Illinois, Iowa, Louisiana, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, Washington, West Virginia, and Wyoming. The Commonwealth of Virginia and the State of Minnesota have also passed modified versions of the Uniform Act. The Act is at various stages of passage or consideration before the legislatures of the following states and territories: Alabama, California, the District of Columbia, Kansas, New York, Ohio, Pennsylvania, and Wisconsin.

Your Committee on Conference upon consideration has agreed to the following amendments to **S. B. No. 310, S. D. 1, H. D. 2**:

(1) Delete the first two lines in Section 1, **S. B. No. 310, S. D. 1, H. D. 2**, and substitute in lieu thereof the following:

"Except as otherwise specified in this Act, the present Chapter 329, Hawaii Revised Statutes, entitled 'Narcotics' is repealed and the following substituted therefor as Chapter 329:"

Because **H. B. No. 20** in the form pending before the Legislature, Regular Session, 1972, refers to this bill as Chapter 329, your Committee has agreed to this amendment to provide clear directions that this Act shall be designated as Chapter 329 of the Hawaii Revised Statutes.

(2) Delete Section 8 because the bill has been retyped without bracketing and under-scoring.

(3) Delete Section 9 and insert in lieu thereof the following as Section 8:

"Section 8. This Act shall take effect on January 1, 1973 only if **H. B. 20** in any form passed by the Legislature, Regular Session 1972, becomes an Act. In that event, provisions of **H. B. No. 20** referring

to Chapter 329 shall be deemed to refer to this Act except that references in Chapter 13 of **H. B. No. 20** relating to HRS Chapter 329 and Part V of Chapter 328 shall be superseded by this Act."

Your Committee has agreed to this amendment to insure that this bill will become effective simultaneously with any form of **H. B. 20** passed by the Legislature, Regular Session 1972, because drug provisions of this bill and Part IV, Chapter 12 of such **H. B. 20** are complementary. A second sentence is added by your Committee to clarify the implementation of this Act.

(4) Delete Section 39(4) (iii),

"a conveyance is not subject to forfeiture for a violation of Section 26(c);"

Your Committee has agreed to this amendment to conform this section to the deletion of Section 26 from the bill.

Your Committee on Conference is in accord with the intent and purpose of **S. B. No. 310, S. D. 1, H. D. 2**, as amended in the form attached hereto as **S. B. No. 310, S. D. 1, H. D. 2, C. D. 1** and recommends its passage on final reading.

Representatives O'Connor, Roehrig,  
Kawakami, Yamada and Aduja.  
Managers on the part of the House.

Senators Ushijima, Kawasaki, Yamasaki,  
Lum and Mills.  
Managers on the part of the Senate.

#### **Conf. Com. Rep. No. 4 on S. B. No. 766**

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in **S. B. No. 766, S. D. 1, H. D. 1**, entitled: "A BILL FOR AN ACT RELATING TO THE LEGAL CAPACITY OF MINORS FOR HOSPITAL, HEALTH CLINIC, MEDICAL, AND DENTAL CARE AND SERVICES.", having met, and after full and free discussion, have agreed to recommend and do recommend to their respective Houses the final passage of this bill in an amended form.

The purpose of this bill is to allow minors from the age of 14 to 19 inclusive to give consent to the provision and performance of medical care and services by hospitals and clinics, public or private, or by a physician licensed to practice medicine, for the treat-

ment of venereal disease or pregnancy, exclusive of surgery or abortion. This bill also provides that an emancipated minor may give his consent to the provision and performance of medical care and services by hospitals and clinics, public or private, or by a physician licensed to practice medicine, or to the performance of dental care and services by a dentist licensed to practice dentistry. If a minor or emancipated minor has given his consent, the consent of his parent or legal guardian shall not be necessary in order to authorize care and service by a hospital, health clinic, physician or surgeon, osteopathic surgeon, or dentist, and said parent or legal guardian shall not be liable for any such care or service rendered.

Under existing law a minor from the age of 14 to 19 inclusive may legally consent to medical care and service if the minor alleges that she is pregnant or that he or she professes to be afflicted with venereal disease. This bill would not restrict the situations in which a minor may give legal consent to dental service and most forms of medical care. However, the minor is expressly prohibited from having the capacity to consent to surgery and abortion.

Your Committee upon consideration of this bill recommends that it be amended as follows:

1. Redefine the term "minor" who shall be any person from the age of fourteen to the age of majority inclusive. The age of majority in this State is now 18 years.

2. Redefine the term "medical care and services" which means the diagnosis, examination and administration of medication for general medical and dental care except that it shall not include surgery or any treatment to induce abortion.

3. Delete the term "emancipated minor."

4. Provide that when a minor who requires medical care and services shall be deemed to have the legal capacity to act, his consent to the provision of medical care and service shall be valid and binding as if said minor had achieved his or her majority as the case may be.

5. Delete that portion of the bill which will provide for non-liability of a parent or guardian of the minor who gives consent to his own medical treatment.

6. Give public and private hospitals, or public and private clinics or physicians licensed to practice medicine the discretionary power to inform the spouse, parent, or legal guardian of the medical care and service rendered.

Your Committee on Conference is in accord with the intent and purpose of **S. B. No. 766, S. D. 1, H. D. 1**, as amended herein, and recommends its passage on final reading in the form attached hereto as **S. B. No. 766, S. D. 1, H. D. 1, C. D. 1**.

Representatives O'Connor, Kawakami and Carroll.

Managers on the part of the House.

Senators Altiery, Takitani and Mills.

Managers on the part of the Senate.

**Conf. Com. Rep. No. 5 on S. B. No. 13**

The purpose of this bill is to regulate the use and application of pesticides to assure their safe and proper use with a minimum adverse effect on the environment.

Your Committee on Conference feels that the purpose of this bill will be accomplished by amending Chapter 149, Hawaii Revised Statutes by:

(1) Changing "economic poison" to "pesticide" wherever it appears in the chapter.

(2) Creating an advisory committee on pesticides to help formulate rules and regulations.

(3) Requiring pesticide dealers and wholesalers to obtain annual licenses and to keep records of sales of certain pesticides.

(4) Regulating the use and application of pesticides by providing means and penalty for the enforcement of such prohibition.

Your Committee on Conference recognizes that pesticides are vital to the community in crop and livestock production as well as in controlling disease-carrying insects and general household pests. With appropriate controls now, pesticides can contribute to mankind with minimum effects on the environment.

Your Committee on Conference, after careful consideration, recommends several amendments:

(1) To realize a fairer representation of

the community, your Committee has added three at-large members to the advisory committee. In addition to helping formulate rules and regulations on pesticides, the committee's duties have been expanded to advising the department on pesticide problems.

(2) To control the use of pesticides, the department shall establish two classes of pesticides: (a) general use and (b) restricted use. Provision shall be made for a system of control over the distribution and use of certain pesticides purchased by the consuming public.

(3) To regulate all sales and distributions of pesticides, retailers have been added to those required to have annual licenses and to keep records when selling, soliciting or receiving orders for restricted pesticides.

(4) To provide the greatest degree of safety and environmental protection, all pesticide applicators, public and private, must be certified in order to purchase and use restricted pesticides. However, provision is made for general supervisory control and responsibility without requiring every laborer to be certified.

(5) To provide for better coordination and protection, the board in consultation with the director of health, where human health is affected, shall establish procedures for the registration and disposal of pesticides.

(6) Certain rules and regulations are to be promulgated affecting the cancellation or suspension of applications for the use of pesticides where the use will result in "substantial adverse effects on the environment".

(7) To protect public health and safety, the chairman of the department, in consultation with the advisory committee, and with the approval of the director of health, may ban the use of certain pesticides when they pose an "imminent hazard".

(8) The enforcement sections of the bill have been changed by the deletion of a prison sentence. Your Committee feels that the fine is sufficient control and that a jail sentence would certainly pose an extreme hardship on a small farmer.

(9) The Authority to Inspect section has been added which authorizes the department to examine and inspect application methods and equipment according to law. Your Committee feels that this provision is necessary to monitor and educate the users of pesticides in

order to carry out the purpose of this Act. However, this section shall not be construed as an infringement upon any person's constitutional right against unreasonable searches and seizures as protected by the 4th and 14th amendments of the Federal Constitution. Your Committee has made the intent clear by requiring that such inspections shall be made "according to law".

(10) The appropriation section has been deleted. Your Committee has been assured by the department of agriculture that funds will not be necessary until such time as procedures are established by the department and advisory committee.

Your Committee on Conference is in accord with the intent and purpose of **S. B. No. 13, S. D. 1, H. D. 1**, as amended herein, and recommends its passage on final reading in the form attached hereto as **S. B. No. 13, S. D. 1, H. D. 1, C. D. 1**.

Representatives Roehrig, Ajifu and Kondo.

Managers on the part of the House.

Senators Brown, Ching and Mirikitani.

Managers on the part of the Senate.

**Conf. Com. Rep. No. 6 on H. B. No. 356**

The purpose of this bill is to amend Section 353-27, Hawaii Revised Statutes, which relates to the custodial duty of the Department of Social Services and Housing over monies belonging to prisoners, to provide for custody and accounting only of authorized money of prisoners and eliminate the requirement of maintaining individual bank accounts for each prisoner.

Your Committee concurs that elimination of confiscated money, in the possession of inmates, will contribute greatly to reducing illegal activities within the prison.

Your Committee further agrees that the maintaining of individual savings passbooks costs the State, in clerical and fiscal staff time, more than the interest earned and is therefore too costly and cumbersome in view of the resulting benefits. However, any prisoner may gain the interest-earning intended in Section 355-27, H. R. S., by purchasing savings bonds.

Your Committee has made one amendment to the bill to change the effective date to July 1, 1972.

Your Committee on Conference is in accord with the intent and purpose of **H. B. No. 356, S. D. 1**, as amended herein, and recommends its passage on final reading in the form attached hereto as **H. B. No. 356, S. D. 1, C. D. 1**.

Representatives Lunasco, Wong and Devereux.

Managers of the part of the House.

Senators Ushijima, Takitani and Mills.

Managers on the part of the Senate.

**Conf. Com. Rep. 7 on H. B. No. 1636-72**

Your Committee on Conference on the disagreeing vote of the House to the amendments proposed by the Senate in **H. B. No. 1636-72, H. D. 1, S. D. 1**, entitled: "A BILL FOR AN ACT AMENDING APPROPRIATIONS FOR THE FISCAL BIENNIUM JULY 1, 1971 TO JUNE 30, 1973, AND AUTHORIZING THE ISSUANCE OF BONDS.", having met, and after full and free discussion, have agreed to recommend and do recommend to their respective Houses the final passage of this bill in amended form.

The purpose of this bill is to amend certain appropriations for the fiscal biennium 1971-1973, contained in the General Appropriations Act of 1971 (Act 68, Session Laws of Hawaii, 1971).

Your Committee, in reviewing the financial resources necessary to meet State needs, has been cognizant of the retreat of the State's economy from the extremely high levels of economic growth and prosperity of the recent past. Diverse movements and developments in the different forces and sectors of the economy which have caused a downturn of the economy and the concomitant lower revenues to the State have been the primary considerations of your Committee.

The slowing of the economy, however, should not be a reason for inaction by this legislature. Your Committee is aware that significant factors other than "economical" enter into the consideration of appropriations and public policy directions. The austere financial condition and lower revenues are proper and major concerns, but there is also concern for **human values and needs**—to improve the standard of living of all our people and to insure for all our citizens the opportunities for unhampered self-development. Your Committee believes that these very

basic values need not be deemed as conflicting, that it is possible to support those programs and activities which respond directly to human needs with due consideration of economic factors.

We in Hawaii have embarked upon a new era in our history. Many will term the seventies as "The Responsible Years" because what we do in this decade will carry the responsibility for what Hawaii will be in the year 2000.

This bill reiterates the primary concerns of your Committee. These concerns are:

(1) Concerns for solving the immediate problems and challenges created by technological, ecological and demographic developments;

(2) Concern about the effectiveness of State programs;

(3) Concern that the State's limited financial resources are utilized effectively; and

(4) Concern about predicting the future that will be and designing the future that can be.

Your Committee, therefore, feels that there is an optimism and clear commitment to support programs and activities which respond directly to human values and needs - the advancement of the standard of living in our State and insuring maximum opportunities for all of our people to advance and realize their potential.

It is with such a philosophy that your Committee reviewed the requests for supplemental appropriations.

#### **Ecology, Environment and Recreation**

Your Committee's concern of the potential ecological and environmental problems to be faced in the future is reiterated through the proposed programs contained herein. The proposals relate to the development of policies and programs which will facilitate the realization of "quality of life" for our people.

The proposals, though difficult to attain or appreciate in the immediate future, will establish a foundation upon which programs can be developed. Your Committee recommends a high priority be given toward the establishment of an urban quality growth policy for the State. That research and devel-

opment of policies and programs relating to population dispersion and growth must be one of the major undertakings on the part of the State if we are to achieve a balance distribution of open space, recreation, culture and economics complementing the lifestyles of our people. In addition, the development of a master plan for noise control and abatement is proposed.

Your Committee in recommending the funding for the sewers program cautions the administration in its implementation at the expense of other State programs. It should be noted that alternative funding measures of the sewers program should be considered.

#### **Economic Development**

The thrust of your Committee's recommendations is in the area of capital improvement and the further development of agricultural programs. Substantial investment on the part of the State to maintain the economy of Kohala has been recommended in this bill and in separate measures. The improvement to Waikiki is another priority of the Committee in recognition of the impact Waikiki maintains on the total State economy. Another area of emphasis is in the farm loan programs.

#### **Education and Culture**

Your Committee in its effort to achieve "comprehensiveness" in the community colleges has provided funds for the expansion of the continuing education for women program to the community colleges. The availability of this program will increase opportunities for women who are high-school dropouts, young mothers, divorcees and widows, career women, and women never employed; and to establish an Allied Health Program in the Kauai Community College. It has also provided \$50,000 and three positions to implement the food service program at the Leeward Community College.

In deliberation of the State ETV's responsibility for the enrichment of the lives of television viewers whose primary objective is not specifically "educational," funds are provided for the filming of a historic pageant, "The Fiftieth Star" and to continue the production of the labor-oriented ETV series "Rice and Roses."

Your Committee believes that in the near future public television will have the poten-



tial to broaden and enrich the lives of television viewers through meaningful offerings. Your Committee expects all executive agencies to fully utilize public television for the purposes of producing informational programs to acquaint the public with services and agencies they might not otherwise hear about, such as consumer protection services, legal aid and public defender services, and OEO and Progressive Neighborhood Programs.

Your Committee recognizing the importance of providing opportunities to today's youth, has provided for the continuation of the Pacific Asian and Affairs Program, Honolulu Youth Theatre, Honolulu Youth Symphony, Young Farmers Program and the Honolulu Symphony Society. It is your Committee's belief that the cultural enrichment will enhance the quality of life of today's youth.

#### **Government Direction and Support Services**

Pursuant to Article III, Section 4 of the State of Hawaii Constitution, your Committee has provided funds to defray the expenses of the Legislative Reapportionment Committee.

#### **Health**

Your Committee, being cognizant of the health of our people and the importance of maintaining health facilities has provided funds to assist the Molokai General Hospital maintain a sound financial position. In addition, an appropriation has been recommended to assist the Waikiki Drug Clinic.

#### **Human Resources**

Your Committee is firmly committed to the objective of enabling individuals and families in need of aid to attain an adequate standard of living. To further promote the achievement of the social and psychological adjustments necessary for successful living in modern society, your Committee has provided for the development of programs to aid youth, the elderly and for children's day care.

#### **Human Rights and Justice**

Your Committee has provided funds for the printing of the recently enacted Hawaii Penal Code and for other purposes which are intended to safeguard individual and property rights.

#### **Transportation**

Your Committee has provided funds for the research and development of policies and programs relating to modes of transportation in its effort to facilitate the physical movement of people and goods into and from the State and from place to place within the State.

#### **State Financial Position**

Your Committee is mindful of the decreasing growth rate of tax revenues which is affecting the State's effort in implementing programs. The growth rate has been partially affected by the accelerated tax refund policy implemented by the department of taxation. In addition, the general economy has been stabilized to a degree as a result of international fiscal policies and the general slowdown of economic activities on the national and local level. Your Committee is of the opinion that the economy will generally begin to accelerate barring any major economic disturbances.

In view of the above, your Committee recommends that the State continue its efforts in developing programs vital to the welfare of our people. That the resources will be available to implement programs will be dependent upon the administration's spending policies and the management of the State's cash flow program. Your Committee notes that the administration has through existing laws, the authority to implement fiscal programs necessary to cover expenditures that may adversely affect the State's financial position.

Section 103-6, Hawaii Revised Statutes allows the Governor to borrow on a temporary basis monies from funds under his jurisdiction subject to certain limitations.

Section 37-53, Hawaii Revised Statutes allows the Governor to transfer any unrequired balances of special funds accounts into the general fund account.

Your Committee further notes that legislation that would increase the administration's authority over public funds are being considered during the current legislative session. These include legislation on grants-in-aid, retirement system contribution, and health fund benefits. It should be noted that these legislative proposals do not reduce employee benefits, but would facilitate the development of programs on a statewide basis and increase the purchasing power on the part of the State. In addition, your Committee has also proposed legislation on lapsing of prior ap-



propriations that would increase the availability of resources.

Your Committee is aware of the revenue-sharing legislation which is now pending before the United States Congress and has taken this into consideration in suggesting ways and means of maintaining a sound financial position.

Your Committee strongly recommends that the administration continue its prudent fiscal policies and maintain a manageable level of spending.

Your Committee on Conference is in accord with the intent and purpose of **H. B. No. 1636-72, H. D. 1, S. D. 1**, as amended herein, and recommends its passage on final reading in the form attached hereto as **H. B. No. 1636-72, H. D. 1, S. D. 1, C. D. 1**.

Representatives Suwa, Akizaki, Kane-shiro, Kondo, Morioka, Young, Ajifu, Fong, Poepoe, Inaba, Kishinami, Kuni-mura, Wong, Yim, Chong and Oda.  
Managers on the part of the House.

Senators Yoshinaga, Yamasaki, Nishi-mura, Toyofuku, Henderson and Lum.  
Managers on the part of the Senate.

**Conf. Com. Rep. 8 on S. B. No. 1862-72**

The purpose of this bill is to amend various provisions of the Workmen's Compensation Law (Chapter 386, Hawaii Revised Statutes) relating to the special compensation fund in order to insure its solvency; and, by floor amendment in the Senate, prescribing alternate methods by which the director of labor shall determine charges for medical and hospital services.

As to the special compensation fund, the bill, as introduced, because of the serious financial condition thereof, propose to take the following steps:

1. Remove the present individual employer maximum aggregate liability for income and indemnity benefits of \$35,100 for a single industrial accident as provided for in Secs. 386-31 and 386-32.

2. For the calendar year 1972 only, require insurance carriers to pay a special assessment (surcharge) one and one-quarter per cent on gross workmen's compensation insurance premiums written by carriers in the calendar

year 1971.

3. For the calendar year 1972 only, require employers not insured under Sec. 386-121(a) to pay a special assessment (surcharge) equal to the special charge as defined and in accordance with the provisions of Sec. 386-154.

The assessments would be due and payable within 30 days from receipt of notification by the department of regulatory agencies.

This bill retains the \$35,100 maximum benefit chargeable to the employer for permanent partial disability injuries. Your Committee feels that lifting of the ceiling of \$35,100 maximum benefit chargeable to the employer would have a substantial adverse affect on the cost of Workmen's Compensation. Your Committee recommends that the Director of the Department of Labor and Industrial Relations make a thorough study of the Special Compensation Fund and submit the findings to the legislature.

Your Committee has amended the bill by amending Part (a) of Section 5 by deleting the words 'three-quarters of one' and substituting the words 'one and one-quarter.' Your Committee finds that the present levy of three-quarters of one per cent on gross premiums on workmen's compensation insurance issued does not provide the necessary revenues to pay qualified beneficiaries. Whereas, pay-outs have been increasing at a rate of 48%, receipts have been increasing at a rate of only 16.3%. It is estimated that the regular assessment of three-quarter of one per cent and the recommended one and one-quarter per cent surcharge for the calendar year 1972 only is estimated to be about \$639,381, estimated payout for calendar year 1972 is \$549,697, thus a remaining balance of \$89,000 at the end of the year would carry the Fund through February and March of next year.

Your Committee on Conference is in accord with the intent and purpose of **S. B. No. 1862-72, S. D. 2, H. D. 1** as amended in the form attached hereto as **S. B. No. 1862-72, S. D. 2, H. D. 1, C. D. 1** and recommends its passage on final reading.

Representatives O'Connor, Kimura and Yamada.

Managers on the part of the House.

Senators Toyofuku, Yoshinaga and Hen-

derson.

Managers on the part of the Senate.

**Conf. Com. Rep. No. 9 on S. B. No. 1502-72**

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in **S. B. 1502-72, S. D. 2, H. D. 1**, entitled: "A BILL FOR AN ACT RELATING TO A RESIDENTIAL LANDLORD-TENANT CODE", having met, and after full and free discussion, have agreed to recommend and do recommend to their respective Houses the final passage of this bill in an amended form.

The purpose of this bill is to establish a comprehensive residential landlord-tenant code under which the law governing residential landlord and tenant relations would be restated in a manner consistent with recent court decisions, with the residential rental market, and with the objective of improving such landlord and tenant relations. The code would spell out in some detail the respective rights, obligations, and remedies of residential landlords and tenants.

The proposed codification of this fundamental area of the law must be undertaken with great care, for the code is intended to be comprehensive and to serve as the basis for future law that will be developed by the courts. For this purpose and in furtherance of the code's design for even-handed treatment of the interests of both landlords and tenants, your Committee recommends the following amendments to **S. B. 1502-72, S. D. 2, H. D. 1**:

1. Amend sec. -7(2) to clarify that university student and faculty residence in a structure directly controlled and managed by the University of Hawaii or in a structure erected on land leased by a nonprofit corporation from the University of Hawaii for such student and faculty housing is excluded from applicability of the code.

2. Amend sec. -7(6) to provide that occupancy by an employee of the owner or landlord whose right to occupancy is conditional upon such employment or by a pensioner of the owner or landlord is excluded from applicability of the code.

3. Renumber sec. -23 as sec. -22.

4. Delete from sec. -44(c) the phrase "whichever is earlier" as surplusage.

Your Committee on Conference is in accord with the intent and purpose of **S. B. No. 1502-72, S. D. 2, H. D. 1**, as amended and in the form attached hereto as **S. B. No. 1502-72, S. D. 2, H. D. 1, C. D. 1**, and recommends its passage on final reading.

Representatives O'Connor, Kimura, Kawakami, Roehrig, Judd, Yamada and Carroll.

Managers on the part of the House.

Senators Ushijima, Kawasaki, Takitani, Wong, Mills and Lum.

Managers on the part of the Senate.

**Conf. Com. Rep. No. 10 (Majority) on H. B. No. 2439-72**

Your Committee on Conference on the disagreeing vote of the House of Representatives to the amendments proposed by the Senate in **H. B. No. 2439-72, H. D. 1, S. D. 2**, entitled: "A BILL FOR AN ACT RELATING TO THE STATE HIGHER EDUCATION LOAN FUND," begs leave to report as follows:

The purpose of this bill is to appropriate \$300,000 out of the general revenues of the State of Hawaii to augment the State Higher Education Loan Fund (S.H.E.L.F.), and to amend the age of majority in conformity with recent legislation.

Your Committee has reviewed the provisions of this bill and has reinstated the residency provision whereby recipients of the loans provided herein shall "have been residents of the State for at least one year" prior to their receipt of said loans, which your Committee believes to be a reasonable and just pre-requisite for the granting of State loan assistance.

Your Committee on Conference is in accord with the intent and purpose of **H. B. No. 2439, H. D. 1, S. D. 2**, as amended herein, and recommends its passage on final reading in the form attached hereto as **H. B. No. 2439-72, H. D. 1, S. D. 2, C. D. 1**.

Representatives Kimura, Kishinami and Ajifu.

Managers on the part of the House.

Senators Wong, Yoshinaga and Mills.

Managers on the part of the Senate.

Senator Yoshinaga did not concur.

**Conf. Com. Rep. No. 11 on H. B. No. 1638-72**

Your Committee on Conference on the disagreeing vote of the House to the amendments proposed by the Senate in **H. B. No. 1638-72, H. D. 1, S. D. 1**, entitled: "A BILL FOR AN ACT RELATING TO GENERAL PUBLIC IMPROVEMENTS AND THE FINANCING THEREOF, MAKING APPROPRIATIONS FOR PUBLIC IMPROVEMENTS AND PLANS RELATED THERETO OUT OF GENERAL REVENUES, SPECIAL FUNDS, GENERAL OBLIGATION AND REVENUE BOND FUNDS AND GRANTS; AND PROVIDING FOR THE ISSUANCE OF BONDS.", having met and after full and free discussion, have agreed to recommend, and do recommend, to their respective Houses, the final passage of this bill in the amended form.

The purpose of this bill is to appropriate or authorize, as the case may be, funds for the financing of general public improvements for the fiscal year 1972-73.

The projects herein contained have been conceived to accommodate current capital improvement requirements and are intended, essentially, to complete or complement projects contained in Acts 68 and 197, Session Laws of Hawaii, 1971. They are formulated consistent with the comprehensive implementation of State programs, notwithstanding that your Committee has provided for the appropriation of funds to the counties sufficient for the purpose of meeting the functional responsibilities of local government.

Significant projects are included within general obligation bond funding for compliance with air and water quality control standards (particularly for construction of sewerage facilities throughout the State). Sizeable State matching appropriations are also provided for other State and county projects, including parks and recreational facilities, highway improvements and educational facilities. The programs hereby prescribed by the projects funded are projected to preserve, and enhance the level of public benefit hereby introduced into use.

Your Committee is in accord with the intent and purpose of **H. B. No. 1638-72, H. D. 1, S. D. 1**, as amended herein, and recommends its passage on final reading in the form attached hereto as **H. B. No. 1638-72, H. D. 1, S. D. 1, C. D. 1**.

Representatives Suwa, Akizaki, Kane-shiro, Kondo, Morioka, Young, Ajifu,

Fong, Poepoe, Inaba, Kishinami, Kuni-mura, Wong, Yim, Chong and Oda.  
Managers on the part of the House.

Senators Yoshinaga, Yamasaki, Nishimura, Toyofuku, Henderson and Lum.  
Managers on the part of the Senate.

**Conf. Com. Rep. No. 12 on S. B. No. 1588-72**

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in **S. B. No. 1588-72, S. D. 2, H. D. 1**, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC BROADCASTING," having met, and after full and free discussion, have agreed to recommend and do recommend to their respective Houses the final passage of this bill in an amended form.

The purpose of this bill is to establish a public broadcasting authority composed of an appointive board principally to control and manage facilities for educational television, and to produce and otherwise obtain programs for broadcast intended to enlighten Hawaii's people. Specifically, this bill will provide implementation for the recommendations of the Senate Interim Committee on Educational Television, as outlined in **Special Committee Report No. 4**. It establishes an organization to be known as the "Hawaii Public Broadcasting Authority" under a governing body to be known as the "Board of Public Broadcasting" whose members are appointed by the Governor, with the advice and consent of the Senate. Appointments are for staggered six-year terms, and the members serve without compensation, except for travel and other expenses. In addition to the appointed members, the President of the University of Hawaii and the Superintendent of the Department of Education will serve as ex-officio, non-voting members of the Board.

The Authority will replace the Board of Regents of the University of Hawaii as the FCC licensee for KHET, and will serve as the administrative and policy-making body for educational television in Hawaii. The Authority will hire an executive director to function as a general manager of all public broadcasting facilities and manage the day-to-day operations of KHET, and will itself be under the administrative aegis of the Department of Regulatory Agencies.

The provisions of this bill do not require an appropriation of funds during the present Legislative Session. In lieu of new funding,

the bill provides for interim measures whereby all employees of the University of Hawaii Division of Educational Television shall be temporarily assigned to the Public Broadcasting Authority; and the University of Hawaii shall continue to be responsible for expenditures for personnel, property, facilities, equipment and all other costs relating to the management, operation and maintenance of the Educational Television network, as authorized in the 1971-73 biennial budget.

Your Committee upon consideration of this bill recommends that it be amended as follows:

1. The number of members of the Board of Public Broadcasting has been decreased from fifteen to eleven (p. 2, line 5). Accordingly, the number of members for each of the three staggered terms has been decreased from five to four, four and three respectively (p. 2, line 21-22).

2. Therefore, the number of members constituting a quorum and the number who may call a meeting has been decreased from eight to six (p. 3, lines 21 and 13 respectively).

3. A section has been added to establish a revolving fund for the Public Broadcasting Authority to be utilized for receiving and expending funds derived from private sources for services and air-time, and State funds specifically appropriated for deposit into said fund.

Your Committee on Conference is in accord with the intent and purpose of **S. B. No. 1588-72, S. D. 2, H. D. 1**, as amended herein, and recommends its passage on final reading in the form attached hereto as **S. B. No. 1588-72, S. D. 2, H. D. 1, C. D. 1**.

Representatives Kimura, Kishinami and Devereux.

Managers on the part of the House.

Senators, Wong, Yoshinaga and Mills.

Managers on the part of the Senate.

**Conf. Com. Rep. No. 13 on S. B. No. 2008-72**

The purpose of this bill is:

(1) to grant employees of community antennae television companies the same exemption from the provisions of the electricians and plumbers law granted to employees of other public employers;

(2) to provide a definition of "maintenance electrician" in Hawaii Revised Statutes Sec-

tion 448E-1;

(3) to permit persons who are currently licensed as maintenance electricians under an ordinance of any county of the State prior to January 1, 1972, to continue to practice their trade and qualify for renewal of their licenses, and

(4) to "grandfather" persons holding a current and valid electrician's or plumber's license under an ordinance of any county of the State prior to January 1, 1972.

Your Committee has agreed to amend the bill as follows:

(1) Insert a new section six to grant employees of community antennae television companies the same exemption from the provisions of the electricians and plumbers law granted to employees of other public utilities because of the Attorney General's opinion that CATV is a public utility.

Your Committee on Conference is in accord with the intent and purpose of **S. B. No. 2008-72, S. D. 1, H. D. 1**, as amended in the form attached hereto as **S. B. No. 2008-72, S. D. 1, H. D. 1, C. D. 1**, and recommends its passage on final reading.

Representatives O'Connor, Kawakami and Yamada.

Managers on the part of the House.

Senators Ushijima, Taira and Anderson.

Managers on the part of the Senate.

**Conf. Com. Rep. No. 14 on S. B. No. 1823-72**

The purpose of this bill is to allow industrial loan companies to have outstanding investment certificates and registered debentures up to ten times the aggregate amount of its paid-up capital and surplus, and to expand the powers of the bank examiner with respect to the issuance of such debt instruments.

Under existing law an industrial loan company is permitted to issue investment certificates and debentures only up to five times the aggregate amount of its paid-up capital and surplus.

Your Committee after due consideration has made the following amendments to **S. B. No. 1823-72, S. D. 1, H. D. 1**:

(1) Your Committee has agreed to amend the bill to give the bank examiner exclusive supervisory control over the issuance of all debt instruments by industrial loan companies thereby eliminating the inefficiencies re-

sulting from dual regulations which exist at present. Your Committee has further agreed to empower the bank examiner to establish a lower ratio for any industrial loan company than the maximum permitted by law, or even prohibit the issuance of debt instruments altogether, based on certain criteria set forth in the bill.

(2) Your Committee has agreed to amend the effective date to July 1, 1972 to give the bank examiner time to make a preliminary determination of the ratio to be permitted each industrial loan company presently issuing investment certificates and debentures.

Your Committee on Conference is in accord with the intent and purpose of **S. B. No. 1823-72, S. D. 1, H. D. 1**, as amended and attached hereto as **S. B. No. 1823-72, S. D. 1, H. D. 1, C. D. 1**, and recommends its passage on final reading.

Representatives O'Connor, Kimura, Kawakami, Wedemeyer, Judd, Yamada and Medeiros.

Managers on the part of the House.

Senators Ushijima, Kawasaki, Yamasaki, Takitani, Mills, and Lum.

Managers on the part of the Senate.

**Conf. Com. Rep. No. 15 on S. B. No. 1729-72**

The purpose of this bill is to amend Act 185 S.L.H. 1971, "Relating to Counsel and other Services for Indigent Criminal Defendants" by broadening the scope of public defender services and by providing a basis for establishing a procedure which will facilitate and expedite the delivery of such services to an indigent person at all stages of the criminal process, from arrest to discharge.

Your Committee finds that the existing statute relative to public defender services is deficient in several respects:

1. The existing statute does not authorize public defender services in all situations in which an indigent person is constitutionally entitled to legal counsel, such as custodial interrogations, lineups, civil commitments, delinquency proceedings and other pre-arraignment and post conviction situations.

2. By requiring the court to make the initial determination of indigency before public defender services can be provided, the existing statute deprives an indigent person of legal counsel at critical pre-arraignment and other stages of the criminal process.

3. The existing statute does not authorize

staff investigators for the Office of the Public Defender.

Your Committee believes that **S. B. No. 1729-72, S. D. 1, H. D. 1, C. D. 1** will rectify the foregoing deficiencies by providing for responsible changes which will materially improve, without disrupting the existing defender program and the delivery of its services. Thereunder, an indigent person will be entitled to receive legal, investigative and related services at the point of arrest and thereafter at all stages of the criminal and correctional process. Unless otherwise ordered by the court, the initial determination of indigency will be made by the public defender subject to court review.

Since public defender services will be subject to judicial sanction, your Committee is satisfied that this Bill will facilitate and expedite the delivery of defender services to an indigent person while ensuring that such services will not be made available to any person who has the ability to obtain private counsel.

Your Committee has agreed to amend Section 1, subsection (a) by changing one of the conditions for defender services from "imprisonment for more than sixty days" to "imprisonment for thirty days or more." This amendment is necessary to assure legal services for indigents who are arrested for "petty misdemeanors" under the new penal code. The penal code classifies certain offenses, presently misdemeanors, as petty misdemeanors carrying a maximum penalty of thirty days imprisonment. Your Committee finds that the interests of justice require that legal counsel be provided to an indigent person who is arrested for a petty misdemeanor.

Your Committee has also agreed to amend Section 1, subsection (c) by providing that a person "shall" rather than "may" waive his right to counsel by refusing to furnish any information pertinent to the determination of indigency. Your Committee believes that a person who refuses to furnish such information, or an adequate explanation in lieu thereof, after being apprised of his right to counsel and the consequences of his refusal to furnish such pertinent information, should be deemed to have waived his right to counsel.

Your Committee on Conference is in accord with the intent and purpose of the bill as amended in the form attached hereto as **S. B. No. 1729-72, S. D. 1, H. D. 2, C. D. 1**, and recommends its passage on final reading.

Representatives O'Connor, Kimura and

Carroll.

Managers on the part of the House.

Senators Ushijima, Yamasaki and Mills.

Managers on the part of the Senate.

**Conf. Com. Rep. No. 16 on S. B. No. 919**

The purpose of this bill is to amend the existing liquor law in the following respects:

(a) Amend Section 281-2, Hawaii Revised Statutes, by deleting the word "liquor" and substituting therefor the word "alcohol" for purposes of consistency;

(b) Add the following words "who has or is about to obtain liquor for consumption by him on the premises" after the word "minor" in the proviso clause in Section 281-4(c), Hawaii Revised Statutes, for purposes of consistency;

(c) Limit the renewal of a temporary license only once for an additional period not exceeding sixty days. It also eliminates any reference to a "conditional license" because there is no statutory provision for a "conditional license";

(d) Eliminate the requirement that the applicant for a license must state his nationality;

(e) Eliminate the requirement that an application by a corporation must be signed by two or more officers so that the signature of a single officer, if properly authorized, will suffice;

(f) Eliminate the right of protest by registered voters and property owners against renewal of licenses;

(g) Delete the requirement of approval or disapproval of an application by a liquor inspector because existing law does not require the approval or disapproval of an application by a liquor inspector; and

(h) Permit the sale of liquor inventory after non-renewal of a license. Existing law permits the sale of inventory only if a license is revoked or cancelled.

After thorough consideration your Committee has agreed to amend the bill by deleting Section 9 which would have repealed Section 281-82, Hawaii Revised Statutes, and by deleting Section 10. Section 11 is renumbered as Section 9.

Your Committee on Conference is in accord with the intent and purpose of **S. B. No. 919, S. D. 1, H. D. 1**, amended in the form

attached hereto as **S. B. No. 919, S. D. 1, H. D. 1, C. D. 1**, and recommends its passage on final reading.

Representatives O'Connor, Aduja and Kunimura.

Managers on the part of the House.

Senators Ushijima, Kawasaki and Lum.

Managers on the part of the Senate.

**Conf. Com. Rep. No. 17 on H. B. No. 54**

The purpose of this bill is to amend Chapter 84, Hawaii Revised Statutes, relating to standards of conduct for state legislators and employees to provide fairly definite, yet flexible rules of conduct that can be meaningfully enforced. Your Committee agrees with the observations set forth and intent declared in Senate **Standing Committee Report No. 670-72** and incorporates the same as parts hereof except as they are not in conflict with this report.

Subsequent to the adoption of Senate **Standing Committee Report No. 670-72** covering **H. B. No. 54, H. D. 1, S. D. 2**, the Ethics Commission has reviewed said draft and has commented thereon by way of "PRESS RELEASE ON COMMISSION POSITION ON **H. B. No. 54, S. D. 2**," dated April 12, 1972, a copy of which is attached hereto as Exhibit "A" and made a part hereof by reference. Your Committee has reviewed the press release containing the suggested amendments and has substantially complied with the amendments proposed by the Ethics Commission thereby strengthening the ethics code. More particularly, your Committee has amended **H. B. No. 54, H. D. 1, S. D. 2** in the following respects.

1. The Ethics Commission suggested that section 84-2(10) H.R.S., which reads "Unwarranted" means unauthorized under this chapter." be deleted as ambiguous. Your Committee has deleted section 84-3(10), H.R.S.

2. The Ethics Commission suggested that section 84-3(6) H.R.S., be amended to expand the definition of "financial interest" to cover (a) a loan or other debtor interest and (b) a directorship or officership in a business. Your Committee has accordingly included such interests within the definition of "financial interest."

3. The Ethics Commission suggested that a proviso be added to a paragraph within a section 84-13, H.R.S., so that the paragraph shall read:

"Nothing herein shall be construed to



prohibit a legislator from introducing bills and resolutions, serving on committees or from making statements or taking action in the exercise of his legislative functions, provided that the legislator has previously filed a full and complete public disclosure of the nature and extent of the interest or transaction affected by legislative action.

Your Committee disagreed with the suggested amendment and did not include the proviso. The effect of the proviso would make the filing of a disclosure a **condition precedent** to any exercise of the legislative functions. Article III, Section 8, of the Hawaii Constitution provides in part that "No member of the legislature shall be held to answer before any other tribunal for any statement made or action taken in the exercise of his legislative functions; . . .". The Ethics Commission, having jurisdiction under the code, and being a separate tribunal would have power to restrict and disqualify the legislator's right to exercise his legislative function if a legislator fails to file a disclosure. To restrain and disqualify a legislator from exercising his legislative functions deprives the constituents of the disqualified legislator from the representation to which they are entitled. The proviso militates against **representative** government. It is sufficient that failure to disclose is made a violation under the Act and subject to the penalties thereunder. Thus, your Committee has amended the paragraph to read as follows:

"Nothing herein shall be construed to prohibit a legislator from introducing bills and resolutions, serving on committees or from making statements or taking action in the exercise of his legislative functions. Every legislator shall file a full and complete public disclosure of the nature and extent of the interest or transaction which he believes may be affected by legislative action."

4. The Ethics Commission has recommended that section 84-17, H.R.S., relating to requirements of disclosure be amended to read as set forth in Exhibit "A". Your Committee has accepted the recommendation except that the disclosures of any additions, deletions, etc., of financial interest to be made within 30 days after the change was not acceptable. There are many who deposit money in savings accounts on a regular basis or pay a loan on a regular basis so that it would require continuing disclosure of a changing saving or loan amount. Reporting once a year is sufficient to effectively check conflicts of interest.

5. The Ethics Commission suggested that all disclosures be filed with the Ethics Commission and be made a matter of public record. Your Committee believes that disclosure to the Ethics Commission is sufficient for it to effectively enforce the code. Your Committee has provided that the employee shall file his disclosure with the Ethics Commission and that the legislator shall file his disclosure with the Presiding Officer of the legislative House of which he is a member, the Ethics Commission being also provided with a copy of the legislator's disclosure. While confidentiality is maintained, the bill as amended allows each of the legislative Houses to make the disclosure available for public examination as the rules of each House may prescribe.

Your Committee has provided for substantially all the suggestions of the Ethics Commission. Sound reasons have been provided herein for those suggestions found unacceptable.

Your Committee on Conference is in accord with the intent and purpose of **H. B. No. 54, H. D. 1, S. D. 2**, as amended in the form attached hereto as **H. B. No. 54, H. D. 1, S. D. 2, C. D. 1**, and recommends its passage on final reading.

Representatives O'Connor, Kimura, Sakima, Wedemeyer, Juss and Yamada.  
Managers on the part of the House.

Senators Takitani, Toyofuku and Mirikitani.  
Managers on the part of the Senate.

#### PRESS RELEASE ON COMMISSION POSITION ON H. B. No. 54, S. D. 2

We have reviewed **H. B. 54, S. D. 2**, as reported out by the Senate Committee on Public Employment. We cannot, at this time, support **S. D. 2** because it rejects the principle of full and current public disclosure which the Commission supported and recommended in **H. B. 54, H. D. 1** and **S. D. 1**, and at the same time removes legislative actions from ethical consideration under HRS, §84-13.

The Commission believes that the removal of legislators from HRS, §84-13, should be effected only if 1) there is a **full and current public** disclosure requirement administered and enforced by the Commission and 2) a proviso or reservation to this effect in §84-13. We have suggested amendments to **S. D. 2**

and trust that the Conference Committee will seriously consider the suggested amendments attached hereto.

#### **Suggested Amendments to S. D. 2**

Delete §84-3(10); or, reinstate S. D. 1: "unwarranted" means unjustified, unauthorized; a result which might not have been otherwise achieved.

**Reason:** The definition provided by S. D. 2 is ambiguous and confusing.

Amend §84-3(6) to read:

"Financial interest" means an interest held by an individual, his spouse, or minor children which is:

(A) An ownership interest in a business.

(B) A creditor interest in an insolvent business.

(C) An employment, or prospective employment for which negotiations have begun, or

(D) An ownership interest in real or personal property.

(E) A loan or other debtor interest.

(F) A directorship or officership in a business.

**Reason:** The above clarify ambiguity in present law.

§84-13 Add proviso as follows to 2nd full paragraph:

"Nothing herein shall be construed to prohibit a legislator from introducing bills and resolutions, serving on committees or from making statements or taking action in the exercise of his legislative functions, provided that the legislator has previously filed a full and complete public disclosure of the nature and extent of the interest or transaction affected by legislative action."

**Reason:** The removal of a legislator's action from the purview of the Commission should be accompanied by appropriate safeguards to the electorate. In a democracy, freedom of information of action by government and government officials should also include the freedom to know the conflicting financial interests of public servants. It is fundamental that a public trustee disclose financial interests which conflict with the public interest. Therefore, before a legislator takes action in the legislature on such matters, he should be required to publicly disclose the particular interest or transaction being

affected by such legislative action.

#### **§84-17 Requirements of disclosure.**

(a) Every employee shall within 30 days of the commencement of public employment or term of public office, file a disclosure of his financial interests which may be affected by the state agency of which he is an employee or by a state agency which may exercise official action over such interest. The disclosure shall state the nature and extent of such interest; provided that the extent of such interest may be stated in terms of number of shares, percentage or value. Within 30 days of any deletion, addition, transfer or termination of any financial interest, the employee shall notify the Ethics Commission of such deletion, addition, transfer or termination.

(b) Every legislator shall within 30 days of the commencement of public office file a disclosure of financial interests, relationships or transactions, including the nature and extent of such interest, relationship or transaction, which may be affected by a State agency, provided that the extent of such interest may be stated in terms of number of shares, percentage or value. Within 30 days of any deletion, addition, transfer or termination of any financial interest, the employee shall notify the Ethics Commission of such deletion, addition, transfer or termination.

(c) The information on the disclosures required herein shall be a public record filed with the Ethics Commission.

(d) Except for legislators, or employees removable only by impeachment, the filing of disclosures pursuant to this section shall be a condition of entering upon and continuing in public employment.

(e) With respect to legislators or employees removable only by impeachment, the failure to file a disclosure pursuant to this section shall be deemed to be a violation of this chapter."

**Reason:** 1. Public employees and legislators are public trustees. Financial conflicts of interest should be a matter of public record. The public record should state the nature and extent of the interest, relationship or transaction so that the public may make an intelligent decision with respect to the conduct of their employees and legislators. This is even more essential when legislative action is removed from purview of HRS, §84-13.

2. Amendments to a disclosure should be timely and made as they occur so that the facts are known prior to the taking of potentially conflicting public action.



## SPECIAL COMMITTEE REPORTS

### Special Com. Rep. 1 on Credentials

Your Committee on Credentials begs leave to report that it has investigated, considered and reviewed the matter of the seating of Patsy K. Young as a member of the House of Representatives of the Sixth Legislature of the State of Hawaii, Regular Session of 1972.

Your Committee, to which was referred the communication from the Governor of the State of Hawaii on the appointment of Patsy K. Young to fill the vacancy created by the election of the Honorable Joseph T. Kuroda to the Senate, representing the Fourth Senatorial District, has reviewed the communication of appointment, and her qualification, and finds her to be qualified and recommends that Patsy K. Young be seated as a member of the House of Representatives from the Twentieth Representative District.

Signed by Representatives Kimura, Ajifu, Fong, R. Garcia, Kato, Lunasco, Poepoe, Takamine and Wasai.

### Spec. Com. Rep. No. 2

Your joint Senate-House interim committee on the Hawaii Penal Code authorized to study the proposed Hawaii Penal Code, pursuant to **Senate Concurrent Resolution No. 90** and **House Concurrent Resolution No. 105**, entitled:

“REQUESTING AN INTERIM COMMITTEE TO STUDY H. B. No. 20, H. D. 1, S. D. 1, RELATING TO THE HAWAII PENAL CODE”,

begs leave to report as follows:

The purpose of our study was:

1. to thoroughly research and review the Judicial Council of Hawaii's (Proposed) Hawaii Penal Code;

2. to study most intensively the areas of significant change in the substantive law of Hawaii, proposed by the Code, as noted by Senate **Standing Committee Report No. 599-71**;

3. to carefully consider the technical, practical and philosophical implications of the proposed code; and

4. to review all legislation enacted by the 1971 Legislature that affects or is affected by the Proposed Hawaii Penal Code.

### Background - National roots

In 1961, the Director and Assistant Director of the American Law Institute reported:

“Criminal law in the United States, although relied upon by society for protection of citizens against the severest kinds of harm that may be inflicted against men and institutions, has long been neglected by those concerned with the betterment and improvement of the law. It did not receive the special attention that had been accorded the other branches of the law in the sense of systematic analysis and synthesis and the bringing to bear on its basic problems the relevant knowledge that had been developed in the social sciences.”<sup>1</sup>

A year later, the American Law Institute published the Model Penal Code, the product of a ten year study of America's criminal laws. It provided the impetus, momentum and source of ideas for a national penal law revision movement which has since involved over 40 states and the Federal government.

### Legislative History

The State of Hawaii, aware of the shortcomings of its own archaic criminal laws, responded to the American Law Institute's stimuli. In 1963, legislative interest resulted in **House Resolution No. 242**. It requested the Legislative Reference Bureau of the University of Hawaii to make a comparison between Hawaii's and Illinois' criminal laws. Illinois was selected because it had recently codified its penal laws in 1962. It used as its guide the American Law Institute's Model Penal Code. The report was prepared in three parts and published in April, 1965. In 1966, pursuant to legislative authorization and appropriation (**Senate Resolution 88** and **House Resolution 139**, 1966; Act 29, Session Laws of Hawaii 1966; Act 125, Session Laws of Hawaii 1967; and Act 31, Session Laws of

Hawaii 1968), the Judicial Council of Hawaii undertook the task of preparing a proposed revision of the penal laws of the state of Hawaii. To accomplish this task, the Council established the Penal Law Revision Project composed of the Committee on Penal Law Revision and its staff.

Three years later in 1970, the first systematic restatement of Hawaii's criminal law was presented to the State Legislature for enactment as the Hawaii Penal Code (S. B. No. 1739-70 and H. B. No. 1896). However, the legislature in its deliberations, decided to defer legislative action on the Code so there would be more time to study the voluminous 359 page document.

In 1971, the Senate and House Judiciary Committees worked on the Code (S. B. 35 and H. B. 20) submitted by the Judicial Council. Both committees formulated elaborate notification procedures and extensive hearing schedules, including joint hearings on the neighbor islands. Every effort was made to publicize the document and to obtain public views of its contents.

As a result of the hearings and testimonies presented before the committees, extensive findings and studies were accumulated. However, in a revision of this magnitude and complexity, areas of concern and differences of opinion were inevitable. A conference committee on the code was appointed. However, having had less than five days to resolve these differences it found that such time was too short to properly make decisions which would have such a profound and fundamental effect.

### Organization

Your Committee consisted of Senator John T. Ushijima and Representative Dennis O'Connor, who served as co-chairmen of the joint interim committee. The following legislators served as members: Senator Duke T. Kawasaki, Senator Joseph T. Kuroda, Senator Mamoru Yamasaki, Senator Tennyson K. W. Lum, Senator Eureka B. Forbes, Representative Richard A. Kawakami, Representative Stanely H. Rohrig, Representative Frank C. Judd, and Representative Dennis Yamada.

1. Goodrich and Walkin, *The Story of Our American Law Institute*, 1961, p. 22

### Progress

Your Committee reports significant progress in completing its study and preparing its recommendations. The committee met seventeen times for approximately seventy committee hours at intervals from September 10, 1971 through January 14, 1972.

Your Committee wishes to acknowledge the assistance of the following persons who testified on request of the committee: The Governor's Ad Hoc Committee on Substance Abuse; Mr. Andy Lyons, Office of the Governor; Assistant Chief of Police, Itsuku Murakami and members of the Honolulu Police Department; Office of the Prosecutor, City and County; Daniel B. T. Lau, President, and the members of the Hawaii Humane Society; Tanny S. Hong, Deputy Attorney General; Patricia K. Putman, Associate Researcher, Legislative Reference Bureau; Judge Masato Doi, Chairman, Judicial Council of Hawaii's Penal Law Revision Project; Myron Thompson, Director of Social Services and Housing; Ray Belnap, Administrator, Corrections Division; John Howard Association; Office of the Public Defender; Dr. Louis Cassarett, Department of Pharmacology, University of Hawaii; Hyman Greenstein, Honolulu Attorney; Barry Bollenson, H.C.C.D.; Waikiki Drug Clinic; Mr. Herb Brentlinger, Governor's Action Committee for Young Adults; Robert Fukuda, United States Attorney; Mr. Earl Chun, Board of Pardons and Paroles; Dr. Edward Lewis, Jr., Chief Medical Officer, Federal Bureau of Narcotics and Dangerous Drugs, Dept. of Justice; Mr. Kenneth Baumgartner, Legal Officer, Bureau of Narcotics and Dangerous Drugs, Dept. of Justice; Residents Advisory Council of Oahu State Prison; and the Hawaii Hotel Association.

### General Observations

The following observations provide the foundation and framework for the committee's recommendations.

1. Your Committee appreciates the necessity to codify the criminal laws of the State of Hawaii. The source of most of our present criminal law is the 1869 Penal Code of the Hawaiian Kingdom, compiled from the Penal Code of 1850. The balance was enacted piecemeal over the next 103 years. Consequently, the criminal laws of Hawaii are in many instances outdated technically, philosophically and socially. Though the times

and tenor of the people have changed over the past 122 years many of our criminal laws have not. Therefore, time and people have created a need for revision to align the criminal law with society's values and modern public policy.

Your Committee further notes that although most of the substantive provisions proscribing criminal conduct are found in Title 37 and 38 of the Hawaii Revised Statutes, our present criminal liability provisions are found scattered throughout the statutes. Moreover, many areas of the law have never been codified, having been left to a case by case development. Such development of this aspect of our criminal law has been sporadic, at best.

2. Your Committee concurs with Senate **Standing Committee Report No. 599-71**, and House **Standing Committee Report No. 277-71** that the proposed draft, basically, will effect a redefinition of criminal offenses, contemporize language, eliminate inconsistencies, logically rearrange criminal provisions and amend substantive criminal law, resulting in a clear, accessible body of law for Hawaii.

### **Recommendations**

Your Committee finds that ten specific areas of the Proposed Code should be treated separately and discussed in some detail by this report. These major areas of concern on which your Committee focused and to which your Committee recommends amendment to **H. B. 20**, **H. D. 1**, **S. D. 1** are as follows:

### **Principles of construction**

Your Committee recommends amendment of Section 104, to limit the scope of the fair import principle contained within that section. It is also the intent of the Committee that the definitions of crimes are to be strictly construed. Your Committee finds that the broad wording of Section 104, as stated in the Judicial Council's Proposed Draft, would subject the Code to unwarranted argument and wishes to avoid this possibility through the limitation imposed by the amendment.

### **Commentary**

It is your Committee's recommendation that the commentary should not be used as evidence of legislative intent, and therefore, should be deleted from the bill. However,

your Committee recommends that the commentaries be published with the Code as an aid in understanding the provisions of the Code. The Committee further recommends that an attorney be hired to update and to revise the commentaries including the citations in conformity with the amendments made to **H. B. 20**, and to delete historical and general information where not relevant.

### **Sentence for the offense of murder**

Your Committee recommends the amendment of Section 606 to provide for life imprisonment without possibility of parole in four instances which the Committee believes are so heinous to the security of our society that the severest deterrent penalty should be required. However, to provide hope of rehabilitation which concurrently adds to the safety of other prisoners, your Committee further recommends the amendment, as provided herein, that after twenty years of imprisonment, the Board of Pardons and Paroles, and the Director of Social Services and Housing prepare an application for the governor to commute the sentence to life with parole. It is the intent of your Committee that the term "peace officer" includes judges and prosecuting attorneys. It is also the intent of your Committee that the Proposed Code's Section 101 shall apply to prisoners presently serving sentences of life without parole are, after twenty years of imprisonment, subject to the same review as provided in Section 606.

### **Negligent Homicide**

Your Committee recommends amendment of Section 703, as provided herein, to limit negligent homicide to the offense defined by present law. The Committee believes that expansion of the offense beyond the scope of present law, which is specifically limited to negligence in the operation of a motor vehicle, would serve no valid purpose.

### **Sex Offenses**

Your Committee recommends amendment of Section 730(1)(b), 731(1)(b), 733(1)(b), 734(1)(b), 736(1)(b), 737(1)(b) and 738(1) to eliminate the requirement of actual knowledge and to increase the age of consent from 12 to 14 years. While your Committee appreciates the fact that the onset of puberty comes earlier in today's youth than in the youth subject to the first enactment of the

present laws, we believe the most important consideration is the question of maturity levels in relation to chronological age.

Your Committee concurs with the absence of criminal provisions pertaining to fornication, adultery and homosexuality between consenting, sexually mature persons, feeling that to invoke the criminal process serves no social function. However, applying the same principle, the Committee recommends adding a new section, Section 741, to this chapter retaining the crime of incest because of demonstrated social need.

#### **Ethics**

Your Committee recommends deletion of the sections pertaining to Corrupt Influence and Abuse of Public Office believing separate legislation would allow more comprehensive, systematic and appropriate treatment of the type of misconduct covered in these sections.

#### **Disorderly conduct and loitering**

Your Committee recommends amendment of Section 1101 on disorderly conduct by deleting subsection (1)(c) because of the unconstitutional vagueness of the phrase "which serves no legitimate purpose of the actor." Accordingly, your Committee suggests that Section 1101(1)(c) be amended as provided herein based on a study and recommendation on the matter by the Department of the Attorney General of the state of Hawaii. The Committee further recommends the deletion of the entire Section 1107 on loitering because of the unconstitutionality due to vagueness of this section. Since under constitutional standards a valid arrest must be supported by probable cause, a state cannot enforce a statute which legitimizes arrest for mere suspicion. Moreover, no statute can unreasonably interfere with a person's freedom to move about or standstill. **People v. Beltrand**, New York County Criminal Court 9/15/70, and **State v. Grahovac**, Sup. Ct., No. 5025, 2/1/71.

#### **Cruelty to animals**

Your Committee recommends amendments, provided herein as Sections 1109 and 1110, relating to cruelty to animals in order to update our present statutory provisions. The Committee felt the single provision in the Proposed Code is too vague to prevent some types of mistreatment of animals now prohibited by law.

#### **Gambling**

The basic thrust of gambling offenses of the Proposed Code is to impose heavy penalties on various forms of institutionalized gambling and at the same time to recognize that society no longer condemns as criminal, casual gambling in a social context. Your Committee recommends amendment of the definition of the term "player" to prevent professional gamblers from avoiding penal liability by claiming status as a "player". Penal liability may only be avoided if the game is social and the "player" is over the age of majority. It is the intent of your Committee that the revised definition precludes a nightclub, hotel, bar, restaurant, or any other business involved in interstate commerce from providing any accommodation for the promotion of any form of gambling.

#### **Drugs and intoxicating compounds**

Your Committee recommends the amendment of Sections 1240 through 1251, as provided herein. The revisions recommended incorporate schedules of drugs, marijuana and marijuana concentrates into the Proposed Code's approach of distinguishing the severity of offense on the basis of the amount of the substance possessed or dispensed. The placing of drugs into several schedules is based on the enactment of the "Comprehensive Drug Abuse Prevention and Control Act of 1970" (Public Law 91-513) which has made it necessary for the United States to update and revise their drug laws. Your Committee has suggested this revision in anticipation of the state of Hawaii adopting a Uniform Controlled Substances Act to achieve uniformity between Hawaii's criminal and health laws and those of the Federal Government to enable government at all levels to control more effectively the drug abuse problem. Your Committee also recommends inclusion of criminal provisions on the abuse of intoxicating compounds which are presently found in Chapter 328 of the Hawaii Revised Statutes relating to the regulatory control of drug abuse.

One area on which the Committee spent a considerable period of study was the disposition of marijuana. Your Committee finds the present sanctions in Hawaii are inconsistent with the philosophy of this Code to penalize according to the degree of social harm. Your Committee finds there is good reason to moderate present punitive laws so that penalties are more in keeping with what is now known

about the potential for abuse and social harm involved. The revisions suggested are directed at the illegal trafficker who either possesses large amounts of dangerous, harmful or detrimental drugs or who distributes it in any amount. Severest penalties are given to the person who distributes to a minor who is at least three years his junior.

Your Committee notes a growing trend towards expanding the methods of controlling drug use beyond the law enforcement approach and recommends that new education and rehabilitation programs be explored.

Your Committee recommends amendment to **H. B. No. 20, H. D. 1, S. D. 1** as appended hereto, and further recommends that **H. B. No. 20, H. D. 1, S. D. 1** with the amendments be enacted into law by the legislature, Regular Session 1972.

Representatives O'Connor, Kawakami, Roehrig, Judd and Yamada.  
Managers on the part of the House.  
Representatives Judd did not sign the report.

Senators Ushijima, Kawasaki, Kuroda, Yamasaki, Forbes and Lum.  
Managers on the part of the Senate.

AMENDMENTS TO HOUSE BILL NO. 20, H. D. 1, S. D. 1			
Page	Section	Lines	Amendments
4	-104	1-3	Delete entire section; "The rule that a penal statute is to be strictly construed does not apply to this Code, but the provisions herein must be construed according to the fair import of their terms.", insert "The provisions of this Code cannot be extended by analogy so as to create crimes not provided for herein, however, in order to promote justice and effect the objects of the law, all of its provisions shall be given a genuine construction, according to the fair import of the words, taken in their usual sense, in connection with the context, and with reference to the purpose of the provision."
5	-105	1-3	Delete entire section; "The commentary accompanying this Code shall be published with the Code and may be used as evidence of legislative intent and as an aid in construing the provisions of this Code in the event of ambiguity.", insert "Reserved."
17	-114(2)	2	Delete "assumed", insert "presumed"
19	-118(5)	1	Insert "a person who acts or" after the word "includes"
19	-118(7)	1	Insert "'him,'" after the word "'he' "
40	-218	3	Delete "or law" after the word "fact"
41	-220	4-7	Delete subsection (1); "the statute or other enactment defining the offense is not known to the defendant and has not been reasonably made available to him, by publication or otherwise, prior to the conduct or result alleged; or", renumber subsection (2) to (1)
55	-234	4-5	Delete subsection (1); "the bodily injury consented to or threatened by the conduct con-

Page	Section	Lines	Amendments
			sented to is not serious; or", renumber subsections
57	-236(1)	1	Delete "shall", insert "may"
60	-300	2	Insert "Believes' means reasonably believes" as a new subsection (1), renumber subsections
71	-307(4)	6-7	Delete "of a person charged with or convicted of a felony." after the word facility, insert "." after "facility."
75	-309(5)(a)	3-7	Delete "unless his belief in the lawfulness of the rule or procedure sought to be enforced is erroneous and his error is due to ignorance or mistake as to the provisions of the Code, any other provision of the criminal law, or the law governing the administration of the institution;"
92	-404(9)	2	Insert the word "non-indigent" before the word "defendant"
101	-412(2)	9	Delete "one year", insert "ninety days"
105	-418(1)(b)	6	Insert "in which case the family court shall have exclusive original jurisdiction," after the word "age,"
105	-418	7-8	Delete "(i) the family court has no jurisdiction over him, or (ii)" after the word "unless"
134	-601	Title	Delete "investigation", insert "diagnosis"
134	-601(1)	1	Delete "investigation", insert "correctional diagnosis"
134	-601(1)	3	Delete "investigation", insert "diagnosis"
134	-601(3)	10	Delete "investigation", insert "diagnosis"
135	-602	Title	Delete "investigation", insert "diagnosis"
135	-602	1	Delete "investigation", insert "diagnosis"
135	-602	6	Delete "probation officer", insert "diagnostic center"
	-605(1)	4	Delete "608", insert "607"
	-605(3)	3	Delete "609", insert "608"
141	-606	3-6	Delete "which shall either be life or twenty years as the court determines. The minimum length of imprisonment shall be determined

Page	Section	Lines	Amendments
			by the board of paroles and pardons in accordance with section 669.”, insert “as follows:
			(a) Life imprisonment without possibility of parole in the murder of:
			(i) a peace officer while in the performance of his duties, or
			(ii) a person known by the defendant to be a witness in a murder prosecution, or
			(iii) a person by a hired killer, in which event both the person hired and the person responsible for hiring the killer shall be punished under this subsection, or
			(iv) a person while the defendant was imprisoned.
			As part of such sentence the court shall order the director of the department of social services and housing and the board of paroles and pardons to prepare an application for the governor to commute the sentence to life with parole at the end of twenty years of imprisonment.
			(b) life imprisonment with possibility of parole or twenty years as the court determines, in all other cases. The minimum length of imprisonment shall be determined by the board of paroles and pardons in accordance with section 669.”
141 142	-607		Delete entire section, “Before sentence is suspended or imposed, the defendant may admit in open court the commission of one or more other crimes and ask that they be taken into account by the court on the issue of his disposition. When the defendant has asked that other crimes admitted in open court be taken into account and the court has not rejected such request, suspension or imposition of the sentence shall bar the prosecution or conviction of the defendant in this State for any such admitted crime.”
142	-608	-	Renumber “607”
143	-609	-	Renumber “608”
144- 145	-610	-	Renumber “609”
146	-611	-	Renumber “610”
148	-621	2	Delete “shall”, insert “may”
149	-623	3	Delete “two years”, insert “six months”
150	-624(2)(g)	2	Delete “weapon”, insert “instruments”



Page	Section	Lines	Amendments
150	-624(2)(g)	2	Insert "by the court" after the word "permission"
163	-661	9	Delete "671", insert "669"
167	-667(2)	3	Delete "shall", insert "may"
167	-667(2)	3	Insert "by the court" after the word "committed"
167	-667(2)	3	Insert "and housing" after the word "services"
168	-668(2)	1	Delete "penal or reformatory", insert "correctional"
169	-669(1)	1	Insert "or an extended" after the word "indeterminate"
169	-669(1)	4	Insert "and housing" after the word "services"
171	-670(7)	2	Delete "defendant is recommitted upon revocation of his parole", insert "parolee's parole is revoked"
172	-671(1)	5	Delete "maximum", insert "minimum"
173	-671(2)	4	Delete "maximum", insert "minimum"
173	-672(1)	3	Insert "and housing" after the word "services"
173	-672(1)	4	Insert "The court shall determine the initial place of confinement and the director shall determine the proper program of redirection and subsequent place of confinement best suited to meet the individual needs of the committed person.", after the word "law."
176	-700(11)	1-2	Delete "and a male and female living together as man and wife regardless of their legal status after the word "married"
182	-703 Title (1)(2)		<p>Delete entire section and title, "Negligent homicide. (1) A person is guilty of the offense of negligent homicide if he negligently causes the death of another person. (2) Negligent homicide is a misdemeanor."</p> <p>Insert "Negligent homicide in the first degree. (1) A person is guilty of the offense of negligent homicide in the first degree if he causes the death of another person by the operation of a vehicle in a grossly negligent manner. (2) Negligent homicide in the first degree is a class C felony."</p>

Page	Section	Lines	Amendments
			Insert new section: "Sec. 704 -Negligent homicide in the second degree. (1) A person is guilty of the offense of negligent homicide in the second degree if he causes the death of another person by the operation of a vehicle in a negligent manner. (2) Negligent homicide in the second degree is a misdemeanor."
186	-715(1)(b)	2	Delete " " after the word "causing"
186	-715(1)(b)(i)	1	Delete "(1)" before the word "evacuation"
186	-715(1)(b)(i)	1	Delete "public" before the word "building"
186	-715(1)(b)(i)	2	Delete "or" after the word "transportation" and insert "."
186	-715(1)(b)(ii)		Delete "(ii) serious public inconvenience."
186	-722(3)	1	Re-number (3) to (4)
188	-722(3)	1	Insert new (3), "In any prosecution under this section it is an affirmative defense, that the person restrained (a) was on or in the immediate vicinity of the premises of a retail mercantile establishment for the purpose of investigation or questioning as to the ownership of any merchandise; (b) was restrained in a reasonable manner and for not more than a reasonable time; (c) was restrained to permit such investigation or questioning by a police officer or by the owner of the retail mercantile establishment, his authorized employee or agent; and (d) that such police officer, owner, employee or agent had reasonable grounds to believe that the person so detained was committing or attempting to commit larceny of merchandise on the premises."
189	-723(1)(a)	1-5	Delete "(a) being a relative of a person less than 18 years old, he knowingly takes or entices the person from his lawful custodian, knowing that he has no right to do so, with the intent to hold the person permanently or for a prolonged period; or"
189	-723(1)		Re-letter subsections
190	-724(2)	1	Delete "misdemeanor", insert "class C felony."
194	-730(1)(b)	2	Delete "whom he knows", insert "who"
			Delete "12", insert "14"
194	-731(1)(b)	2	Delete "whom he knows", insert "who"

Page	Section	Lines	Amendments
			Delete "12" insert "14"
196	-733(1)(b)	2	Delete "whom he knows", insert "who"
			Delete "12", insert "14"
197	-734(1) (b)	2	Delete "whom he knows", insert "who"
			Delete "12", insert "14"
198	-736(1)(b)	2	Delete "whom he knows", insert "who"
			Delete "12", insert "14"
198	-737(1)(b)	2	Delete "whom he knows", insert "who"
198	-737(1)(b)	2	Delete "14", insert "16"
198	-737(1)(b)	2	Delete "6", insert "4"
200	-738(1)	4	Delete "he knows"
200	-739(2)	1-5	Delete "(2) Where lack of consent is based on incapacity to consent, the facts or conditions making the victim incapable of giving effective consent shall be prima facie evidence that the defendant, at the time the conduct was engaged in, was aware of or knew of those facts or conditions."
201	-740	4	Delete "14", insert "16"
202	-741	-	Delete "Testimony of complainant. No person shall be convicted of any felony under this part upon the uncorroborated testimony of the alleged victim. Corroboration may be circumstantial."
202	-741	-	Insert "Incest. "(1) A person commits the offense of incest if he commits an act of sexual intercourse with another who is within the degrees of consanguinity or affinity within which marriage is prohibited. "(2) Incest is a class C felony."
212	-813(2)	1	Delete "misdemeanor", insert "class C felony."
212	-814(2)	1	Delete "petty"
212	-815(2)	1	Delete "violation", insert "petty misdemeanor"
221	-831(1)(b)	1	Delete "\$500", insert "\$200"
228	-840(1)	2	Delete " " after theft, insert ": (a)"

Page	Section	Lines	Amendments
228	-840(1)	4	Insert “;or” after “another”
228	-840(1)	-	<p>Insert “(b) he is armed with a dangerous instrument, as defined in section 700(4) and:</p> <p>“(i) he uses force against the person of the owner or any person present with intent to overcome the owner’s physical resistance or physical power of resistance; or</p> <p>“(ii) he threatens the imminent use of force against the person of anyone who is present with intent to compel acquiescence to the taking of or escaping with the property.”</p>
228	-841(1)(a)	1-2	Delete “(a) he is armed with a dangerous instrument, as defined in section 700(4) and:”
228	-841(a)	3	Delete “(i)”, insert “(a)”
228	-841(a)	6	Delete “(ii)”, insert “(b)”
228	-841(b)	1	Delete “(b)”, insert “(c)”
229	-842	1-9	<p>Delete entire section “Robbery in the third degree.</p> <p>“(1) A person commits the offense of robbery in the third degree if, in the course of committing theft:</p> <p>“(a) he uses force against the person of the owner or any person present with intent to overcome the owner’s physical resistance or physical power of resistance; or</p> <p>“(b) he threatens the imminent use of force against the person of anyone who is present with intent to compel acquiescence to the taking of or escaping with the property.</p> <p>“(2) Robbery in the third degree is a class C felony.”</p>
230	-843	Title	Renumber “843” to “842”
231	-850(b) (8)	1-3	Delete “(8) ‘credit card’ means a writing or other evidence of an undertaking to pay for property or services delivered or rendered to or upon the order of a designated bearer;”
231	-850(b) (9)	1	Renumber “(9)” to “(8)”
237	-858	1-10	Deleted entire section and replaced it with section 861

Page	Section	Lines	Amendments
237	-859	1-10	Deleted entire section and inserted)
237	-860	1-4	Deleted entire section and inserted)
238	-861	1-8	Replaced section 858 and inserted)
-	-862	-	inserted)
-	-863	-	inserted)
-	-864	-	inserted)
-	-865	-	inserted) present credit card offenses Section 730-1
-	-866	-	inserted) to 730-12, HRS
-	-867	-	inserted)
-	-868	-	inserted)
252	-903(2)	2	Delete “medical attention”
262	-1010(2)(b)	2	Insert “ ‘as provided by law,” after the word “function”
269	-1020(1)	4	Insert “correctional or” before the word “de- tention”
269	-1020(2)	1	Delete “C”, insert “B”
269	-1021(1)	2	Insert “correctional or” before the word “de- tention”
269	-1021(2)	1	Delete “misdemeanor”, insert “class C felony.”
270	-1022(1)(a)	3	Insert “correctional or” before the word “de- tention”
270	-1022(1)(b)	1	Insert “correctional or” before the word de- tention”
270	-1022(2)	2	Insert “correctional or” before the word “de- tention”
270	-1022(2)	5	Insert “correctional or” before the word “de- tention”
270	-1022(3)	1	Delete “C”, insert “B”
270	-1023(1)(a)	2	Insert “correctional or” before the word “de- tention”

Page	Section	Lines	Amendments
270	-1023(1)(b)	1	Insert “correctional or” before the word “detention”
270	-1023(2)	2	Insert “correctional or” before the word “detention”
270	-1023(3)	1-2	Delete “petty misdemeanor”, insert “class C felony”
271	-1024(1)	4	Insert “or C” before the word “felony.”
272	-1025(1)	4-5	Delete “a class C felony,”
272	-1025(1)	5	Delete “,” after “misdemeanor”
274	-1029(1)	3	Insert “or C” before the word “felony”
275	Part IV	Title	Delete “and corrupt influence”
276	-1041	-	Delete entire section
277	-1042	-	Delete entire section
278	-1043	-	Delete entire section
279	-1044	-	Delete entire section
280	Part V	-	Delete “Part V Abuse of Public Office”
282	Part VI	-	Renumber Part VI to Part V
287	-1064(2)	1-3	Delete subsection (2), insert “(2) ‘In the course of the same proceeding’ includes separate hearings at separate stages of the same official or administrative proceeding but does not include any stage of the proceeding after the close of the evidence.”
295	-1073	Title	Insert “or by” after the word “of”
295	-1074(3)	1	Delete “C”, insert “B”
296	-1075(2)	1	Delete “misdemeanor”, insert “class C felony.”

Page	Section	Lines	Amendments
296	-1076(1) (a)	2	Delete “or availability” after the word “ver-ity”
298	-1077(3)(a)	4	Delete “offenses”, insert “offense”
303	-1100	-	Insert “(5) ‘animal’ includes every living creature;”
303	-1100	-	Insert “(6) ‘cruelty’, ‘torture’ or ‘torment’ includes every act, omission, or neglect whereby unjustifiable physical pain, suffering or death is caused or permitted.”
304	-1101(1) (c)	1-2	Delete (c) under subsection (1) insert, “(c) creates a hazardous or physically offensive condition by any act which is not performed under any authorized license or permit.”
311	-1107	-	Delete entire section
312	-1108	-	Renumber 1107
313	-1109	-	Renumber 1108
313	-1110	-	<p>Delete entire section, insert, “(1) A person commits the offense of cruelty to animals if he knowingly or recklessly:</p> <p>“(a) overdrives, overloads, tortures, torments, deprives of necessary sustenance, or cruelly beats or needlessly mutilates or kills, or causes or procures to be overdriven, overloaded, tortured, tormented or deprived of necessary sustenance, or to be cruelly beaten, or needlessly mutilated or killed, any living creature.</p> <p>“(b) keeps or uses; or in any way is connected with or interested in the management of, or receives money for the admission of any person to, any place kept or used for the purpose of fighting or baiting any bull, bear, dog, cock or other creature, and every person who encourages, aids or assists therein, or who permits or suffers any place to be so kept or used.</p> <p>“(c) carries or causes to be carried, in or upon any vehicle or other conveyance, any tiring creature, in a cruel or inhuman manner.</p> <p>“(d) sets on foot, or instigates in or does any act towards the furtherance of any act of cruelty to animals.</p> <p>“(2) Subsections (1) (a), (b), (c) and (d) are not applicable to accepted veterinary practices and to activities carried on for scientific research.</p>



Page	Lines	Section	Amendments
			“(3) Whenever any domestic animal is so severely injured that there is no reasonable probability that its life or usefulness can be saved, the animal may be immediately destroyed. “(4) Cruelty to animals is a misdemeanor.”
313	-1110	-	Re-number 1109
313	-	-	Insert new section “1110 Relating to agent of society. The agent of any society which is formed or incorporated for the prevention of cruelty to animals, upon being appointed thereto by the president of such society in any district in the State, may within such district make arrests and bring before any district magistrate thereof offenders found violating the provisions of section 1110 to be dealt with according to law.”
317	-1200	1	Delete “or she”
334	-1220(8)	1-13	Delete entire subsection (8) and inserted new subsection (8), “ ‘Player’ means a person over the age of majority who engages in social gambling solely as a contestant or bettor on equal terms with the other participants therein without receiving or becoming entitled to receive something of value or any profit therefrom other than his personal gambling winnings. ‘Social gambling’ is gambling, or a contest of chance, in which the only participants are players and from which no person, corporation, or other business entity receives or becomes entitled to receive something of value or any profit whatsoever, directly or indirectly, other than as a player, from any source, fee, remuneration connected with said gambling, or such activity as arrangement or facilitation of the game, or permitting the use of premises, or selling or supplying for profit refreshments food, drink service, or entertainment to participants, players, or spectators. A person who engages in ‘bookmaking’ as defined in paragraph (2) is not a ‘player’.”
334	-1221(1)(b)	1	Delete “or” after the word “lottery”
334	-1221(1)(b)	1	Insert “or other gambling” after the word “mutuel”
337	-1223(1)(b)	2	Delete “or” after the word “lottery”, insert “,”
		2	Insert “ ‘or other gambling’ ” after the word “mutuel”
341	-1240-1251		Delete all sections  Insert new sections 1240-1255

## Section 1240 Definitions of terms in this part.

(1) "dangerous drug" means any substance or immediate precursor defined or specified as a Schedule I substance or a Schedule II substance by Chapter 329 of the Hawaii Revised Statutes, except marijuana or marijuana concentrate;

(2) "harmful drug" means any substance or immediate precursor defined or specified as a Schedule III substance or a Schedule IV substance by Chapter 329 of the Hawaii Revised Statutes, or any marijuana concentrate but not marijuana;

(3) "detrimental drug" means any substance or immediate precursor defined or specified as a "Schedule V substance" by Chapter 329 of the Hawaii Revised Statutes, or any marijuana;

(4) "immediate precursor" means a substance which the Department of Health, State of Hawaii, has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture;

(5) "intoxicating compounds" means any compound, liquid or chemical containing toluol, hexane, trichloroethylene, acetone, toluene, ethyl acetate, methyl ethyl ketone, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, or any other substance for the purpose of inducing a condition of intoxication, stupefaction, depression, giddiness, paralysis or irrational behavior, or in any manner changing, distorting or disturbing the auditory, visual or mental processes. For the purposes of this section, any such condition so induced shall be deemed to be an intoxicated condition;

(6) "marijuana" means any part of the plant cannabis sativa, whether growing or not, including the seeds and the resin, and every alkaloid, salt, derivative, preparation, compound, or mixture of the plant, its seeds or resin, except that, as used herein, "marijuana" does not include hashish, tetrahydrocannabinol, and any alkaloid, salt, derivative, preparation, compound, or mix-

ture, whether natural or synthesized of tetrahydrocannabinol;

(7) "marijuana concentrate" means hashish, tetrahydrocannabinol, or any alkaloid, salt, derivative, preparation, compound, or mixture, whether natural or synthesized, of tetrahydrocannabinol;

(8) "minor" means a person who has not reached the age of majority;

(9) "ounce" means an avoirdupois ounce as applied to solids and semi solids, and a fluid ounce as applied to liquids;

(10) "practitioner" means

(a) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this State.

(b) a pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this State.

(11) "to distribute" means to sell, transfer, give, or deliver to another, or to leave, barter, or exchange with another, or to offer or agree to do the same; and

(12) "to sell" means to transfer to another for consideration.

(13) "unlawfully" means:

(a) to possess or distribute a Schedule I, II, III, IV, or V substance, a marijuana concentrate, marijuana, or intoxicating compound, when not authorized by law to do so by an apothecary, physician, dentist, podiatrist, practitioner, or veterinarian; or

(b) to receive and possess a Schedule I, II, III, IV, or V substance, a marijuana concentrate, marijuana, or intoxicating compound, from sources unauthorized by the law to dispense such substances.

Section 1241 Promoting a dangerous drug in the first degree.

(1) A person commits the offense of promoting a dangerous drug in the first degree if he knowingly and unlawfully:

(a) possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of:

(i) one ounce or more, containing any of the respective alkaloids or salts of heroin, morphine, or cocaine; or

(ii) two ounces or more, containing one or more of any of the other dangerous drugs; or

(b) distributes:

(i) 50 or more capsules, tablets, ampules, or syrettes containing one or more dangerous drugs; or

(ii) one or more preparations, compounds, mixtures, or substances of an aggregate weight of

(A) 1/8 ounce or more, containing any of the respective alkaloids or salts of heroin, morphine, or cocaine; or

(B) 1/2 ounce or more, containing any other dangerous drug; or

(c) distributes any dangerous drug in any amount to a minor who is at least three years his junior.

(2) Promoting a dangerous drug in the first degree is a class A felony.

Section 1242 Promoting a dangerous drug in the second degree.

(1) A person commits the offense of promoting a dangerous drug in the second degree if he knowingly and unlawfully:

(a) possesses 50 or more capsules, tablets, ampules, or syrettes, containing one or more dangerous drugs; or

(b) possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of:

(i) 1/8 ounce or more, containing any of the respective alkaloids or salts of heroin, morphine, or cocaine; or

(ii) 1/2 ounce or more, containing any dangerous drug; or

(c) distributes any dangerous drug in any amount.

(2) Promoting a dangerous drug in the second degree is a class B felony.

Section 1243 Promoting a dangerous drug in the third degree.

(1) A person commits the offense of promoting a dangerous drug in the third degree if he knowingly and unlawfully possesses any dangerous drug in any amount.

(2) Promoting a dangerous drug in the third degree is a class C felony.

Section 1244 Promoting a harmful drug in the first degree.

(1) A person commits the offense of promoting a harmful drug in the first degree if he knowingly and unlawfully:

(a) possesses 400 or more capsules or tablets containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof; or

(b) possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one ounce or more containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combinations thereof; or

(c) distributes 50 or more capsules or tablets containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof; or

(d) distributes one or more preparations, compounds, mixtures, or substances, of an aggregate weight of 1/8 ounce or more, containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof; or

(e) distributes any harmful drug or any marijuana concentrate in any amount to a minor who is at least three years his junior.

(2) Promoting a harmful drug in the first degree is a class B felony.

Section 1245 Promoting a harmful drug in the second degree.

(1) A person commits the offense of pro-

moting a harmful drug in the second degree if he knowingly and unlawfully:

(a) possesses 50 or more capsules or tablets containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof; or

(b) possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of 1/8 ounce or more, containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof; or

(c) distributes any harmful drug or any marijuana concentrate in any amount.

(2) Promoting a harmful drug in the second degree is a class C felony.

Section 1246 Promoting a harmful drug in the third degree.

(1) A person commits the offense of promoting a harmful drug in the third degree if he knowingly and unlawfully possesses any harmful drug or any marijuana concentrate in any amount.

(2) Promoting a harmful drug in the third degree is a misdemeanor.

Section 1247 Promoting a detrimental drug in the first degree.

(1) A person commits the offense of promoting a detrimental drug in the first degree if he knowingly and unlawfully:

(a) possesses 400 or more capsules or tablets containing one or more of the Schedule V substances; or

(b) possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one ounce or more containing one or more of the Schedule V substances; or

(c) distributes 50 or more capsules or tablets containing one or more of the Schedule V substances; or

(d) distributes one or more preparations, compounds, mixtures, or substances, of an aggregate weight of 1/8 ounce or more, containing one or more of the Schedule V substances; or

(e) possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of 2.2 pounds or more, containing any marijuana; or

(f) distributes one or more preparations, compounds, mixtures, or substances of an aggregate weight of 2 ounces or more, containing any marijuana; or

(g) distributes any marijuana or any Schedule V substance to a minor who is at least three years his junior.

(2) Promoting a detrimental drug in the first degree is a class C felony.

Section 1248 Promoting a detrimental drug in the second degree.

(1) A person commits the offense of promoting a detrimental drug in the second degree if he knowingly and unlawfully:

(a) possesses 50 or more capsules or tablets containing one or more of the Schedule V substances; or

(b) possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of 1/8 ounce or more, containing one or more of the Schedule V substances; or

(c) possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one ounce or more, containing any marijuana; or

(d) sells any marijuana or distributes any Schedule V substance in any amount.

(2) Promoting a detrimental drug in the second degree is a misdemeanor.

Section 1249 Promoting a detrimental drug in the third degree.

(1) A person commits the offense of promoting a detrimental drug in the third degree if he knowingly and unlawfully possesses any marijuana or any Schedule V substance in any amount.

(2) Promoting a detrimental drug in the third degree is a petty misdemeanor.

Section 1250 Promoting intoxicating compounds.

(1) A person commits the offense of promoting intoxicating compounds if he knowingly and unlawfully:

(a) breathes, inhales, or drinks any compound, liquid or chemical containing toluol, hexane, trichloroethylene, acetone, toluene, ethyl acetate, methyl ethyl ketone, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, or any other substance for the purpose of inducing a condition of intoxication, stupefaction, depression, giddiness, paralysis or irrational behavior, or in any manner changing, distorting or disturbing the auditory, visual or mental processes.

(b) sells or offers for sale, delivers or gives to any person under 18 years of age, unless upon written order of such person's parent or guardian, any compound liquid or chemical containing totuol, hexane, trichloroethylene, acetone, toluene, ethyl acetate, methyl ethel ketone, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, or any other substance which will induce an intoxicated condition, as defined herein, when the seller, offeror or deliveror knows or has reason to know that such compound is intended for use to induce such condition.

(2) Promoting intoxicating compounds is a misdemeanor.

(3) This section shall not apply to any person who commits any act described herein pursuant to the direction or prescription of a practitioner, as defined in the "Hawaii Food, Drug and Cosmetic Act" (section 328-16).

Section 1251 Possession in a motor vehicle; prima facie evidence.

(1) Except as provided in subsection (2), the presence of a dangerous drug, harmful drug, or detrimental drug in a motor vehicle, other than a public omnibus, is prima facie evidence of knowing possession thereof by each and every person in the vehicle at the time the drug was found.

(2) Subsection (1) does not apply to:

(a) other occupants of the motor vehicle if the substance is found upon the person of one of the occupants therein; or

(b) all occupants, except the driver or owner of the motor vehicle, if the substance

is found in some portion of the vehicle normally accessible only to the driver or owner; or

(c) the driver of a motor vehicle who is at the time operating it for hire in the pursuit of his trade, if the substance is found in a part of the vehicle used or occupied by passengers.

Section 1252 Knowledge of character, nature, or quantity of substance, or age of transferee; prima facie evidence.

(1) The fact that a person engaged in the conduct specified by any section in this part is prima facie evidence that he engaged in that conduct with knowledge of the character, nature, and quantity of the dangerous drug, harmful drug, detrimental drug, or intoxicating compounds possessed, dispensed, or sold.

(2) The fact that the defendant dispensed or sold a dangerous drug, harmful drug, detrimental drug, or intoxicating compound, to a minor is prima facie evidence that the defendant knew the transferee to be a minor.

Section 1253 Penalties under other laws.

Any penalty imposed for violation of this part or Chapter 329 is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

Section 1254 Bar to prosecution.

If a violation of this part or Chapter 329 is a violation of a Federal law or the law of another State, a conviction or acquittal under Federal law or the law of another State for the same act is a bar to prosecution in this State.

Section 1255 Conditional discharge for possession as first offense.

(1) Whenever any person who has not previously been convicted of any offense under this Part or Chapter 329 or under any statute of the United States or of any State relating to a dangerous drug, harmful drug, detrimental drug, or intoxicating compound, pleads guilty to or is found guilty of possession of a dangerous drug, harmful drug, detrimental drug, or an intoxicating compound under Sections 1243, 1246, 1249, or 1250, the court, without entering a judgment of guilt

and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions:

Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided.

(2) Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him.

(3) Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

(4) There may be only one discharge and dismissal under this section with respect to any person.

#### Section 1256 Expunging of court records

(1) Upon the dismissal of such person and discharge of the proceeding against him un-

der section 1255 of this chapter, this person, if he was not over 20 years of age at the time of the offense, may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment, or information, trial, finding of guilt, and dismissal and discharge pursuant to this section.

(2) If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 20 years of age at the time of the offense, it shall enter such order.

(3) The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information.

(4) No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest or indictment or information, or trial in response to any inquiry made of him for any purpose.

Page	Section	Line	Amendments
350	-1300(2)(a)		Delete "(viii) sections 709-31 through 709-41)"
350	-1300(2)(a)		Re-number "(ix), (x), (xi)"
350	-1300(2)(b)(i)		Delete "705-4 through 705-8", insert 705-4, 705-5, and 705-6 through 705-8;"
350	-1300(2)(b)(iii)		Insert "709-31 through 709-41," after 709-19"
350	-1300(2)(b)(iv)		Delete "710-10", insert "710-11"
351	-1300(2)(b)		Insert "(ix) chapter 716 (sections 716-1 through 716-7)"
351	-1300(3)(a)		Insert "(i) section 705-5.5;"
351	-1300(3)(a)(xi)		Delete "730-3", insert "730-12"
351	-1300(3)(a)		Insert "(xxvi) chapter 746 (sections 746-1 through 746-19);"
351	-1300(3)(a)		Delete "(xxxii) chapter 754 (sections 754-1 and 754-2);"
352	-1300(3)(a)		Delete "(xxxv) chapter 757 (sections 757-1 and 757-2);"
351-352	-1300(3)(a)		Re-number subsections

Page	Section	Line	Amendments
352	-1300(3)(b)		Insert "(vi) chapter 754 (sections 754-1 and 754-2) shall be recodified as part of Title 38"
352	-1300(3)(b)		Insert "(vii) chapter 757 (sections 757-1 and 757-2) shall be recodified as part of Title 21"
352	-1300(3)(b)		Renumber (vi) through (x)
353	-1300(4)		Insert a new "(e)" sections 275-1 through 275-5, and section 275-8 is repealed
353	-1300(4)		Reletter sections

### Spec. Com. Rep. No. 3

Your House Interim Committee on Taxation of Agricultural Lands, created pursuant to **House Resolution No. 213, H. D. 1**, Sixth Legislature, Regular Session of 1971, entitled: "HOUSE RESOLUTION REQUESTING THE SPEAKER OF THE HOUSE OF REPRESENTATIVES TO ESTABLISH A SPECIAL HOUSE INTERIM COMMITTEE ON TAXATION OF AGRICULTURAL LANDS," begs leave to report as follows:

The purpose of this resolution is to request the Speaker of the House of Representatives to establish a special interim committee to study the present policies of taxation of agricultural lands as well as alternative beneficial policies.

Your Committee recognizes that the agricultural industry has played a significant role in perpetuating the "life of the land." Your Committee believes that agriculture can and should grow as an industry in its contributing role in Hawaii's economy. But your Committee also realizes that Hawaii's rapid economic growth and increased urbanization have created new problems for agriculture.

The crux of these new problems is described in the State Agricultural Development Plan:

The problem of preserving prime agricultural lands "is particularly critical near metropolitan centers, where it has forced the premature liquidation of some productive farm lands. At the fringe of urban development, prime agricultural land is quickly priced out of the agricultural land market by the neighboring 'higher' land uses. This change in land use from agriculture to urban use is irreclaimable."<sup>1</sup>

Your Committee, in recognizing the complexity of the problems presently confronting the agricultural industry, felt that a "brainstorming" session with the Governor's Agriculture Coordinating Committee (GACC) would be of great benefit to your Committee in its attempt toward isolating and defining the critical issues underlying these problems. Your Committee met informally on September 9, 1971 with certain members of the GACC; they were: Mr. Toshio Serizawa, Coordinator; Mr. Frederick Erskine, Chairman, Board of Agriculture; Dr. Shelley Mark, Director, Department of Planning and Economic Development; and Mr. Sunao Kido, Chairman, Board of Land and Natural Resources. Mr. Melvin Soong, Deputy Director, Department of Taxation, and members of his staff presented information on the department's present policies with regard to taxation of agricultural lands. Also in attendance at the meeting in a resource capacity were the following interested parties: Mr. Tamotsu Sahara of the Land Study Bureau, University of Hawaii; Mr. Fred Bennion, Director, Tax Foundation of Hawaii; Mr. Tatsuo Fujimoto, Executive Officer, Land Use Commission; and Mr. Edward Tangen, Member, Land Use Commission.

Your Committee also held two public hearings out in the "field" in order to provide the small, independent farmers an opportunity to voice their complaints and views on the present taxation policies on agricultural lands. Your Committee held night hearings

1. **Opportunities for Hawaiian Agriculture**, Agricultural Development Plan, Governor's Agriculture Coordinating Committee and Department of Planning and Economic Development, State of Hawaii, 1970, p. 11.



on October 15, 1971 at Waianae Library and on October 22, 1971 at Kaneohe Library for the aforementioned purpose.

### FINDINGS

The primary source of complaints over taxation policies on agricultural lands has been the small, independent farmer involved in diversified agriculture. As one independent farmer operating in the Waianae area stated, "We, small farmers, are being squeezed out of farming because of the high cost of farming which is mostly due to the property tax increasing annually."

The small farmers' property tax problem may be described thusly: Under Hawaii's real property tax laws, agricultural lands must be assessed at its fair market value, or some fraction thereof (HRS Sec. 246-2). The statute, in effect, places the same tax rate on agricultural lands as on surrounding improved lands involved in higher uses. Further, both Hawaii law (HRS Sec. 246-10) and accepted appraisal practice require valuation of land according to its highest and best use. As used in the statute, highest and best use undoubtedly means what appraisers universally mean: that the value or present worth of a property shall be estimated by assuming that it will yield the incomes, in money or amenities, which it is capable of yielding if it is put to its highest and best use throughout its remaining life.

The taxation policies aforementioned particularly affect those agricultural lands situated in the rural-urban fringe where urban development is encroaching upon agricultural lands. Much of the agricultural land in this transition zone is operated by small farmers in contrast to the larger parcels held by sugar cane and pineapple growers which are situated in typically rural areas.

As urban development pushes out into open agricultural country, the demand for land for urban purposes inflates the price of farmland throughout the area to values far greater than can be supported on the basis of current use. Strictly speaking, under tax laws that require assessment on the basis of such concepts as full market value and highest and best use, the potential value of agricultural land rather than the present use value must be considered for assessment purposes. The potential value of agricultural land in the rural-urban fringe must therefore reflect the demand pressures that are expressed in the

market place for such land by those who would bid up the offering prices in the expectation of eventual development. Thus, land currently devoted to farms but potentially available for development must be assessed and taxed on the higher value, i. e., its value for non-farm use. Because these increasing market values of agricultural land are reflected in increasing assessments for property tax purposes, taxes on agricultural land actually used for agricultural production become prohibitively expensive, so that the gross return from agricultural use is inadequate to offset the costs of continued agricultural use. The farmer, whose current income may not cover his operating expenses, also probably realizes that the longer he holds onto his land, the better his chance of maximizing his capital gain. At the same time, however, the burden of the higher tax makes it difficult for him to retain ownership and operation of his land, and the farmer is compelled to sell out to the speculator.

The speculator may or may not wish to immediately develop the land he has purchased from the farmer. The speculator may decide to subdivide his newly purchased property into a residential development or to develop it for commercial purposes. Or he may be content to let the land lie idle for years and wait for a higher market use to ripen. Whatever course he may decide to take, the result is that part of the State's agricultural production capacity has been destroyed, and there will eventually be loss of more open space. Your Committee realizes that some shifting of agricultural lands to more intensive uses is, of course, necessary and desirable. But the shifting process has been both inefficient and wasteful and somewhat premature, often well in advance of actual conversion to urban use. Your Committee is concerned over future food supplies, effective land-use planning, and recreational and open-space lands.

The Department of Taxation's approach to agricultural land valuation uses the income approach which basically recognizes the existence of a direct relationship between the value of land and the income derived from it. In using the income approach to valuation of sugar cane, pineapple, and pasture lands, the department uses a principle of valuation which capitalizes the lease rental of the property being valued. The department believes this valuation method as used with such lands is a better indicator than the comparative sales of similar lands method be-

cause of the relatively low frequency of sales of large sugar cane, pineapple, and pasture holdings in the open market.

However, the Tax Department's approach to valuation of small farms which are situated in the rural-urban fringe is one which generally uses comparative sales as the basis of valuation. The department feels that comparative sales is a valid and reliable basis with reference to valuing farm plots less than ten acres situated in the vicinity of urban areas because of the relatively high frequency of sales of such lands in the open market.

Your Committee is concerned over the use of the comparative sales method as a basis of valuation of agricultural lands in the rural-urban fringe which are being tilled and worked on by the small farmer. The valuation of his land is greatly influenced by the "ballooning" market value of the neighboring urban properties.

Your Committee recognizes two basic arguments that may be advanced for modification of the valuation methods applied to farmland in the rural-urban fringe: (1) That taxation of this land at market value with highest and best use as a criterion has undesirable effects on land ownership and use, specifically the irreclaimable loss of productive agricultural lands to urbanization. This is a most significant issue for the agricultural industry in Hawaii has the third largest economic value (almost \$600,000,000<sup>2</sup>), after defense and visitor expenditures. Agriculture plays a critical role in the diversification of our economy and prevention of an overdependence upon defense and visitor expenditures. (2) That it is grossly unfair to the small farmer who must struggle to maintain some profit margin for the continued operation of his farm. The small, independent farmer is able to initially buy land at a cost that would be economically prohibitive to a plantation only because he is purchasing, in part, a job and food supply for himself and his family. He is able to capitalize some of his cheap labor and food costs into the operating costs of his land. But the small farmer on the rural-urban fringe is an innocent victim of a market situation which is so dynamic and so highly imperfect that the comparative sales method is theoretically not a valid basis for assessment. The small farmer on the rural-urban fringe is an innocent bystander whose cost of operating has been increased by events not within his control as where the sale of a single property in his neighborhood

may radically change the entire market situation. The divergence between agricultural value and fair market value and between the tax assessed and ability to pay is most evident in the case of farmland in the rural-urban fringe.

The Department of Taxation believes that much of the criticism over real property assessment as related to agricultural lands which are in actual agricultural use but have been classified for tax purposes in a "higher" use may be alleviated by dedication of agricultural lands (as provided for under HRS Sec. 246-12) for agricultural use and assessment of its value in such use.

The Department believes that the reduction in tax liability through use of the dedication technique—which ranges from a 30% to a 100% savings—functions as a definite tax incentive. The department reports that, at present, there are 49 urban dedications (dedication of land within an urban district) involving 234 acres and 886 "regular" dedications (dedication of land within an agricultural district) involving about 20,600 acres. It should be noted that these dedications represent only about 1.5% of all agricultural lands in the State. The reason for this rather insignificant percentage figure is that most of the lands dedicated are small parcels situated in the rural-urban fringe where the benefit from the lower assessment is substantial. Larger holdings have not generally been dedicated because the major portion of such holdings do not border urban areas but, rather, are situated in rural areas. The tax benefit which would result—if at all—through dedication of large rural holdings would be minimal in most cases.

The dedication technique as a tax abatement device as applied to agricultural lands was designed with two major purposes in mind: (1) preservation of agricultural lands, and (2) prevention of speculation in the agricultural land market.

Your Committee believes there is some question as to whether the dedication law is performing either task very effectively. The assessment of agricultural lands based on land dedication has brought about some positive results, but has not contributed significantly to the preservation of prime agricultural lands. Casual observation of the

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2. State of Hawaii Data Book, Department of Planning & Economic Development, 1968.

extent of rapid urbanization in the transition zone can well attest to this last statement.

Further, your Committee is doubtful as to the effectiveness of the conditional requirements and the penalty provision under the dedication law in ensuring against speculation in agricultural lands. There is no guarantee against speculative buying under HRS Sec. 246-12. For, under dedication, the landowner is not obligated to retain the land in agricultural use; the obligation is only on the part of the State not to assess the land on the basis of anything but agricultural use so long as it is retained in that use. But the incentive for gain by selling his land at a high price may be too strong for the landowner to resist the tempting purchase offer of one who intends to eventually develop the property concerned.

Your Committee also questions the deterrent effect of the 5% penalty for cancellation of the dedication. The landowner who has the intention of speculating may wish to "dedicate" his land to benefit from tax privileges while waiting for profitable economic circumstances to appear. If an attractive market situation ensues, he may decide to sell or develop his "dedicated" land before the minimum dedication period of ten years and pay the 5% annual penalty. The 5% penalty provision must be viewed in the light of rapidly increasing land values, wherein the landowner who sells or develops his "dedicated" land to higher use will hardly suffer the penalty when considering the much larger potential gain from development or sale.

Your Committee questions whether the 10-year dedication technique is assisting those people who would benefit most by taking advantage of it, i. e., the small farmer. Your Committee observes that probably a significant number of small farmers operate under a month-to-month or year-to-year leasing arrangement whereby the length of the lease period proves inadequate for them to utilize the technique of dedicating their lands for the required minimum 10-year period.

Your Committee recognizes the difficulty in distinguishing between the bona fide farmer and the speculator or developer. His "true" status rests mainly on his intent as owner. But several motives may be present with many owners who buy and sell agricultural lands situated in the rural-urban fringe. Few farmers, no matter how pure their

agricultural orientation, are ignorant of the investment potential of their land. The point at which a farmer becomes a speculator is almost impossible to determine. Further, objective evidence as to his change in motive is difficult to discover.

Your Committee is fully cognizant of the importance of maintaining a balanced rural-urban relationship within our State. The preservation of our prime agricultural lands is vitally important for the success and expansion of our agricultural industry and for the amenity values in terms of open space which are difficult to translate into dollar values. Your Committee affirms the proviso contained in the Land Use Law requiring that "the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation." Your Committee urges the Executive and Legislative branches of State government to explore and consider all alternatives which will preserve prime agricultural lands.

## RECOMMENDATIONS

In view of the foregoing, your Committee recommends that:

1. HRS Sec. 246-12(a) be amended to provide for the assessment of dedicated agricultural lands on the basis of its actual agricultural use (see Attachment). It should be noted that the highest and best use concept would still be incorporated in the assessment task. But it should be emphasized that assessment of such dedicated agricultural lands would be concerned only with highest and best **agricultural** use and would exclude any inflationary influences neighboring non-dedicated lands may have because of their higher use.

2. HRS Sec. 246-12(d) be amended to provide for an increased penalty of 8% (see Attachment). Your Committee's intention in offering this recommendation is to stimulate discussion in the matter of a penalty in the dedication law great enough to offset the possible opportunity for speculative gain which may be realized from the selling of dedicated agricultural lands. Your Committee feels that if the penalty provision was great enough, it might be assumed that the real purposes of the dedication law were being fulfilled.

3. a. The Land Use Law be amended by adding a new section to provide for a land use

classification designated “agricultural preserve” (see Attachment). The purpose of this new section is to preserve prime agricultural lands within the State in order to maintain the viability of the agricultural industry.

b. Real property classified as agricultural preserves be exempted from property taxes.

4. HRS Sec. 246-33.1 be amended to extend the real property tax exemption presently covering semi-permanent crop shelters to artificial crop shelters which are used for commercial purposes, and are of a permanent construction and covered by hard plastic materials (see Attachment). The purpose of this amendment is to assist and encourage the growth and development of the agricultural industry by reducing the real property tax liability of those growers who invest in such capital improvements.

5. The House of Representatives consider adoption of a resolution requesting the Economic Research Center of the University of Hawaii to conduct a study to determine the profitability of the various types of horticultural crops in Hawaii (see Attachment). The purpose of this resolution is to encourage the entry of young people into the agricultural industry so that the industry can continue to be an integral sector of the State's economy and expand its role as a significant contributor to State revenues.

6. The Legislature consider and review the concept of a land bank devoted to agricultural development. Your Committee's proposal of the agricultural land bank concept includes acquisition by the State of lands suitable for agricultural use, to be held by the State and then disposed of, either on a lease or sale basis, to private individuals for agricultural use.

Your Committee refers to two Constitutional provisions which appear to be relevant to a land bank concept:

Article X, section 1 states. The legislature shall promote the conservation, development and utilization of agricultural resources, and fish, mineral, forest, water, land, game and other natural resources.

Article X, section 5 states: The public lands shall be used for the development of farm and home ownership on as widespread a basis as possible, in accordance with procedures and limitations prescribed by law.

Your Committee's research efforts indicate that there does not appear to be any statutory provision specifically designed to provide for planned acquisition of agricultural lands to be held in a land bank. However, under HRS Chapter 171 relating to the management and disposition of public lands, provisions are made for the leasing of State lands for agricultural purposes (see HRS Sec. 171-32); for the sale of State lands as farm lots (see HRS 171-65); and for the development of State lands by a private developer for subsequent disposition for agricultural use (see HRS Sec. 171-60).

Statutory provisions in the area of acquisition by governmental authority for subsequent disposition to private persons exist primarily with reference to residential uses. It would appear that to implement the acquisition phase of a land bank concept, statutory authority should be enacted, perhaps along the lines of HRS Chapter 206, which provides for the acquisition and disposition of residence lots on Oahu, and HRS Chapter 516, which provides for the acquisition of the fee simple remainder interest of the lessor in residential leasehold tracts.

Your Committee is fully aware, however, that passage of legislation will not eliminate possible challenges to the statute in two areas: whether or not there exists a public purpose in the land bank concept and secondly, where condemnation is invoked, whether the taking of lands from a private individual is for a public use. Your Committee recognizes that the ultimate decision as to whether a purpose is public and whether a public use does exist is one to be made by the judiciary.

Nevertheless, your Committee feels that governmental expenditures to implement a land bank concept stand a good chance of being upheld as being for a public purpose in view of the two statements of public policy in Article X of the State Constitution.

Your Committee further feels that a specific declaration by the legislature stating, in the funding of the program, that acquisitions undertaken thereunder through condemnation are for a public purpose buttressed by the Constitutional provisions relating to the promotion of agriculture would resist a challenge as to public use in the event lands must be condemned for land bank purposes.

Signed by Representatives Kawakami, Kondo, Roehrig, Yap, Ajifu and Poepoe.

**Spec. Com. Rep. No. 4**

Your House Interim Committee on Labor, authorized to study the State Manpower Development and Training Program pursuant to **House Resolution No. 28, H. D. 1**, Sixth Legislature, Regular Session of 1971, entitled: "HOUSE RESOLUTION REQUESTING THE HOUSE LABOR COMMITTEE TO EVALUATE THE EFFECTIVENESS OF THE STATE MANPOWER DEVELOPMENT AND TRAINING PROGRAM," begs leave to report as follows:

The purpose of this resolution is to request the House Labor Committee, in cooperation with the Commission on Manpower and Full Employment and the Department of Labor and Industrial Relations, to conduct a study on the effectiveness of the State Manpower Development and Training Program. The evaluation report would include a determination of the success of the Program's graduates in the job market and analyses of their work experiences. The report would also evaluate the Program's effectiveness in filling long-vacant job positions and chronic shortage occupations.

In view of the broad scope of review called for by the House Resolution, your Committee held a hearing on November 23, 1971 at which the Commission on Manpower and Full Employment (CMFE) presented testimony relating to the State Manpower Development and Training (MDT) Program. The Department of Labor and Industrial Relations (DOLIR) offered testimony on the same topic during a Committee hearing held on November 24, 1971. At both hearings, representatives of the Department of Personnel Services (DPS), the Department of Social Services and Housing (DSSH), and the Manpower Training Section of the University of Hawaii Community Colleges were present and available to your Committee in a resource and advisory capacity. The Governor's Special Assistant in Human Resources was also present at both hearings in a resource capacity.

Your Committee proceeded to gather information and data relating to the State MDT Program through this means of public hearings aforementioned with full cognizance of the intent and purpose of the Manpower Development and Training Act of 1969 and of the amendments made thereto in

1971 by Act 188 (see BACKGROUND section).

**BACKGROUND**

Chapter 394 of the Hawaii Revised Statutes, the Manpower Development and Training Act (Act 251), was enacted in 1969 during an extremely tight labor market situation. Its focus was naturally on increasing the available labor force by providing training and supportive services such as transportation, child care, and health care to the unemployed and underemployed. Act 251 was prompted by the insufficient local labor supply to meet the needs of the State's growing industries. Its stated purpose is "to establish manpower development and training programs in the State of Hawaii and to determine the extent to which the manpower needs of the State's economy can be met by increasing trained labor." The concentration of programs funded under Act 251 has been on occupational skills training and on child care services. Assessment of the operation of the programs indicates that the Act has met the needs of the tight labor market situation of the 1968-70 period with innovation and flexibility.

However, the 1971 Legislature was informed that the tight labor market situation that Hawaii formerly enjoyed was no longer a factor since rising unemployment threatened to wipe out the gains made from the training programs under Act 251. The average annual rate of growth in employment during the last few years has been lower than that for the labor force. The Legislature felt that the drastically changed situation of rising unemployment required a shift in focus.

The 1971 Legislature responded by enacting Act 188 which restated the purpose of HRS Chapter 394 as the establishment of manpower development and training programs and the determination of "the extent to which the employment needs of individuals can be met by either job training or a public service job or a combination of both." The redirection of the State MDT Program marks a significant step in the State's determination to redefine its mission in response to the changing needs of our society.

**INTRODUCTION**

Your Committee fully realizes that Hawaii's most critical and limiting resource is its people. They represent an accurate meas-

ure of Hawaii's strength and security and are essential to the survival and future progress of the State.

Your Committee believes that it is of utmost importance for the State to exert every effort to enhance the skills and knowledge, the abilities and competence, and the creative powers of its people.

In his first Manpower Report of 1963, the late President John F. Kennedy remarked: "Manpower is the basic resource. It is the indispensable means of converting other resources to mankind's use and benefit. How well we develop and employ human skills is fundamental in deciding how much we will accomplish as a nation."<sup>1</sup>

A year later, in his Manpower Report, President Lyndon B. Johnson stated: "Much of our human capability is not being developed or used. . . . Our action or inaction toward realizing the full potential of our human resources is a major factor in determining whether we will strengthen . . . security . . . at home. . . ."<sup>2</sup>

Your Committee realizes that the development and effective utilization of our human resources cannot be left to chance. Mere recognition that Hawaii's most precious single resource consists of the skills, capacities, and creativeness of her people is not enough. Based on the guiding principle that all of Hawaii's people—without regard to race, religion, ethnic origin, sex or age—should have the opportunities to develop their potentialities and to make use of their abilities and skills, long-range manpower policies should be formulated.

Your Committee has reviewed the manpower training and full employment concept as being basically an economic concept. However, your Committee recognizes a fundamental difference between manpower resources and other economic resources. When applying terms such as "supply", "demand", "surplus", "shortage", "utilization", and "investment" to manpower resources, it should be emphasized that human beings are not commodities even though their skills and abilities can be given a value in the labor market. Nor can their knowledge and skills be similarly described in terms of physical forms of capital.

It is with this premise that your Committee has studied the effectiveness of the State

MDT Program. The findings, assessment, and recommendations which follow are intended to isolate and better understand the problematic issues which exist and to offer suggestions for improvements in the State MDT Program.

## FINDINGS

The State Manpower Development and Training Program is administered by the Department of Labor and Industrial Relations with the advice of the Commission on Manpower and Full Employment. The State MDT Program is designed to help resolve imbalances between the worker supply and industry's demand for workers by providing the mechanisms through which barriers to employment may be alleviated.

The CMFE's advisory role is performed through a Manpower Planning Committee of the CMFE which meets monthly with the DOLIR to review and offer suggestions on project proposals. In its advisory role, the CMFE reviews project proposals referred to it by the DOLIR. The DOLIR is the implementing agency with the final authority to approve or disapprove of the projects and to monitor all projects.

As a matter of standard operating procedure, the DOLIR has explored the possibility of federal funding prior to approving and funding projects under the State MDT Program. As found necessary, State MDT projects were developed to supplement existing federal manpower training programs by providing opportunities for training in occupations not covered by the federal programs.

To implement Act 251, the Legislature appropriated \$300,000 for the fiscal year July 1, 1969 to June 30, 1970, and \$326,437 for the fiscal year July 1, 1970 to June 30, 1971.

During the fiscal year which ended on June 30, 1970, the DOLIR funded nine projects, seven of which provided skill training in the occupations of carpenter, glazier and glassworker, sheetmetal worker, operating engineer, and greenskeeper; the two other projects provided supportive services.<sup>3</sup>

During the fiscal year which ended on June 30, 1971, the DOLIR funded six projects, three of which provided skill training in the occupations of cashier-checker, sheetmetal worker, and bulldozer operator; the other three projects involved pre-vocational train-



ing. Also, the operating engineer training project initiated in FY 1969-70 was carried over into FY 1970-71 with additional funding.<sup>4</sup>

With reference to the seven State MDT training projects conducted in FY 1969-70, a total of 188 individuals were enrolled in training for these projects, of which 174 completed the training. Of the 174 individuals who completed the training, 137 obtained employment immediately after training at wages ranging from \$2.12 to \$4.19 per hour. Of the 174 individuals who completed the training, 89 were still employed as of November 30, 1971. Of the 81 individuals who completed preapprenticeship training, 30 were apprentices as of November 30, 1971.<sup>5</sup> The total cost of the seven occupational skill training projects for FY 1969-70 was \$102,455.90.<sup>7</sup>

The two other State MDT projects for FY 1969-70 were supportive services projects, which provided child care and transportation services, and were funded for \$129,707.<sup>7</sup>

With reference to the three State MDT training projects conducted in FY 1970-71, a total of 42 individuals were enrolled in training, of which 32 completed the training. Of the 32 individuals who completed the training, 19 obtained employment immediately after training at wages ranging from \$1.70 to \$2.79 per hour, 5 were unable to obtain employment, and 14 continued employment since training was conducted on a part-time basis. As of November 30, 1971, of the 32 individuals who completed training, 26 are still employed.<sup>6</sup> The total cost of the three occupational skill training projects for FY 1970-71 was \$39,024.<sup>8</sup>

The three other State MDT projects for FY 1970-71 were prevocational training projects, funded for \$77,358.<sup>8</sup> Two projects provided employment orientation and one project provided manpower development and acculturation. All three projects were designed to increase the readiness of individuals who were not yet ready for employment or training.

A total of 38 individuals were enrolled in the two employment orientation projects, of which 34 completed the training. Of the 34 individuals who completed the training, 9 obtained employment, 6 are enrolled in occupational training, 1 is awaiting enrollment in occupational training, 1 was referred to an-

other agency for supportive services, and 17 are not in the labor force. Of the 17 not in the labor force, 2 left Hawaii, 12 refused further services, 1 joined the armed forces, and 2 are unavailable for health reasons.<sup>9</sup>

A total of 30 trainees were enrolled in the manpower development and acculturation project, of which 27 completed the training. Of the 27 individuals who completed the training, 11 obtained employment, 1 enrolled in an adult education program, 1 is awaiting enrollment in occupational training, 1 returned to the Philippine Islands, 1 cannot be located, and 12 are currently being provided with job placement services.<sup>9</sup>

The two supportive services projects funded in FY 1969-70 were extended through November 30, 1971 at a cost of \$102,968. A total of 113 parents and children were provided with transportation services. These child care and transportation services enabled 94 parents to obtain employment and 18 parents to undertake occupational training.<sup>10</sup>

As of this date, the DOLIR does not anticipate instituting any new nor continuing any former State MDT job training projects for two primary reasons: (1) no job training project proposals will be funded while the Governor's freeze on spending is in effect, and (2) with the progressively increasing unemployment rate the State is experiencing, continuation of State MDT job training projects will only add to the pool of trained, but jobless workers which would gradually accumulate in the coming years.

Your Committee is very aware of the chronic shortage occupations that exist in the employment market. DOLIR manpower projections predict that manpower shortages will include the following occupations: day-workers, cooks, janitors, nurse's aides and orderlies, protective service personnel, harvest hands, cannery workers, automobile mechanics, sewing machine operators, autobody repairmen and automobile painters, service station attendants, light truck drivers, and store laborers.<sup>11</sup>

The DOLIR testified that long-vacant and unfilled job positions, such as clerk-typist, general office clerk, account clerk, waiter, waitress, automobile mechanic, autobody repairman, nurse's aide, and orderly are being met through Federal Manpower Development and Training Programs (pursuant to



the Federal Manpower Development and Training Act of 1962<sup>12</sup>), apprenticeship programs, the Community College System of the University of Hawaii (pursuant to State MDT Programs, Federal MDT Programs, and other federally funded programs<sup>13</sup>), or private technical and business schools.

Further, the Hawaii Employers Recruiting and Training Service (HERTS), a private, non-profit organization funded by the Model Cities Program, proposes to train 100 individuals to become sewing machine operators to meet the needs of the garment industry. The DOLIR is providing recruitment and referral services to HERTS. The DOLIR believes that this training project may assist the department in developing an effective means of resolving the problem of a chronic shortage of sewing machine operators.

Your Committee observes that most of the chronic job shortage categories involve occupations which do not necessarily require a college degree. However, there is little future in our technical and automated society for the unskilled. Your Committee believes that the political, economic, social and educational institutions of our State have not adequately met the challenge presented by this dramatic technological change. Job requirements have, in many instances, outdistanced the skill competencies of those seeking entry employment or reemployment. In making this last statement, your Committee is fully cognizant of the various factors—scientific breakthroughs, technological innovations, modifications in the structure of industry, changes in the size and composition of the population, sharp decreases in the levels of governmental spending, and higher employment qualifications—which influence the volume and character of the demands for and the supplies of manpower.

Your Committee acknowledges the request—as directed in **H. R. No. 28, H. D. 1**—to evaluate the effectiveness of the State MDT Program as determined by follow-up analysis on the work experience of graduates of the Program by various relevant criteria. The DOLIR has monitored ongoing State MDT projects, compiled necessary data, and prepared several progress reports on the Program. Your Committee received a summary of State MDT Program new enrollee characteristics by projects as compiled by the DOLIR. The summary submitted utilized various indices in describing the new enrol-

lees within each State MDT project for FY 1969-70 and FY 1970-71.<sup>14</sup>

However, the DOLIR testified that no objective, in-depth, comprehensive evaluation of the effectiveness of the State MDT Program in relation to the purpose for which Act 251 was enacted and the redirection of purpose made by the enactment of Act 188 has been conducted. The summary of State MDT Program new enrollee characteristics fails to provide your Committee with sufficient information and data to effectively comply with the aforementioned task as contained in the resolution. Your Committee has been provided with statistics indicating the number of State MDT Program graduates by project who are still employed or are still in apprenticeship status as of November 30, 1971 (see Appendices C and D). This, your Committee believes, is a significant indicator of the measurement of success of a particular State MDT project, but by no means is it the sole criterion which may be used in determining the degree of success of a specific project.

A list of suggested evaluation factors, jointly developed by the CMFE and the DOLIR, to be used in assessing the State MDT Program was presented to your Committee for its consideration (see Appendix J).

In order for the CMFE to effectively operate in its advisory capacity to the DOLIR in formulating manpower policies for the State, the CMFE must rely heavily on the DOLIR's research and statistics office for providing the necessary statistical data and information. The DOLIR has the responsibility for the development, preparation, and dissemination of information on employment, unemployment, underemployment and general labor market conditions in the State. However, the DOLIR has not been able to perform the needed services because the demands made on the department's research and statistics office in program research and in providing assistance and manpower information to federal and local governments as well as community planning and action groups have been too great.

In response to the DOLIR's dilemma, the 1971 Legislature appropriated the sum of \$60,000 (Act 165) to the DOLIR for four additional staff positions in the department's research and statistics office to conduct a comprehensive and continuing analysis and interpretation of the State's future manpower requirements as highlighted by area skill sur-

veys and prepare an annual analysis of statewide occupational data by industry and by island. The legislative intent of Act 165 is an expectation of a three-phase project:

“Phase 1. Development of a table indicating the occupational distribution of workers within each major industry group.

Phase 2. Development of anticipated occupational needs by applying occupation-industry relationships to existing projections of employment by industry for islands in the State.

Phase 3. Refinement and extension of the occupational detail as information from other sources can be applied. Eventually, there would be preparation of industry data by small areas including employment size of companies, wage levels for major industries, etc.”<sup>15</sup>

However, the CMFE and the DOLIR both testified that a procedural difficulty arose in September, 1971 when the spending freeze on State government expenditures, in effect, halted the implementation of Act 165. The DOLIR stated that, notwithstanding the State spending freeze, no application for funding under the Federal Emergency Employment Act (EEA), P.L. 92-54, for the purpose of assistance in filling the positions within the DOLIR's research and statistics office has yet been made.

A representative of the DPS testified, however, that the aforementioned research positions within the DOLIR would qualify for federal funding assistance under EEA guidelines. The DOLIR expressed anticipated difficulty in recruiting qualified personnel for research positions funded by EEA moneys because of the maximum salary ceiling of \$12,000 per year, exclusive of fringe benefits, as provided for under the EEA.

In closing, it is noteworthy to consider a comment offered by the Chairman of the CMFE before your Committee wherein he questioned “whether technological progress and automation has, in effect, taken its toll and developed to the point of displacing the anticipated amount of human element in industry?” Your Committee finds it difficult to arrive at any definite conclusions about the pace and nature of technological change and automation and their impact upon the economy and the labor force of Hawaii. However, your Committee realizes that auto-

mation per se, is not new. What is new is cybernation, a product of the marriage of cybernetics (defined as the use of electronic devices so as to extend man's mental abilities) to automation. Contemporary technologies demand specific training and skills. Future technological advances may well displace those very same skills and call for entirely new ones. Your Committee acknowledges the possibility—however remote—of rates of technological change so rapid as to make adaptation difficult, and, consequently, to produce instabilities in the economy.

## CONCLUSIONS

Your Committee agrees that there is a most pressing need for manpower area skill surveys to be carried out periodically on a sustained basis. Your Committee also acknowledges the need for an evaluative study of the effectiveness of the State MDT Program as requested by the House Resolution. Your Committee believes that skill surveys and an evaluative study are critical factors necessary in the formulation of a systematic manpower plan for the implementation of the State MDT Program.

However, your Committee concludes that there are two basic reasons which make it difficult for a comprehensive evaluation of the effectiveness of the State MDT Program to be performed by your Committee at the present time. Your Committee has been unable to be provided with sufficient statistical data and information in reference to the State MDT Program's graduates in order to perform a proper evaluation of the Program. Further, the prevailing economic conditions—both nationally and locally—and the rising unemployment rate that exist in our State do not provide the proper setting for a valid evaluation of the public employment aspects of the State MDT Program.

Your Committee therefore recommends that, until favorable circumstances more conducive to making an evaluation of the effectiveness of the State MDT Program arise, the DOLIR continue in its efforts in the collection and compilation of statistical data and information necessary for eventually conducting such an in-depth, comprehensive evaluation study.

Signed by Representative Takamine, Kawakami and Aduja.

## NOTES

1. **Manpower Report of the President and a Report on Manpower Requirements, Resources, Utilization, and Training by the United States Department of Labor**, March, 1963 (Washington, D. C.: U. S. Government Printing Office, 1963), p. xii.

2. **Manpower Report of the President and a Report on Manpower Requirements, Resources, Utilization, and Training by the United States Department of Labor**, March, 1964 (Washington, D. C.: U. S. Government Printing Office, 1964), pp. xi, xix.

3. See Appendix A for detailed description of each project.

4. See Appendix B for detailed description of each project.

5. See Appendix C for further statistical breakdown by project.

6. See Appendix D for further statistical breakdown by project.

7. See Appendix E for further cost breakdown by project.

8. See Appendix F for further cost breakdown by project.

9. See Appendix H for further statistical breakdown by project.

10. See Appendix I for further statistical breakdown by project.

11. **Annual Manpower Planning Report for Fiscal Year 1972**, State of Hawaii, Department of Labor and Industrial Relations, March, 1971, pp. 21-23.

12. Sar A. Levitan and Garth L. Mangum, **Federal Training and Work Programs in the Sixties**, Institute of Industrial Relations (Ann Arbor, Michigan, 1969), pp. 23-101.

13. Other federally funded programs are: Concentrated Employment Program, National Alliance of Businessmen, Work Incentive Program, Public Service Careers, Neighborhood Youth Corps, Economic Development Administration, and Project Transition.

14. Categories used in describing new enrollees: age, sex, marital status, educational

level, handicapped, labor force status at interview, years of gainful employment, number of weeks unemployed, primary wage earner, head of family/household, number of dependents, public assistance recipient, military service status.

15. **House Standing Committee Report No. 565**, Sixth Legislature, Regular Session of 1971, State of Hawaii, pp. 1-2.

## APPENDIX A

## OCCUPATIONAL SKILL TRAINING SUMMARY

## STATE MANPOWER DEVELOPMENT AND TRAINING PROGRAM

## FISCAL YEAR 1969-70

**Carpenter Pre-Apprenticeship Training Project**

Two projects sponsored by the Joint Apprenticeship and Training Committee of the Carpenters' Local Union #745 were completed at a cost of \$21,455.20. The projects were designed to help meet the construction industry's need for carpenters by training and utilizing those non-productive individuals in the Waimanalo area for employment in the industry, thereby alleviating existing manpower and community problems. A total of 39 individuals were enrolled in training of which 32 completed the 8 weeks of training. Of the 32 trainees, 25 obtained employment immediately after training as apprentices at \$3.27 per hour. As of November 30, 1971, 1 individual remains in the apprenticeship program, 2 individuals enrolled in the Hawaii Job Corps Program, 1 found employment with the City and County as a fireman, 3 are in Oahu Prison or Halawa Jail, 3 cannot be located, 1 is on the Mainland, 1 is on Maui, and 20 are unemployed. Of the 20 individuals who are unemployed, 4 are being serviced by the Hawaii State Employment Service.

**Glazier and Glass Worker Project**

Two projects sponsored by the Joint Apprentice and Training Committee of the Glaziers' and Glass Workers' Local Union #1889, AFL-CIO were completed at a cost of \$47,734.58. The projects were designed to help meet the construction industry's need for glaziers. A total of 40 individuals were enrolled in training of which 35 completed the 12 weeks of training. Of the 35 trainees,

28 obtained employment immediately after training as apprentices as \$3.30 per hour. As of November 30, 1971, 15 are employed as apprentices, 6 are "on the bench", and 14 are not in apprenticeship program. Of the 14 individuals who are not in the program, 2 are employed by the City and County, 1 is employed as a male nurse in Alaska, 1 is on Maui, 1 returned to the Mainland, 9 could not be located.

#### **Sheetmetal Worker Pre-Apprenticeship Training Project**

The project was sponsored by the Honolulu Joint Apprenticeship and Training Committee for the Sheetmetal Industry and was completed at a cost of approximately \$7,454.12. It was designed to help meet the construction industry's need for sheetmetal workers by providing training to unemployed persons. A total of 15 individuals were enrolled in training of which 14 completed the 8 weeks of training. All 14 trainees obtained employment immediately after training as apprentices at \$2.79 per hour. As of November 30, 1971, 7 individuals are employed as apprentices, 1 is "on the bench", and 6 individuals are not in the apprenticeship program. Of the 6 individuals who are not in the program, 2 enrolled in college, 2 changed occupations, and 2 could not be located.

#### **Operating Engineer (Upgrading) Training Project**

Sponsored by the Operating Engineers' Joint Apprenticeship Committee, the project was completed at a cost of approximately \$23,250.00. The project was designed to assist the construction industry in meeting the increasing need for Operating Engineers who are able to operate and/or repair a wide variety of existing and/or new types of heavy equipment by providing training to those unemployed Equipment Operators with limited skills, to upgrade their skills to a level commensurate with employer expectations. The training was conducted at Rancho Murietta Training Center in Sacramento, California. A total of 84 individuals enrolled and completed the 6 weeks training. Of the 84 completing training, 63 obtained employment immediately after training as Operating Engineers at wages ranging from \$4.19 to \$6.40 per hour. As of November 30, 1971, 57 individuals are employed and 27 individuals are "on the bench".

#### **Greenskeeper Project**

The "Greenskeeper Project" for the County of Kauai was completed at a cost of approximately \$2,562.00. The project was designed to meet, on a timely basis, the need for workers trained in Golf Course Greenskeeping and/or related ground maintenance work for the newly established Eagle County Development Corporation in Hanalei, Kauai, and for several hotels in the area by providing training to those plantation workers with limited or no saleable skills who are expected to be "laid off" from their employment with the closing of the Kilauea Sugar Company. A total of 10 individuals were enrolled in training of which 9 completed the 9 Saturdays of training. Of the 9 trainees, 7 obtained employment immediately after training at wages ranging from \$2.12 to \$2.80 per hour. Of the 9 individuals who completed the greenskeeper training, 9 individuals are currently employed.

#### **Kona Child and Family Center Project**

Sponsored by the Hawaii County Economic Opportunity Council (HCEOC), the project was funded for the period December 1, 1969 to November 30, 1970 at a cost of approximately \$51,418.00. The project was designed to increase the work force from the non-participating population in the Kona area, specifically housewives, to meet an unmet need for workers resulting from the accelerated growth of hotels and allied tourist industries in the area.

Due to a continuing need for supportive service, the Kona project was extended for another year with fiscal year 1970-71 funds at an estimated cost of \$47,813.00. A total of 64 children were enrolled in the Center which resulted in the attainment and/or sustenance of employment for 49 parents. Funding for the project was terminated after November 30, 1971.

#### **Lahaina Child Care and Transportation Services Center**

Sponsored by the Maui County Economic Opportunity Council (MCEOC), the project was funded for the period March 1, 1970 to February 28, 1971. The project was designed to help meet the demands for workers in the Lahaina area resulting from the catalytic growth of the hotel and allied tourist industries in the area by providing child care and transportation services, thereby enabling

women, in particular, to avail themselves of the employment opportunities in the Lahaina area. The estimated first year cost of this project was \$78,289.00. Since February 28, 1971 two extensions were granted under fiscal year 1970-71 appropriations to allow continuity while the MCEOC could seek alternative sources of funding. The first extension was for the period March 1, 1971 to June 30, 1971 at a cost of \$26,717.36. The second extension period ran from July 1, 1971 to September 30, 1971 at a cost of \$20,038.00. A third extension ran from October 1, 1971 to November 30, 1971 at a cost of \$8,400.00.

A total of 87 children were provided with child care services and 113 individuals with transportation services which resulted in the employment of 45 persons. Funding for the project was terminated after November 30, 1971.

#### **APPENDIX B**

#### **OCCUPATIONAL SKILL TRAINING SUMMARY**

#### **STATE MANPOWER DEVELOPMENT AND TRAINING PROGRAM**

#### **FISCAL YEAR 1970-71**

##### **Cashier-Checking Training Project**

Under the fiscal year 1970-71 appropriations, a Cashier-Checker Training Project for the County of Hawaii was developed and completed at a cost of approximately \$10,270.00. The project was designed to meet, on a timely basis, the need for workers trained to handle cashier and related work for the Hilo Shopping Center Mall. A total of 15 were enrolled in training of whom 12 completed the 6-8 weeks of training. Of the 12 trainees, all obtained employment immediately after training as cashiers at wages ranging from \$1.70 to \$2.34 per hour. As of November 30, 1971, 10 are currently employed, 1 moved to the Mainland, and 1 cannot be located.

##### **Sheetmetal Worker Pre-Apprenticeship Training Project**

Sponsored by the Honolulu Joint Apprenticeship and Training Committee for the Sheetmetal Industry, the project was developed for the County of Hawaii and completed at a cost of approximately \$8,810.00. The project was designed to help meet the

need for workers trained to handle sheet-metal work. A total of 13 individuals were enrolled in training. Of the 13 trainees, 7 obtained employment immediately after training as apprentices at \$2.79 per hour. As of November 30, 1971, 2 are employed as apprentices, 4 are "on the bench", and 6 individuals are not in the apprenticeship program. Of the 6 individuals who are not in the program, 1 is a fireman and 5 could not be located.

##### **Bulldozer Operator (Entry) Project**

A 20-25 week Bulldozer Operator (Entry) Project was conducted by the Hawaii Community College at a cost of approximately \$19,944.00. The purpose of this project is to train and upgrade laborers to meet the shortage of skilled bulldozer operators and to provide a pool of trained personnel to meet the needs of the employers. The project was scheduled to run from March 13, 1971 to August 28, 1971. However, at the request of the Hawaii Community College, the training was extended to October 2, 1971. A total of 14 individuals were enrolled in the project of which 8 completed the training. However, all 14 are currently employed as this was a part-time upgrading project.

##### **Employment Orientation Training Project**

Two Employment Orientation Training Projects were developed and completed at a cost of approximately \$14,463.00. These projects were designed to provide pre-vocational training to those residents of Hauula who were not adequately prepared to accept employment, enter into skill training, and/or undertake other activities necessary for establishing themselves in suitable employment. A total of 38 individuals were enrolled of which 34 completed the 4 weeks of training. Of the 34 completing training, as of November 15, 1971, 9 obtained employment, 6 enrolled in training, 1 is awaiting enrollment in training, 1 referral to another agency for supportive services, and 17 are not in the labor force. Of the 17 not in the labor force, 2 left Hawaii, 12 refused further services, 1 joined the military, and 2 are unavailable for health reasons.

##### **Manpower Development and Acculturation Project**

A 22-week Manpower Development and Acculturation Project was developed by the Tom Rohr Co., Ltd. and was scheduled to

ing, as of October 31, 1971, 11 obtained employment, 1 enrolled in an adult education program, 1 is being considered for occupational training, 1 returned to the Philippine Islands, 1 cannot be located, and 12 are currently being provided with job placement services. An evaluation of the project is currently being conducted by the Industrial Relations Center of the University of Hawaii.

PROJECT TITLE	Contract Period	Weeks of Training	No. to be Enrolled	No. Enrolled	No. Completed	No. Placed Immediately After Training	No. of Apprentices As of 11/30/71	No. on Jobs as of 11/30/71
Carpenter Pre-Apprentice	10/27/69 to 12/16/69	8	25	20	16	14	1	1
Carpenter Pre-Apprentice N2	1/12/70 to 3/6/70	8	20	19	16	11	0	0
Glazier Pre-Apprentice	2/16/70 to 5/8/70	12	20	20	16	14	7	4
Glazier Pre-Apprentice N2	5/18/70 to 8/7/70	12	20	20	19	14	14	11
Sheetmetal Worker Pre-Apprentice	6/15/70 to 8/7/70	8	15	15	14	14	8	7
Operating Engineer (Upgrading)	1/5/70 to 12/31/70	6	96	84	84	63	NA	57
Greenskeeper	4/4/70 to 5/30/70	9 Saturdays	18	10	9	7	NA	9
TOTALS		-	214	188	174	137	30	89

APPENDIX D  
OCCUPATIONAL SKILL TRAINING SUMMARY  
STATE MANPOWER DEVELOPMENT  
AND TRAINING PROGRAM  
FISCAL YEAR 1970-71

PROJECT TITLE	Contract Period	Weeks of Training	No. to be Enrolled	No. Enrolled	No. Completed	No. Placed Immediately After Training	No. of Apprentices As of 11/30/71	No. on Jobs as of 11/30/71
Cashier-Checker	10/5/70 to 11/27/70	8	15	15	12	12	NA	10
Sheetmetal Worker Pre-Apprentice	10/5/70 to 11/27/70	8	12	13**	12	7	6	2
Bulldozer Operator (Entry)	3/13/71 to 10/2/71	200 hrs	14	14	8	14*	NA	14
<b>TOTALS</b>			41	42**	32	33*	6	26

\*Fourteen employed when project started

\*\*Trainee added to fill a vacant slot

APPENDIX E  
COST SUMMARY  
STATE MANPOWER DEVELOPMENT AND TRAINING PROGRAM  
FISCAL YEAR 1969-70

Appropriation ..... \$300,000.00

Project Title	Project Cost
<b>Occupational skill Training</b>	
Carpenter Pre-Apprentice	\$ 11,492.69
Carpenter Pre-Apprentice #2	9,962.51
Glazier and Glass Worker	19,175.38
Glazier and Glass Worker #2	28,559.20
Sheetmetal Worker Pre-Apprentice	7,454.12
Operating Engineer (Upgrading)	23,250.00
Greenskeeper	2,562.00
	<u>\$102,455.90</u>

## APPENDIX E — (Continued)

<b>Supportive Services</b>	
Kona Child and Family Center	\$ 51,418.00
Lahaina Child Care and Transportation Services Center	<u>78,289.00</u>
	\$129,707.00
TOTAL PROJECTS COSTS .....	\$232,162.90
ADMINISTRATIVE COST (8/69-6/30/70) .....	12,609.13
TOTAL PROGRAM COST .....	<u>\$244,772.03</u>
BALANCE .....	<u><u>\$ 55,227.97</u></u>

## APPENDIX F

## COST SUMMARY

## STATE MANPOWER DEVELOPMENT AND TRAINING PROGRAM

## FISCAL YEAR 1970-71

Appropriation ..... \$326,437.00

Project Title	Project Cost
<b>Occupational Skill Training</b>	
Cashier-Checker	\$ 10,270.00
Sheetmetal Work Pre-Apprentice	8,810.00
Bulldozer Operator (Entry)	<u>19,944.00</u>
	\$ 39,024.00
Operating Engineer (Upgrading)*	<u>9,843.00</u>
	\$ 48,867.00
<b>Pre-Vocational Training</b>	
Employment Orientation	\$ 6,634.00
Employment Orientation	7,829.00
Manpower Development and Acculturation	<u>62,895.00</u>
	\$ 77,358.00
<b>Supportive Services</b>	
Kona Child and Family Center	\$ 47,813.00
Lahaina Child Care and Transportation Services Center	<u>66,793.00</u>
	\$114,606.00
TOTAL PROJECTS COST .....	\$240,831.00
ADMINISTRATIVE COST (7/1/70-6/30/71) .....	22,851.00
TOTAL PROGRAM COST .....	<u>\$263,682.00</u>
BALANCE .....	<u><u>\$ 62,755.00</u></u>

\*Project initiated during FY 1969-70 and continued into FY 1970-71.



## APPENDIX G

## COST SUMMARY

## STATE MANPOWER DEVELOPMENT AND TRAINING PROGRAM

FISCAL YEAR 1971-72

Appropriation ..... \$347,146.00

Project Title	Project Cost
<b>Pre-Vocational Training</b>	
Evaluation of Manpower Development and Acculturation Project	\$3,995.00

<b>Supportive Services</b>	
Lahaina Child Care and Transportation Service Center	\$8,400.00

TOTAL PROJECTS COST ..... \$12,395

## APPENDIX H

## PRE-VOCATIONAL TRAINING SUMMARY

## STATE MANPOWER DEVELOPMENT AND TRAINING PROGRAM

FISCAL YEAR 1970-71

Project Title	Contact Period	Length of Training (Weeks)	No. to be Enrolled	Number Enrolled	No. Completed Training	Status After Training
Employment Orientation	11/16/70 to 12/11/70	4	20	18	14	*
Employment Orientation	11/23/70 to 12/18/70	4	20	20	20	*
Manpower Development and Acculturation Program	3/1/71 to 7/31/71	22	30	30	27	**

\*EMPLOYMENT ORIENTATION STATUS AFTER TRAINING  
AS OF NOVEMBER 15, 1971

No. Placed on Jobs	No. Placed or will be Placed in training	No. referred to Supportive Services	No. Not in Labor Force
9	7	1	17

\*\*MANPOWER DEVELOPMENT AND ACCULTURATION  
STATUS AFTER TRAINING  
AS OF OCTOBER 31, 1971

No. Placed on Jobs	No. Placed or will be Placed in training	No. Enrolled in Adult Education	Job Placement Services	Cannot be Located	Left for Philippines
11	1	1	12	1	1

APPENDIX I  
CHILD CARE AND TRANSPORTATION SERVICES SUMMARY  
STATE MANPOWER DEVELOPMENT AND TRAINING PROGRAM  
FOR PERIOD DEC. 1, 1969 TO OCT. 31, 1971

		P R O J E C T S		
		KONA	LAHAINA	TOTALS
		12/1/69-	3/1/70	
		10/31/71	10/31/71	
III. Child Care Services Information				
A. Child-Applicants				
1. Number of Children Enrolled .....	64	87	151	
2. Number of Children Terminated .....	41	69	110	
3. Number of Children Currently Enrolled .....	23	18	41	
B. Parent-Applicants				
1. Number of Parent-Applicants Enrolled .....	53	60	113	
2. Number of Parent-Applicants Terminated Enrollment .....	33	39	72	
3. Number of Parent-Applicants Currently Enrolled .	20	21	41	
III. Transportation Services Information				
1. Total Number of Individuals Provided Services ..	N/A	113	113	
2. Number Terminated Services .....	N/A	95	95	
3. Number currently receiving services .....	N/A	18	18	
III. Employment/Training Information				
1. Total Number of Enrolled Applicants Obtained Employment .....	49	45	94	
2. Total Number of Enrolled Applicants Obtained Training .....	4	14	18	
3. Total Number of Enrolled Applicants Did Not Obtain Employment or Training .....	0	6	6	

APPENDIX J  
SUGGESTED EVALUATION FACTORS\*  
STATE MANPOWER DEVELOPMENT AND TRAINING PROGRAM

- A. Achievement of overall objectives of State MDT Program.
- B. Adequacy of project review process.
  - 1. Guidelines and procedures.
  - 2. Information on manpower needs and problems, such as reports and projections to analyze data and to determine the manpower needs.
  - 3. Criteria for limiting pilot and supportive service projects.
    - a. Guidelines established for the purpose of limiting pilot and demonstration supportive service projects.
    - b. Provisions for continuity of the project after Act 251.
    - c. Objectives for disposition of a pilot and demonstration project upon completion.
    - d. Provisos for an evaluation upon completion.
- C. Adequacy of project monitoring.
- D. Adequacy of training or supportive services rendered.
- E. Achievement of project objectives.
  - 1. Adequacy of measures of effectiveness.
- F. Effects of stipends on the program.
- G. Clarification of advisory role of the Commission.

\*Jointly determined by the Commission on Manpower and Full Employment and the Department of Labor and Industrial Relations.

**Spec. Com Rep. No. 5**

Your Joint House-Senate Interim Committee on "The Proposed Model Residential Landlord Tenant Code As Prepared By The Legislative Reference Bureau" (proposed code) created pursuant to **H. R. No. 395, H. D. 1** and **S. R. No. 300**, begs leave to report as follows:

The stated purpose of the proposed code is to simplify, clarify, modernize, and revise the law in Hawaii governing the rental of dwelling units and the obligations and rights of landlords and tenants of dwelling units; to encourage landlords and tenants to maintain and improve the quality of housing in this State; and to revise the law of residential landlord and tenant by changing the relationship from one based on the law of conveyance to a relationship that is contractual in nature.

The proposed code was prepared pursuant to **House Resolution No. 355** and **Senate Resolution No. 279, S. D. 1** passed in 1970 and was derived from a proposed Residential Landlord-Tenant Code which was a result of research conducted by students of the University of Chicago Law School. In effect, the proposed code purports to balance the obligations and rights of tenants and landlords of residential dwelling units in Hawaii.

Chapter 666 of the Hawaii Revised Statutes constitutes the basis of present statutory law concerning landlord and tenant in Hawaii.

The provisions of Part I concern either procedural matters or summary possession for recovery of the premises by the landlord, and applies to all tenancies - commercial, residential, and agricultural. Part II, enacted in 1970, concerns health requirements in rental dwellings stipulating tenants' remedy of repair and deduction for minor defects, and prohibiting retaliatory evictions and rent increases in such health instances. Remaining Hawaii landlord-tenant law is either established by case law, which is difficult to assess by the average person, or covered by general principles of the common law. Present statutory law in Hawaii provides few guidelines to the landlord-tenant relationship.

The proposed code attempts to delineate and regulate the landlord and tenant obligations and rights. Principally left to the discretion of the parties are, however, the rental price and the length of term of the rental agreement. Substantively, the proposed code

contains all the provisions of Part II of the present HRS Chapter 666, and would prevail over conflicting provisions in Part I. The proposed code would demarcate the following general areas not presently covered by statute: principles of tenancy rules; expanded grounds for eviction; tenant right to remedy non-payment of rent and improper use of the premises before termination of the tenancy; explicit landlord obligations for safety, health, and maintenance; new tenant remedies; apportionable double rent penalty to hold-over tenants; prohibitions against unconscionable clauses; Office of Consumer Protection to provide counsel for needful tenants; entry to the premises by the landlord; prohibitions against the landlord unreasonably refusing subleasing or assignments; disclosure of the names of owners and landlords of the premises; provisions regulating security deposits.

In public hearings during the interim, testimony was heard from the representatives of the Hawaii Association of Real Estate Boards; Jenks, Kidwell, Goodsill, and Anderson on behalf of the Harold K. L. Castle Estate; Tenants Action Group of the Citizens for Hawaii; Public Interest Research Group of Hawaii; the Welfare and Housing Action Movement and the State Welfare Coalition; Office of Consumer Protection; the Committee on Coordination of Rules and Statutes; and many other persons representing real property interests and general concern with rental housing as a matter of public health, safety, and welfare. Your Committee also considered, in subsequent meetings, the effect of the proposed Legislative Reference Bureau.

Areas of the proposed code which received lengthy consideration included:

1) **Security deposits.** Tenants list this among their most serious grievances, particularly in establishing the maximum amount, the uses of and unreasonable withholding of, procedures for the recovery of, and accrued interests thereon. Your Committee found the provisions in the proposed code unclear in language and burdensome on the courts as well as the parties in such a manner that it may possibly cause increases in rental prices. Upon deliberation, your committee suggests the following:

(a) A maximum sum of one and one half months rent be allowed as security deposit from the tenant to be used for repair of dam-

ages over and above reasonable wear and tear and for failure to pay rent but not for cleaning fees;

(b) Disputes are to be settled exclusively by the small claims court division of the district court in order to promote expediency of relief and a reduction of court costs, and that such decisions are to be final and binding.

2) **Unlawful removal and exclusion of the tenant by the landlord.** While there is much concern that the landlord not physically oust or lock out a tenant so as to endanger anyone's health or physical well being, your Committee questions the advisability of providing a provision granting treble damages and costs to the tenant in such instances.

3) **Landlord's right of entry** and conditions pertaining thereto. Concern was focused on invasions of tenants' right of privacy through abuses of the landlord's entry for inspection of the premises. Your Committee is in general accord with provisions that the landlord must give two days' notice prior to entry except where impracticable, or the premises appear abandoned, and emergencies.

4) **Tenant right to remedy, nonpayment of rent,** and improper use of the premises before termination of tenancy. Section 68 of the proposed code allows a tenant behind in his rent payment to remedy such within fourteen days of notice and thereby preclude termination of his tenancy. Question was raised on changing the fourteen-day period to five days to expedite the procedure because notice usually is not sent out on the day of default but several weeks later. Section 72 of the proposed code allows a tenant five days to remedy a misuse of the premises and thereby preclude termination of his tenancy. It is suggested that this date be one determined reasonable by the landlord, or a shorter period, because serious infractions may warrant immediate termination.

5) **Office of Consumer Protection to provide counsel for tenants unable to afford same.** Your Committee is of the consensus that in order for such office to handle the large volume of needful tenant grievances, separate legislation enlarging such office's capacity would be needed. Your Committee believes this would unduly tax the budget of the state and is contrary to your Committee's desire of permitting most landlord-tenant disputes to be handled by the small claims court.

6) **Condominium and Cooperative Apartment House Rules.** Concern was raised as to the enforceability of the bylaws of an association of condominium and cooperative apartment owners on tenants of such units. Your Committee is in accord with provisions requiring the tenant to comply with landlords' house rules.

7) **Applicability of the proposed code to a long-term lease of land on which there is a residence or dwelling.** The broadness of the definitions in the proposed code raises the possibility that a landlord under such a lease might be considered as a "landlord" within the coverage of the code. This was not within the intention of the proposed code. Your Committee is in accord with possible provisions excluding the applicability of the proposed code to a lease of improved residential land for a term of fifteen years or more.

8) **Protection from discrimination by landlords against tenant organizing or organizations.** The principle of unions is well established in our society. Prohibitions against discrimination by employers against labor organizing or organizations are clearly defined. Your Committee believes protection from discrimination by landlords is a matter of great concern, but should be further considered by separate legislation.

9) **Automatic right of renewal of residential tenancies for like terms.** Your Committee believes this matter might be prohibited by our State and Federal Constitutions. It is not recommended by your Committee.

10) A list of suggested revisions to the proposed code submitted by the Legislative Reference Bureau as minor or clarification changes on December 18, 1971 follows:

(a) Section -2(b)(1) — which changes "obligations and duties to rights and obligations";

(b) Section -2(b)(3) — which adds "primarily";

(c) Section -3(a) — which adds "real property, public health, safety and fire prevention";

(d) Section -7(2) — which substitutes "succeeds to the interest" for "stands in place";

(e) Section -7(5) — which adds a new

provision which excludes the application of the code to occupancy by an employee whose right to occupancy is conditional upon employment in and about the premises;

(f) Section -8(1) — which adds “including an action for possession”;

(g) Section -8(4) — which deletes “property” and adding in lieu thereof “building”;

(h) Section -8(5) — which changes the definition of “owner” and to specify that the term includes a mortgagee in possession;

(i) Section -8(8) — which adds “and premises” to the end of the sentence expanding the definition of “rental agreement” to include agreements with respect to the premises;

(j) Section -8(11) — redrafts the definition of tenant;

(k) Section -9(c)(2) — which substitutes “rental agreement” for “contract”;

(l) Section -10 — which expands the obligation of good faith to cover acts required as a condition precedent to the exercise of a right or remedy;

(m) Section -31(a) — which substitutes “remedies” for “benefits”;

(n) Section -43 — which rewords substantially the section requiring disclosure to the tenant of the names and addresses of owners and landlords by limiting it to managers and owners or their agents;

(o) Section -45 — which adds a new substantive section limiting the liability of landlords and managers with respect to events occurring when they no longer have that status.

(p) Section -51(4) and Section -51(5) — which attempts to clarify which fixtures or appliances;

(q) Section -51(6) — which changes style;

(r) Section -51(7) — which adds a new duty to the tenant requiring him to keep the dwelling unit in fit condition.

Your Committee recommends that a redraft of the proposed code incorporating the above-noted revisions be prepared by the Legislative Reference Bureau and be consid-

ered by the House and Senate in the 1972 session.

The proposed code, as a whole, contains provisions which warrant further study upon the finalization of the matters in question noted above.

Your Committee recognizes the present deficiency of laws in Hawaii regulating landlord-tenant relations, the critical shortage of low and middle income housing in Hawaii, the imbalance of landlord and tenant bargaining positions created by such shortage, and the need to encourage further development of rental units by landowners and developers. However, your Committee questions whether the proposed code fully remedies such problems.

Your Committee recommends that the subject matter of the revised Proposed Residential Landlord-Tenant Code as will be prepared by the Legislative Reference Bureau be further considered by the legislature, Regular Session of 1972.

Representatives O'Connor, Yap, Wedemeyer and Judd.

Managers on the part of the House

Senators Kuroda, Kawasaki, Ushijima, Yamasaki, Lum and Forbes.

Managers on the part of the Senate.

#### **Spec. Com Rep. No. 6**

The Interim Committee on Drug Abuse was charged with the task of studying the drug abuse problem in the State and to recommend “possible solutions which (would) eliminate drug abuse and restore drug abusers to a productive and healthy life.” With this in mind, the committee held four public hearings to evaluate the present programs available and to explore the causes of drug abuse:

1) Hearing on the two studies done in the area of drug abuse—**Report of the Hawaii Committee on Drug Abuse and Narcotic Addiction and Rehabilitation in Hawaii.**

2) Hearing on government and private programs. Testimonies were given by representatives of the Department of Health, the Department of Education, and private agencies. Private citizens were also present to testify.

3) Hearing at Kailua High School. Students testified on the drug problem and other related areas.

4) Hearing at Farrington High School. Students testified on the drug problem and other related areas.

**FINDINGS.** Attempts at arriving at solutions to the drug problem have thus far been plagued by ignorance, misinformation and have been born out of fear, panic and pressure from the community at large. Consequently, adequate planning of programs in the area of drug abuse prevention, education, rehabilitation, and treatment have suffered from the inability of both governmental and private programs to define the problem areas and to implement appropriate measures.

Your committee finds that there are many private groups and agencies claiming to be involved in such areas as drug abuse prevention, treatment, rehabilitation, and education. Presently over forty agencies, both public and private, are listed as having drug programs. Your committee further finds that most of these programs are small programs which operate on very limited budgets making limited impact on the drug abuse problem.

Your committee further finds that the whole area of drug abuse suffers from the consequences of scattered responsibility with the lack of centralized coordination, direction and authority. No one agency or project seems to know what the other is doing and in many areas overlapping and duplication of services are found to exist.

Your committee further finds that no one public agency is directly responsible for the controlled use of public monies appropriated for the drug abuse problem. In addition, public monies appropriated for use by private agencies are neither coordinated nor regulated. Evaluation of the feasibility, need and effectiveness of such programs are also nonexistent. As a result, there are worthy programs which apparently receive little or no money and there are programs which may receive considerable amounts of money without producing desired results. Such a situation seems to result in questionable productivity in program implementation.

Your committee further finds that fiscal responsibility also affects government drug abuse programs. Presently, monies are being appropriated in a piece-meal fashion to different state agencies without regard to a coordinated, comprehensive program for drug abuse. Thus, many public agencies are work-

ing in limited areas almost without knowledge of programs in other public agencies.

Your committee further finds that limited programs with limited effect will make a limited contribution and will not solve the drug problem in this State. Coordination, centralized authority and responsibility, and the development of a comprehensive approach to the drug problem must be implemented.

Your committee views the establishment of the Governor's Committee on Substance Abuse as the first step towards the coordination and implementation of a comprehensive approach to drug abuse in the State. Your committee also notes that the Legislature has supported the committee through an appropriation of \$70,000 for the biennium 1972-73. However, your committee is alarmed at the fact that the monies appropriated to the Governor's Committee on Substance Abuse have not yet been released by the Governor. Realizing that the financial situation of the state is grave, your committee nonetheless feels that such a problem as drug abuse can no longer be ignored and that its effects are not limited to a particular group of persons within the society. Your committee therefore urges that the monies appropriated for the Governor's Committee on Substance Abuse be released for use in the interest of the public welfare of the people of this State.

Even more important than coordination of public and private programs is the need to examine the present approach to the drug problem. As one of its goals, your committee attempted to understand the drug problem as it affects the youth and adults of the State.

From the hearings held at Kailua High School and Farrington High School, your committee found that "drug abuse" is a relative term the greater society imposed on drug use by the young people and adults. To many of the students who testified, drug use is a symptom of large social problems. For example, many students expressed a sense of alienation from school, parents and society in general. Others maintained that they were bored, or were disinterested in life. Some felt overwhelmed by the problems they must confront. Powerlessness to cope with problems, loss of self, boredom and alienation evolve out of the individual's inability to understand his life or control it. Thus, drug use represents an attempt on the part of individuals to solve or escape problems. Your committee finds, however, that although drugs may be

used as an escape from problems, many students and adults realize that the escape is only a temporary solution at best. Nonetheless, to many of them drug use seems the best alternative at their disposal.

Your committee recognizes that the family, the most basic social unit, has long been undergoing functional changes such that today, the family is well on its way to becoming stripped of its central importance as the moral and emotional developer of its children. As a result, the burden of such an education is being transferred to the school. However, the school as an institution has not developed to meet such needs and therefore is failing. Instead of adjusting to a new role which the school must play to fill the void of the declining family, it has become even more authoritarian and limited, institutionalizing those subjected to its processes.

As a consequence of such conditions, your committee finds that the present educational system has inadvertently contributed to the drug problem. Based on hearings of the committee during the interim and prior legislative activities, it appears that the school system for the most part is failing to adequately prepare the youth of the State to assume the responsibilities of adulthood and to cope with the ever changing internal and external environments. The school administrators must recognize this failure and begin to alter their educational structure to accommodate programs designed to offer different alternatives from which the student can choose for himself according to his interest, view and goals.

Your committee finds that the present school system places heavy emphasis on college education as a goal for students. This attitude of "college or bust" however, does not pervade among the youth of today who do not necessarily subscribe to all the touted values of college education. As a consequence, your committee finds that many of the students are dissatisfied with school and the limitations of a system which categorizes students without regard for their individual needs preference, differences, aspirations, or attitudes. Your committee further finds that alternative educational objectives must be offered to the student who is not interested in a college prep curriculum. For example a work/study program might be made available during the earlier year of a student's education. Introduction of such alternatives would make school a place for all students to

benefit from equally instead of a select group interested only in a college education.

Your committee finds that it is not alone in its diagnosis of a need for alternatives in education and the present lack of such alternatives in the school system. In a statement to the legislature on the objectives of **House Bill No. 639, RELATING TO COMPULSORY SCHOOL ATTENDANCE**, which would lower the age of compulsory school attendance, Governor John A. Burns made the following statement:

The apparent purpose of the bill is to allow students who do not fit into an academic environment to seek other training or activities more suitable to their needs. There is a serious question as to whether or not other options are truly available to these students.

Your committee finds that students expressed the need for a "friend" from within the administration. Students apparently feel that the school counselor, by the very nature of his job and in the absence of strong parental guidance, could be the one adult person with whom a meaningful and personal relationship may be developed. However, under the present counseling system established by the Department of Education, the counselor will never be able to achieve his role as "friend" to the student. The role of the counselor within the school has never been clearly defined by the department and is generally subject to the demands of the principals of each school. The counselor may be requested to be everything from an attendance monitor, to record keeper, to disciplinarian, to health monitor and other unrelated tasks which intrude upon his duties and responsibilities to the student. In addition, in most schools the counselor normally handles approximately five hundred students in a school year and cannot begin to become acquainted with each student on a close personal basis. The consequences of case overload forces the counselor to limit his scope of counseling and to expedite matters rather than attempting to delve into the causes of problems. The results of this system promote the view by students that the counselor is just another representative of an oppressive society, one that increasingly tends to reduce individuals to an insignificant part of the mass population.

Your committee further finds that school counselors often have no "feel" for the stu-



dents they are helping and too often they suffer from the plague of "generation gap". Much like the system to which they belong, many counselors advance the idea of "college or bust", adding further to the negative attitude that if a student is not college prep material, he is not a "good" student. In addition, your committee finds that the counselor with his case overload has no time to explore the many personal and social problems a student may have and as a result resolves many of these problems by didactically handing out advice as to what is morally right or wrong; advice based on value absolutes which may or may not have any relationship to the student. The counselor therefore becomes a "teacher" in the worst sense of the word. Students in turn become very leery of the counselor and his role, basically mistrusting the counselor. As a result students do not have any one to turn to within the school system.

The net result of such an education system, and personal relationships is a high degree of frustration and confusion on the part of both the students and counselors. In the latter case, this results in isolation from the students; in the former case, the cumulative effect on a great many students is reliance on drugs to fill the voids and solve the problems.

Your committee finds that drug education in the schools is not the panacea to the drug problem. The present education approach ignores or greatly overlooks the personality "set" that the individual student brings to the educational experience: early development, parental expectations and modeling, peer group pressure or goals, current life expectations including goal oriented behaviors, and availability of reasonable alternatives. The education approach also seems to ignore those features of society that promise and reward drug experience such as the saturation of chemical advertising that plagues our communication media, the modeling for drug-oriented decision making that goes on in public and private life, and the increasing lack of meaningful goals as they become apparent within the current society structure where individuals have very little control over their own being and destiny.

Your committee finds that most importantly, drug education has become an attempt to make parents of the schools and their staff, replacing natural parents who increasingly abdicate their traditional responsibilities for guidance and control of their

offspring. Schools are expected to assume leadership roles in very personal and intimate issues of living, sexuality, the role of drugs in society, the development of social relationships, etc., issues that cannot just be learned in theory, but must also be lived. The schools are not structured to be parents. Their resource components are too numerous, too impersonal, and sometimes disinterested. As stated earlier in this committee report, the school has not developed accordingly to begin to fill some of the voids left by the decline of the family.

Consequently while recognizing the basic value of education, your committee finds that the school drug abuse education program as it is now constituted reflects a gross misinterpretation of the problem and a waste of opportunity and resources by the school administration.

Your committee finds that marijuana is the most prevalent form of drugs used by the students of the State and more importantly, that most students tend to shy away from the use of "hard drugs".

Your committee further finds that considerable research has been conducted by many private and public agencies on marijuana, its use, and its effects upon the human being. Your committee feels that more research and study is necessary before any final conclusions can be drawn in this area. Your committee finds that the uncertainty and conflict over the effects of marijuana makes it difficult for law makers at this time to judiciously enact appropriate legislation with respect to punitive action against users. An example of such a dilemma was recently demonstrated by the opposing views expressed by the justices of the Hawaii Supreme Court in their decision in the case of *State of Hawaii v. Kanter Jan. 20, '72*.

Your committee concludes that not enough is known about the problem of marijuana as being a drug with actual or potential residual deadly effects on individual users and the general community. Despite all the research that has been undertaken thus far by various sources, the situation is far from clear in permitting the free and unbridled use of marijuana in the community, given the enduring legal, medical, regulatory environment of confusion and uncertainty. Your committee concludes that at this time, in the history of drug research and other related studies, it is far more prudent and



socially responsible to err on the side of conservatism in moving for legislation and regulatory programs designed to control the use of the drug. Until more is known about the effects of marijuana drug use on individuals and society at large, we should proceed cautiously and carefully in liberalizing the State's drug use laws.

But this is not necessarily so in the case of drug supply. Your committee finds that existing public and private practices are oriented too much towards rectifying the demand problems associated with marijuana, and not enough to restricting, controlling, or rectifying the supply problems. This reflects the ignorance or neglect of the less obvious role of the suppliers. Your committee finds that the state should lend all possible support to federal activities in helping to control the supply of drugs in Hawaii. It is imperative that a great deal of attention must be given the drug supply problems to control illicit supplies by criminal elements and to control the manufacture and distribution systems of private firms regulated by the state and federal authorities. All of these areas should be further studied by the committee during the 1972 session, and the subsequent interim period.

Based on the foregoing findings, your committee respectfully submits the following conclusions and recommendations:

1. Your committee concludes that the drug abuse program in the State lacks coordination and centralization. Your committee further concludes that both public and private agencies must be brought together in a concerted effort if any progress is to be made against drug abuse. Your committee recommends that the Governor's Committee on Substance Abuse be established as a permanent committee within the Office of Special Assistant of Human Resources, directly responsible to the Governor. The permanent committee should be the single state agency with the authority and responsibility to supervise the administration of all state related substance abuse programs. It should develop state-wide substance abuse programs, integrate and coordinate the flow of public money and resources into the various private and public substance abuse programs. Your committee further recommends that \$500,000 be appropriated to the committee for administrative and program costs in regulating substance abuse.

2. To be consistent with the above recom-

mendation, your committee recommends that all appropriations to the various public and private agencies for programs in the area of substance abuse prevention, treatment, rehabilitation, and education should be diverted to the Governor's Committee on Substance Abuse. Such agencies should be directed to obtain funds from this Committee.

3. While your committee supports the concept of drug abuse education, we recommend the drug abuse programs now being administered by the Department of Education be transferred to the Governor's Committee on Substance Abuse. Your committee feels that administration of the program by the Department of Education is irrelevant, restrictive, and inflexible and has dubious results. By moving the program to the Governor's Committee, greater possibilities for innovation, experimentation, and responsiveness to the needs of the young people as well as adults can be better achieved. Your committee further recommends that the educational program should not be limited to health class sessions, and that a more innovative and comprehensive approach be developed to include such things as creating a different learning and searching environment, field trips to drug clinics, hospitals, doctor's offices, experiments, etc.

4. Your committee recommends that a full review of the school counseling and guidance system be made by the House Committee on Education. Such an examination should also thoroughly analyze alternatives to a college education. Your committee makes these recommendations in response to the students' criticism of the present counseling system and their expressed wish for different educational alternatives to meet individual needs and to develop skills in areas other than the academic field.

5. Your committee concludes that the school system has evolved into an authoritarian system and that students who are affected by the decisions of the administration are often not consulted in such decisions. Your committee therefore recommends that hearings be held on the conclusions and recommendations of the Student Conference 1971 and 1972 sponsored by the Hawaii High School Student Council Association. If legislators are to make responsible decisions in the area of education, they should also consider the recommendations of those who are affected by these decisions.

6. Your committee recommends that the State Office of Special Assistant of Human Resources develop programs oriented to the problems of adult drug abuse including the abuse of alcohol consumption.

7. Finally, your committee recommends that the House Committee on Public Health, Youth and General Welfare further investigate the development of adequate financing of more programs aimed at drug suppliers and the vigorous implementation of such programs against such illegal suppliers of drugs.

Signed by Representatives R. Garcia, Kihano, Suwa, Devereux, Saiki, Duponte, Lunasco, Wong and Leopold.

#### **Spec. Com. Rep. No. 7**

Your Interim Committee, created pursuant to **House Resolution No. 386**, Regular Session of 1971, entitled: "HOUSE RESOLUTION REQUESTING THE SPEAKER OF THE HOUSE OF REPRESENTATIVES TO APPOINT AN INTERIM COMMITTEE TO DETERMINE WHETHER THERE IS A PUBLIC NEED TO AMEND THE STATE LAW OF PUBLIC ACCOUNTANCY TO PERMIT LICENSING OF OTHER CLASSES OF ACCOUNTANTS, BOOKKEEPERS, AND TAX PREPARERS," begs leave to report as follows:

The purpose of this resolution is to determine whether there is a need for the regulation of accountants, other than certified public accountants, as well as bookkeepers and tax return preparers. The Resolution was, in part, the result of **House Bill No. 1579** of the 1971 Regular Session, which relates to the licensing of accountants, other than certified public accountants. As stated in **Stand. Com. Rep. No. 910** on **H. R. No. 386**:

"The purpose of this Resolution is to look deeper into the question of whether licensing of accountants who are not Certified Public Accountants would be a desirable change in the Hawaii Public Accountancy Law."

At the present time, only those accountants licensed under Chapter 466 of the Hawaii Revised Statutes are allowed to provide

accounting services to the public for a fee. This includes certified public accountants and those public accountants who were actually practicing accounting at the time the present law was enacted. The latter group, "grandfathered" in under Ch. 466-11, HRS, are "registered" under the present law, and are allowed to practice accounting in the same manner as a certified public accountant. Other than these two groups, no other person can hold himself out as a public accountant under our present law.

As required by the Resolution, your Committee looked into the areas of bookkeeping and tax return preparation as well as accounting. Your Committee received testimony from the State Board of Accountancy, the Department of Regulatory Agencies, the Department of Taxation, the Office of Consumer Protection, the Office of the Ombudsman, the Legislative Reference Bureau, the Internal Revenue Service, the Better Business Bureau, the Tax Foundation of Hawaii, the Hawaii Society of Certified Public Accountants, the Hawaii Association of Public Accountants, and the various independent bookkeepers and tax return preparers presently in business in Hawaii. Additionally, your Committee has on file a letter from the Office of the Attorney General rendering an opinion on the applicability of Chapter 466, Hawaii Revised Statutes, to the practice of public accountancy under certain enumerated conditions. Your Committee would like to make note here of the cooperation and assistance rendered by the Hawaii Society of Certified Public Accountants and the Hawaii Association of Public Accountants during this interim study. Your Committee was also provided commendable staff assistance by the Office of the Legislative Auditor in its deliberation.

The basic approach taken by your Committee has been to view the issue in terms of public interest and public need. The role of government in regulating certain aspects of private enterprise is based on the premise of both prevention and protection. It is preventive in terms of minimizing unscrupulous and fraudulent practices, and guaranteeing the consumer proper redress in such cases. It is also to serve the purpose of ensuring an acceptable standard of service as well as promoting the availability of service as needed by the public. The public must be protected from fraud and dishonesty and assured of the required degree of competence on the part of

public practitioners. The State, under its police power, may pass laws to protect the public against fraud, deception or the consequence of ignorance and incapacity, and may exact the requisite degree of skill and learning from persons in professions and pursuits which affect the public health or welfare, such as accountancy. The consequences today of ill-trained, unscrupulous practitioners can have far-reaching and oftentimes disastrous results for the unsuspecting client. The client should be assured that the practitioner he selects has demonstrated a required degree of competence through experience or an examination, and that he is bound to adhere to established rules of conduct and professional ethics.

#### **FINDINGS AND RECOMMENDATIONS:**

The findings and recommendations of your Committee are discussed under each of the following classes of providers of services: (1) tax return preparers; (2) bookkeepers; and (3) public accountants. Your Committee finds that the present statutes adequately regulate the accounting practices of certified public accountants, therefore no further comment is made in this report regarding C.P.A.'s. Finally, recommendations are made regarding a change in the composition of the State Board of Accountancy and the granting to the Board the authority to secure the assistance of others to proctor examinations given by the Board.

##### **Tax Return Preparers**

In its study of tax return preparers, your Committee concludes that there is a need to discourage fly-by-nighters to insure consumer protection and redress in cases of faultily prepared tax returns, and to maintain reliable, quality services. Under the present law, any person may engage in the business of preparing tax returns for a fee, with or without any training or experience in this field. Your Committee, therefore, recommends that tax return preparers be regulated by the State. This recommendation is made in view of your Committee's concern over the increased number of tax return preparers who solicit business during the tax season, and whose operations go unchecked. This is not to condemn the larger, more established tax return preparation firms who, as far as your Committee is concerned, do provide tax return preparation services in a professional

and responsible manner. Further, those persons engaged in the business of tax return preparation for a fee testifying before your Committee favored some kind of regulation of tax return preparers.

Your Committee recommends that **House Bill No. 1579** be amended to include the regulation of tax return preparers, and that such regulation reflect the following guidelines:

1. That a tax return preparer shall be any person engaged in offering to the public tax return preparation and tax return audit representation services for a fee. Tax return preparation shall be defined to include the preparation of payroll, sales, excise and individual income tax returns. Tax return audit representation shall be defined to include representation on behalf of a client on tax returns under examination by tax authorities, to the extent permitted by the tax authorities;

2. That any person engaged in tax return preparation and tax return audit representation as defined, shall maintain an office on a year-round basis:

3. That any person engaged in tax return preparation and tax return audit representation as defined, shall have successfully passed an examination as developed by the board which shall test the person's competence and knowledge in tax matters relating to services he is authorized to provide. At the time of licensing, the person shall be a citizen of the United States or declared his intention of becoming a citizen, a resident of the State, over the age of twenty years and of good moral character. Such person shall also have a minimum of a high school diploma or its equivalent, and at least two years of experience in the field of tax return preparation. In the case of a firm or corporation providing tax return preparation and tax return audit representation services, there shall be at least one person duly licensed as a tax return preparer;

4. That in the case of a person, firm or corporation maintaining more than one office or branch, there shall be at least one person duly licensed as a tax return preparer working in a full-time capacity in each such office or branch;

5. That any person engaged in tax return preparation and tax return audit representation as defined, shall be responsible for any errors, including resulting penalties and in-

terest payments, that may occur due to negligence on the part of said person;

6. That any person engaged in tax return preparation and tax return audit representation as defined, shall not advertise.

7. That any person engaged in tax return preparation and tax return audit representation who has been in the business of providing such services for a fee for at least two years prior to January 1, 1973, and who is a citizen of the United States or has declared his intention of becoming a citizen, a resident of the State, over the age of twenty years, of good moral character, shall be registered as a tax return preparer upon application to and verification by the board. In the case of a firm or corporation engaged in providing tax return preparation and tax return audit representation services for a fee for at least two years prior to January 1, 1973, any person employed by such firm or corporation meeting the eligibility requirements set forth in this paragraph shall be registered as a tax return preparer upon application to and verification by the board.

#### **Bookkeepers**

In its study of bookkeepers, your Committee concludes that bookkeepers should be regulated in order to fill a real and tangible need in helping small businessmen with their recordkeeping and simple tax compliance requirements. It is your Committee's view that oftentimes the services required by the small businessman are not complex and might well be handled by a person other than a certified public accountant.

In addition, your Committee concludes that the regulation of bookkeepers will aid in the elimination of any indiscriminate practice of accounting under another name. Your Committee found that, at the present time, a person who is not a C.P.A. or a grandfathered public accountant but desires or is requested to render bookkeeping and other accounting services, may do so for a fee as long as he does not hold himself out to be an accountant. This is partly attributable to the lack of a clear definition of bookkeeping under our present laws. In the regulation of bookkeepers, the scope of services to be provided by bookkeepers should be clearly defined.

Your Committee recommends that **House Bill No. 1579** be amended to include the

regulation of bookkeepers, and that such regulation reflect the following guidelines:

1. That a bookkeeper shall be any person engaged in offering to the public for a fee bookkeeping services, financial statement preparation services, tax preparation services as defined above, and tax return audit representation as defined above. Bookkeeping shall be defined to include the recording of financial transactions in books of account. Financial statement preparation shall be defined to include the preparation of financial statements and supporting schedules from the books of account showing the financial condition of a company as of a certain date, operating results over a period of time, and other schedules such as accounts receivable aging reports, and changes in the proprietor's equity. Each page of the financial statements and supporting schedules prepared by the bookkeeper shall be clearly and conspicuously marked as unaudited and shall include a statement to the effect that the financial statements and schedules are restricted to internal use;

2. That any person who is a bookkeeper as defined above shall maintain an office on a year-round basis;

3. That any person who is a bookkeeper as defined above shall have successfully completed an examination developed by the Board covering accounting principles, practices and procedures and reporting standards relating to bookkeeping and financial statement preparation, as well as met the requirements set forth for a tax return preparer, shall be a high school graduate or its equivalent, and shall have had at least three years experience as a bookkeeper under the supervision of a C.P.A., grandfathered public accountant, or registered bookkeeper. At the time of licensing, the person shall be a citizen of the United States or declared his intention of becoming a citizen, a resident of the State, over the age of twenty years and of good moral character. In the case of a firm or corporation providing services of a bookkeeper, there shall be at least one person duly licensed as a bookkeeper;

4. That in the case of a person, firm or corporation maintaining more than one office or branch, there shall be at least one person duly licensed as a bookkeeper working in a full-time capacity in each such office or branch;

5. That any person who is a bookkeeper as defined above shall not advertise;

6. That all bookkeepers who have been in the business of tax return preparation, tax return audit representation, bookkeeping, and financial statement preparation for a fee for at least two years prior to January 1, 1973, and who is a citizen of the United States or has declared his intention of becoming a citizen, a resident of the State, over the age of twenty years, and of good moral character, shall be registered as a bookkeeper upon application to and verification by the board responsible for the regulation of bookkeepers. In the case of a firm or corporation engaged in providing services of a bookkeeper for a fee for at least two years prior to January 1, 1973, any person employed by such firm or corporation meeting the eligibility requirements set forth in this paragraph shall be registered as a bookkeeper upon application to and verification by the board.

#### Public Accountants

In its study of public accountants, your Committee concludes that, in the public's best interest, a class of public accountants, other than the CPA's and grandfathered public accountants, should not be created. After considering the testimonies received, your Committee believes that the profession of public accountancy requires those engaged in it to possess an extensive body of knowledge on matters relating not only to accounting and auditing, but also to other areas of business management such as tax planning and the development and installation of management information reporting systems. The public has the right to be assured that those who call themselves professional public accountants can indeed provide the services expected of them. Your Committee finds that the services requiring these high level expectations of competency should be limited to CPA's and the grandfathered public accountants.

Your Committee recommends that **House Bill No. 1579** be amended to delete all provisions and references relating to the class of accountants identified as "licensed accountants".

#### State Board Composition

Your Committee further recommends that **House Bill No. 1579** be amended to change the composition of the Board from seven to

nine members. Five members shall be certified public accountants, two members shall be the grandfathered public accountants, one member shall be a registered bookkeeper, and one member shall be a registered tax return preparer. This is to ensure representation of the various professions being regulated by the regulating body.

The Board of Accountancy expressed concern that presently there isn't a sufficient number of Board members to adequately proctor the CPA examinations. Instead of increasing the Board to an unmanageable number for the purpose of providing proctors for examinations, your Committee recommends that **House Bill No. 1579** be amended to include an additional provision which authorizes the Board to secure the assistance of other persons licensed under Chapter 466, without compensation, to proctor examinations given by the Board.

A revised draft of **House Bill No. 1579** which incorporates the findings and recommendations of your Committee, as discussed herein, relating to the regulation of bookkeepers and tax return preparers, the deletion of the class of "licensed accountants" and other matters relating to the Board of Accountancy, is attached hereto.

Signed by Representatives Kishinami, Kunimura, Wasai, Yap, Aki and Carroll.

#### Spec. Com. Rep. No. 8

Your Committee held extensive public hearings for the three-fold purpose of education about these important and comprehensive measures, receipt of opinions and suggestions from representatives of affected interest groups, and consideration of potentially appropriate amendments to the Uniform Acts under study. Witnesses who appeared before your Committee at these hearings included spokesmen from the Hawaii Bankers Association, the Hawaii Credit Union League, the Honolulu Chamber of Commerce, the Honolulu Retail Board, the Legal Aid Society of Hawaii and Hui Maka Ala, the Hawaii Consumer Finance Association, and the Hawaii State Federation of Labor as well as spokesmen for government agencies, knowledgeable in the field, including the Department of Regulatory Agencies, the Office of the Attorney General, and the Office of Consumer Protection. Your Com-

mittee wishes to acknowledge the assistance of the National Conference of Commissioners on Uniform State Laws in making possible the attendance for purposes of testimony of Professor Robert W. Johnson who is the Reporter-Economist for the Uniform Consumer Credit Code and Richard Wheatley who was the first Administrator of the Uniform Consumer Credit Code in Oklahoma.

The initial public hearings held by your Committee were primarily study sessions for the benefit of the Committee members. Your Committee expresses appreciation to John Chanin, Chairman of the Hawaii Commission to Promote Uniform Legislation for conducting these educational seminars.

#### **Uniform Consumer Credit Code - Policies**

The Uniform Consumer Credit Code was promulgated by the National Conference of Commissioners on Uniform State Laws and approved by the House of Delegates of the American Bar Association in 1968. The Code has been enacted in six states—Colorado, Idaho, Indiana, Oklahoma, Utah, and Wyoming—and is under study in the majority of the remaining states by bodies such as your Committee.

The Code is proposed as a comprehensive treatment of most aspects of consumer credit, both consumer credit sales and consumer loans as well as consumer leases. Business transactions are not within the scope of the Code under the reasoning that businesses are generally in a satisfactory bargaining position in relation to grantors of credit whereas consumers stand in special need of legislation to protect their interests. The Code distinguishes consumer transactions and business transactions primarily on the basis of the debtor involved. If the debtor is a natural person, in most cases the Code applies. If the debtor is an organization, generally the Code does not apply. Since a certain amount of business is done and debt is incurred by natural persons as sole proprietors, a further purpose test in defining a consumer transaction is provided—the sale, loan, or lease must be for personal, family, or household purposes. Other limitations on the Code's coverage are that it applies only where credit is granted by a seller or lender regularly engaged in credit transactions of the same kind; it applies only if the debt is payable in installments or a credit service charge or a finance charge is made; and except in cases involving an interest in land, it applies only if the amount in-

involved does not exceed \$25,000.

The general purposes and policies of the Code are set forth as:

(a) To simplify, clarify and modernize the law governing retail installment sales, consumer credit, small loans and usury;

(b) To provide rate ceiling to assure an adequate supply of credit to consumers;

(c) To further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable costs;

(d) To protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;

(e) To permit and encourage the development of fair and economically sound consumer credit practices;

(f) To conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act; and

(g) To make uniform the law, including administrative rules among the various jurisdictions.

The following comments relate to these seven propositions.

(a) To simplify, clarify, and modernize—existing law in Hawaii dealing with credit is scattered throughout the Hawaii Revised Statutes and, due in large part to the historical sequence of enactment of the various laws, is frequently inconsistent and self-contradictory. For example, the Hawaii Retail Installment Sales Act makes wage assignment provisions in a retail installment contract unenforceable in this State (sec. 476-13 HRS). The Industrial Loan Act has no restrictions on assignment of earnings. The Small Loan Act provides that an assignment of earnings is valid if it is in writing and signed by the borrower and his spouse (sec. 409-20 HRS). The Uniform Consumer Credit Code provides that wage assignments for payment or as security for payment of a debt arising out of a consumer credit sale, consumer lease, or consumer loan are prohibited, unenforceable, and revocable by the



buyer, lessee, or debtor. Another example of inconsistency under present laws is in the matter of confessions of judgment. Both the Retail Installment Sales Act (sec. 476-13 HRS) and the Small Loan Act (sec. 409-15) prohibit confessions of judgment, but there is no comparable provision in the Industrial Loan Act. The Uniform Consumer Credit Code makes an authorization to confess judgment void in any consumer loan, consumer lease, or consumer credit sale. Existing law abounds in such inconsistencies, including those in the area of rates and charges. Furthermore, the Hawaii Retail Installment Sales Act relies heavily for basic authorizations on sections of the Industrial Loan Law, incorporated by reference, but leaves unclear such important matters as revolving charge accounts and does not deal at all with the ever growing area of consumer leasing.

Your Committee has concluded that in the matter of simplifying, clarifying, and modernizing the law of consumer credit, the Code would constitute a vast improvement over the existing laws in this State.

(b) To provide rate ceilings to assure the supply of consumer credit—as stated by Professor Johnson in his testimony before your Committee:

“... the Code is an economic document that affects both the costs and revenues of credit grantors. As we narrow or widen the margin between costs and revenues, we contract or expand the market for consumer credit. When we narrow the margin, we eliminate from the legal market the least creditworthy consumers; that is, typically consumers with low and uncertain incomes and with few assets to serve as collateral. This elimination is a product of entirely rational economic behavior on the part of credit grantors.”

In the past it was generally assumed that once a maximum interest rate was established, everybody would begin to charge that amount. After much careful observation of how interest rates work, your Committee realizes that that is not so, for it is now demonstrated that interest is especially sensitive to the laws of supply and demand. As a consequence, the fact that a maximum rate is established i.e., the point beyond which no one can legally charge interest, becomes much less significant. In the State of Hawaii today, under present law, the interest rates charged by commercial lending institutions

generally are far less than the so-called maximum allowable rate. This is shown by looking at the volume in outstanding loans—in banks \$296 million, industrial loans \$263 million, credit unions \$153 million, small loans a mere \$475 thousand; only this last group systematically approaches allowable rates. So the fact that in certain limited areas the maximum rate may be increased should not be viewed as an indication that the maximum will automatically be charged. What the Code does is establish realistic maximum limits, thereby making credit available to people who otherwise would not be included in the potential borrower market. It is most significant that in the states which have adopted the Code the experience has been that the maximum rate is not automatically charged.

In order realistically to establish workable interest rates, the forces of supply and demand must come into play. These forces aided by the Code's provisions which foster increased competition among lenders as well as more meaningful disclosure of rates will tend to keep the rates down. This is one of the most significant points about the way the Code works. Your Committee finds that under the Code, rates will decrease on loans in excess of \$1,700 and increase in an infinitesimal degree on smaller loans. The average installment loan across the country is \$2,000. This means that for the majority of loans the interest rate would be lower under the Code than it presently is with regard to the maximum amount that could be charged.

(c) To further consumer understanding and to foster competition among suppliers of consumer credit—under the Code's economic theory, if competition is to be more effective in forcing a substantial portion of market transactions below the price ceilings, the competitive nature of the consumer credit market must be improved. In Hawaii as in most states, the legal framework prescribing the treatment that may be accorded consumers in their credit transactions varies widely according to the nature of the credit grantor and the good or service financed. This segmentation into Retail Installment Sales Law, Industrial Loan Law, Small Loan Law, etc. creates artificial barriers that prevent consumers from benefiting as fully as they might from the forces of competition. Therefore, a basic thrust of the Code is to improve the quality of the market for consumer credit by breaking down this segmentation through relatively uniform treatment

of all consumer credit transactions. Even though market rates below ceiling rates are evident in the present imperfect market, the changes proposed in the Code to improve competition will substantially reinforce this pattern.

The Code proposes to increase competition in the market for consumer credit in three ways. First, the Code prohibits or restricts collection remedies that give fringe credit grantors that use them extensively an arsenal of oppressive collection tools. Second, the Code provides for a greater ease of entry into the consumer credit field by striking down the artificial legal barriers. Specifically, the Code makes no requirement for licensing on the basis of convenience and advantage, but rather provides a test of financial responsibility, character, and fitness. It removes limits on the amounts of credit that may be granted by different lenders. It strikes down the great multiplicity of rate ceilings and substitutes a price ceiling that is uniform across the board, except for a somewhat lower limit on revolving sales credit. It permits licensees to offer other consumer goods and services, so long as their sale is not used to evade the Code.

Finally, the Code provides for disclosure of the annual percentage rate and the dollar finance charge in a manner essentially identical to that required by the Federal Consumer Credit Protection Act. Many supporters of federal truth-in-lending argued that if consumers were given the annual percentage rate, they could then shop effectively for credit. Your Committee believes that there will be a great improvement in enforcing disclosure by creditors if the responsibility rests with the Code administrator, rather than with an understaffed federal agency responsible for a wide range of federal programs.

(d) To protect consumer buyers, lessees, and borrowers against unfair practices—although Hawaii has been a leader among the states in enacting effective consumer protection legislation, there are many gaps in the State's array of law on the subject. Consumer protection matters in the Uniform Consumer Credit Code that will aid the Hawaii consumer include coverage, for the first time, of consumer lessees, effective regulation on balloon payments, prohibitions against deficiency judgments on credit sales of goods costing \$1,000 or less, prohibitions against a waiver of his rights by the consumer, protec-

tion of the Hawaii consumer in multi-state transactions, across-the-board prohibitions against multiple agreements for purposes of exacting higher charges and assignments of earnings and confessions of judgment, prohibitions against charging the debtor for attorney's fees on loans in which the principal is \$1,000 or less, and, finally, the concept of unconscionability as a tool for the courts in protecting consumers against over-reaching.

(e) To permit and encourage the development of fair and economically sound consumer credit practices—the experiences of the states that have enacted the Code are most impressive to your Committee on this point. Mr. Richard Wheatley, the Oklahoma administrator testified as follows:

"A businessman might rightfully ask—'What about me? You have set out all these consumer benefits and consumer rights, are there any benefits to the businessman?' A cursory reading of the Code will not define or indicate any benefits to creditors, but they are there.

1. A general upgrading of credit worthiness.

2. A favorable competitive situation for bona fide businessmen. A shady operation cannot exist . . . .

3. A place where the creditor can complain about the practices of other creditors . . . .

In summary I would say that the Code is a very effective educational, examination, and enforcement vehicle. It answers most questions regarding credit abuses, and almost all credit connected abuses can be reached and stopped."

(f) To conform to the policies of the Federal Consumer Credit Protection Act—the Federal Act includes a provision that the Board of Governors of the Federal Reserve System shall exempt from the requirements of the Act any class of credit transaction which the Board determines is subject to state law which requires disclosure substantially similar to the Federal requirements and contains adequate provision for enforcement. A model set of regulations is available from the National Conference of Commissioners on Uniform State Laws to assist any state enacting the Code in obtaining the exemption



from the disclosure aspects of the Federal Act.

(g) To make uniform the law among the various jurisdictions—as more and more states enact the Uniform Consumer Credit Code, uniformity will benefit both the mobile consumer and the interstate consumer credit industry.

#### **Uniform Consumer Credit Code - Recommendations**

Your Interim Committee on the Uniform Consumer Credit Code and the Uniform Consumer Sales Practices Act recommends favorable consideration of the Uniform Consumer Credit Code by the House of Representatives of the Sixth Legislature of the State of Hawaii, Regular Session of 1972, subject to the following conditions:

1. That for those sections of the Code where alternatives are provided, the alternatives be determined as follows:

(a) Section 2.404, Alternative A, which provides that an assignee of the rights of a seller is subject to all of the claims and defenses of the buyer against the seller. This alternative is the more protective of the consumer's rights and is substantially the same as the comparable provision in Hawaii's Retail Installment Sales Act (sec. 476-18(d)).

(b) Section 2.413 and 3.404, Alternative B, modified, which limits the attorney's fees that may be charged a defaulting buyer, lessee, or debtor to not more than twenty-five per cent of the unpaid debt but only if the attorney is not a salaried employee of the seller or lessor or his assignee, or of the lender.

This alternative, modified, treats attorney's fees as a charge to be imposed, at least in part, on the defaulting buyer, lessee, or debtor and not as a part of the seller's, lessor's, or lender's general overhead to be indirectly borne by all his customers. There is, however, no such reason to allow attorney's fees to be so charged if the attorney is house counsel. The percentage limitation is consistent with existing law (sec. 607-17 HRS).

2. That a major change in the Code classification of loans be made, with conforming amendments throughout, to delete the concept of "regulated" loans. Similar action was taken in the Code enactments in Colorado,

Oklahoma, and Wyoming. This amendment to the Code will define "supervised" loans as those at a rate exceeding ten per cent and will require lenders who make supervised loans to be licensed or otherwise be supervised financial organizations. Your Committee believes that this amendment will significantly strengthen the consumer protection powers of the Code's administration.

3. That the following sections of the Code be amended as recommended by the Board of Governors of the Federal Reserve System:

section 2.202 (3)

section 2.301 (2) and (3)

section 2.306 (2) (j)

section 3.202 (3)

section 3.301

section 3.306 (2) (g)

section 5.203 (6)

section 6.104 (2)

These amendments are technical matters requested by the Federal Reserve as a condition of exemption under the Federal Truth-in-Lending Law for states enacting the Code.

4. That major amendments be made to the official text of the Uniform Consumer Credit Code to incorporate into the Code existing consumer protection laws in effect in the State that are more favorable to consumers than their comparable code provisions. These amendments include sections 2.403 on consumer notes (sec. 476-36 HRS with additional safeguards to the buyer for the case of a holder of a "consumer note" which is not labeled as required by law); section 2.417 permitting members of the armed services to remove a motor vehicle purchased under a consumer credit sale without the approval of the seller (sec. 476-31 HRS); sections 2.501 to 2.503 on home solicitation sales (secs. 476-1 and 476-5 HRS); sections 4.107 and 4.203 on premium rates for consumer credit insurance (sec. 435-7 HRS); section 4.109 dealing with the consumers choice of insurer for consumer credit insurance (sec. 435-11 HRS); section 4.202 on credit insurance for education loans (sec. 435-4 HRS); section 4.301 on property insurance rates (sec. 476-6 HRS); section 4.305 on motor vehicle credit insurance (sec.

476-6 HRS); sections 5.106 and 5.202 on garnishment not grounds for employee suspension (sec. 378-32).

5. That the administration of the Uniform Consumer Credit Code be established so that the supervision and enforcement of the Code will be carried out in a vigorous way. The Code provides ample powers to the Administrator with jurisdiction over both lenders and merchants. He may bring actions on behalf of an individual or class of debtors to recover excess charges made by a creditor (section 6.113); he may bring actions to restrain creditors from engaging in unconscionable conduct (section 6.111); he may issue orders, including cease and desist orders directed at creditors who engage in violations of the Code; he is given substantial investigatory powers with respect to consumer credit extended by merchants or finance companies; and he is made responsible for adopting rules and regulations concerning disclosure that must be consistent with the Federal Consumer Credit Protection Act and the regulations thereunder. Further, the Code provides for a Council of Advisors on Consumer Credit to aid the Administrator and to improve the standing and quality of consumer credit generally. The members of the Council will be selected from both the consumer credit industry and the public consumer sectors.

Your Committee, recognizing that the efficacy of the Code will depend in large degree on the wisdom and vigor of the Administrator, recommends that his administration not be made a part of any existing agency but that it be an office filled by the Governor, with the advice and consent of the Senate, and to serve at the pleasure of the Governor. Your Committee believes that this extraordinary office will be best equipped to execute its extraordinary powers and responsibilities with independence.

Your Committee has studied at length much of an apparently inexhaustible literature dealing with the Uniform Consumer Credit Code. We have confidence that our conclusions and recommendations will be borne out by experience, and on this subject quote the first Nobel Prize Winner in Economics, Dr. Paul A. Samuelson, who said when he testified in support of the Code in Massachusetts:

“Having recently given detailed study to the economic issues involved in the Uni-

form Consumer Credit Code, and having weighed the arguments pro and con, I wish to go on record . . . as warmly recommending the . . . Code. This new legislation is long overdue, and I predict it will receive favorable consideration . . . and with favorable benefits both to the consumer at large and to the lending industries generally.

“ . . . let me speak to the legitimate concern of consumer groups. With the best intentions in the world, some in that field cannot see the great harm which too-low ceilings do to the equitable and efficient working of the capital markets . . . . To keep in perpetuity low ceilings would do more harm in the next twenty years than would have been true in the twenty years following 1929. After consulting numerous other economists in the field . . . I have satisfied myself that the proposed maximum rate schedules of the proposed . . . Code are schedules that the economy can live with—which is more than can be said for the hodgepodge that has hitherto characterized our history.”

#### **Uniform Consumer Sales Practices Act**

Your Committee also carried on a detailed study, including the holding of public hearings, on another consumer related proposal of the National Conference of Commissioners on Uniform State Laws—the Uniform Consumer Sales Practices Act. Although your Committee is favorably impressed by this Act, particularly its innovative provisions on consumer class actions, and believes that a single administrator with jurisdiction over this Act and the Uniform Consumer Credit Code will be a desirable future development, your Committee recommends that such future development be stayed until after the Code has gone into effect and experience has been accumulated under a Code regime.

#### **Interim Committee Recommendations**

Your Committee has carefully prepared repealing and amending provisions for the Uniform Consumer Credit Code, to assure that enactment of the Code will not insert contradictions and overlaps into the Hawaii Revised Statutes and to assure that existing consumer protection laws are not abridged. Accordingly, the following repeals are recommended:

Chapter 408, Hawaii Revised Statutes, being the Industrial Loan Law

Chapter 409, Hawaii Revised Statutes, being the Small Loan Law

Chapter 476, Hawaii Revised Statutes, being the Retail Installment Sales Law

Chapter 477, Hawaii Revised Statutes, being the Disclosure of Finance Costs Law

Conforming amendments to the Hawaii Revised Statutes recommended as follows:

Section 235-9, Hawaii Revised Statutes, with respect to income taxation of industrial loan companies

Section 237-23, Hawaii Revised Statutes, with respect to general excise taxation of industrial loan companies

Sections 241-1 and 241-3, Hawaii Revised Statutes, with respect to franchise taxation of industrial loan companies

Sections 437-1.1, 437-28, 437-32, 437-33, 437-34, and 437-37, Hawaii Revised Statutes, with respect to the Motor Vehicle Industry Licensing Law

Section 454-2, Hawaii Revised Statutes, with respect to the Mortgage Brokers and Solicitors Law

Sections 478-1, 478-4, and 478-9, Hawaii Revised Statutes, with respect to the Mortgage Brokers and Solicitors Law

Section 490:9-203, Hawaii Revised Statutes, with respect to the Uniform Commercial Code

Chapters 401 and 402, Hawaii Revised Statutes, with respect to powers and functions of the bank examiner

It is also recommended that the law on odometer readings presently a part of the Retail Installment Sales Act (sec. 476-35.1 HRS) be replaced into the Motor Vehicle Industry Licensing Law (ch. 437 HRS); and that the laws on capitalization of industrial loan companies and their authorization to issue certificates for the payment of money (secs. 408-13 and 408-14 HRS) be re-enacted to apply to such corporations under the Code terminology of "supervised lenders".

Your Committee notes that Article 9 of the Code provides for a delayed effective date of January 1, 1973; however it is recommended

that the office of administrator of the Uniform Consumer Credit Code be established and funded from the date the Act is approved in order to provide for staff, equipment, and rules and regulations when the Code goes into operational effect. The Code is designed to function without expenditure of public funds and with its administrative, enforcement, and other operational costs to be financed from the fees which the Code assesses against all sectors of the consumer credit industry, including merchants, lessors, finance companies, and banks. The fee structure is based upon the volume of credit extended by each such firm with provision being made to avoid duplication in the payment of fees as between seller creating consumer credit and a bank or other finance company acquiring the same consumer credit obligation from the seller. Your Committee recommends an appropriation of \$200,000 as an advance, to be repaid into the general fund from the fees to be collected after the Code goes into effect. This amount is necessary for the initial establishment of the office of Code administrator, including the costs of promulgation of rules and regulations, and for the first half year of Code operations. It is pointed out that in the states where the Code is now in effect revenue receipts exceed operational costs.

Your Interim Committee recommends that the Uniform Consumer Credit Code in the amended form attached hereto be passed by the House of Representatives, Regular Session of 1972.

Representatives Kimura, Kishinami, Kunimura, Morioka, Roehrig, Chong, Judd and Yamada.

Representative Judd did not sign the report.

#### Spec. Com. Rep. 9

Your Joint House-Senate Interim Committee to Receive and Report on the Statutory Revision Program of the Committee on Coordination of Rules and Statutes, pursuant to **House Concurrent Resolution No. 24, H. D. 1**, of the Sixth Legislature of the State of Hawaii, Regular Session, 1971, (Your Committee) begs leave to report as follows:

The purpose of the statutory revision program of the Committee on Coordination of Rules and Statutes (Committee on Coordination) and of Your Committee has been to review and revise the Hawaii Revised Statutes and rules relating to civil procedure so

as to coordinate them and eliminate inconsistencies; delete outmoded provisions; make improvements of a technical nature; and transfer procedural matters to court rules where advisable. Such comprehensive updating and unifying of statutes is long overdue in Hawaii. Obsolete civil procedure provisions dating from legislative acts of 1869 are now to be found in our statutes. When the Hawaii Rules of Civil Procedure were adopted, revision became a critical need. While many other states have permanent law revision commissions, the work undertaken by the Committee on Coordination and this Committee is the first comprehensive revision of statutory procedural provisions of Hawaii in this century.

The Committee on Coordination of Rules and Statutes, appointed pursuant to appropriations made for the Judicial Branch, Office of Administrative Director of Courts, by Act 154, L. 1969, Act 175, L. 1970, and Act 68, L. 1971, has submitted **The Report of the Committee Coordination of Rules and Statutes** which covers all of volumes 1 through 7 of the Hawaii Revised Statutes, except chapters 604 and 633 which were the subject of Act 144, L. 1971.

**The Report of the Committee on Coordination** is a culmination of work not lightly undertaken. The Committee on Coordination met regularly at least once a month from September 6, 1969 until the submission of its report on September 1, 1971. Membership of the Committee on Coordination is as follows:

Justice Masaji Marumoto, Chairman

Judge Yasutaka Fukushima, Member

Clinton R. Ashford, Member

Daniel H. Case, Member

Walter G. Chuck, Member

Robert A. Franklin, Member

Hidehiko Uyenoyama, Member

Rhoda V. Lewis, former Supreme Court Justice, is the Reporter of the Committee. **The Report of the Committee on Coordination** consists of (a) three volumes of marked up statutes covering HRS volume 7 and a supplementary report covering HRS volumes 1 through 6 showing deletions and insertions, reporter's notes explaining the changes

made, and in a few instances proposed court rules; and (b) two volumes of drafts of bills to enact the proposed changes.

A brief outline of the chapters the Committee on Coordination recommended for change in the existing Hawaii Revised Statutes follows. The chapters proposed to be amended or repealed are grouped according to their titles as bills as required by Article III Section 15 of the Constitution of the State of Hawaii:

#### 1) Relating to Courts.

Chapters 601, 602, 603, 606, 607, and 608 of the Hawaii Revised Statutes are proposed to be amended. This title concerns courts generally; the supreme court; circuit courts; clerks, reporters, interpreters, etc.; costs and fees; and expenses of court.

#### 2) Relating to Court Proceedings.

Chapters 632, 634, 635, 636, 641 and 655 are proposed to be amended. Under this title, Chapters 631, 637, and 642 of the Hawaii Revised Statutes are proposed to be repealed. The chapters to be amended concern declaratory judgments; civil actions and proceedings, generally; trials; judgments; appeals; and deposit and delivery. Chapter 631 relating to agreed facts, submission on in Supreme Court is to be repealed as the subject matter is covered by the proposed revision of HRS Section 602-5(3) and the proposed Supreme Court Rule 21. Chapter 637 relating to Equity: Jurisdiction and Procedure is proposed to be repealed by reason of the union of law and equity under the Hawaii Rules of civil procedure, Rules 1 and 2; provisions having continuing significance have been transferred to other chapters or incorporated in rules of court. Chapter 642 relating to Reserved Questions is proposed to be repealed as the subject matter is covered by the proposed revision of Section 602-5(2) and the proposed Supreme Court Rule 22.

#### 3) Relating to Remedies.

Chapters 654, 658, 659, 660, 664, 665, 666, 667, 668, and 669 of the Hawaii Revised Statutes are proposed to be amended. This title concerns special proceedings for immediate possession of personal property; arbitration for immediate possession of personal property; arbitration and awards; extraordinary legal remedies—quo warranto; habeas cor-

pus; boundaries, fences, ways, water rights; escheat; landlord and tenant; mortgage foreclosures; partition of real estate; and quieting title.

4) Relating to Evidence.

Chapters 621 and 622 of the Hawaii Revised Statutes are proposed to be amended. This title concerns evidence and witnesses, generally; and documentary evidence.

5) Relating to Deposition and Discovery Proceedings.

Chapter 624 concerning depositions and discovery is proposed to be amended. Chapter 625 of the Hawaii Revised Statutes concerning notice to admit, inspection, and discovery are to be repealed as its provisions either have been superseded by the rules of court or are proposed to be transferred to another chapter.

6) Relating to Limitation of Actions.

Chapter 657 of the Hawaii Revised Statutes concerning limitation of personal and real actions is proposed to be amended.

7) Relating to the Practice of Law.

Chapter 605 of the Hawaii Revised Statutes entitled "Attorneys" is proposed to be amended.

8) Relating to Actions by and Against the State.

Chapters 661 and 662 of the Hawaii Revised Statutes are proposed to be amended. This title concerns the State Tort Liability Act and actions by and against the State.

9) Relating to Torts.

Section 577-3, concerning liability for torts of child, and Chapter 663 concerning tort actions are proposed to be amended.

10) Relating to Land Court Proceedings.

Chapter 501 of the Hawaii Revised Statutes is proposed to be amended.

11) Relating to Recording and the Requirements therefor.

Chapter 502 of the Hawaii Revised Statutes is proposed to be amended.

12) Relating to Liens.

Chapter 507 of the Hawaii Revised Statutes is proposed to be amended.

13) Relating to Proceedings Concerning Property.

Chapters 510, 514, 515, and 516 of the Hawaii Revised Statutes are proposed to be amended. This title concerns community property, horizontal property regimes, discrimination in real property transactions, and residential leaseholds.

14) Relating to Decedents' Estates.

Chapters 531, 532, 533, and 535 of the Hawaii Revised States are proposed to be amended. This title concerns probate: jurisdiction and procedure; descent of property; dower and curtesy; and specific performance of decedents contracts to convey real estate.

15) Relating to Guardianship and Trust Proceedings.

Chapters 551, 552, and 554 of the Hawaii Revised Statutes are proposed to be amended. This title concerns guardians and wards; Uniform Veteran's Guardianship Act; trusts and trustees, accounts.

16) Relating to Family Court Proceedings.

Chapters 571, 577 (excluding Section 577-3 which was included in the bill on Torts), 578, 579, and 580 of the Hawaii Revised Statutes are proposed to be amended. This title concerns family courts; children; adoption; illegitimates: paternity proceedings; and annulment, divorce, and separation.

17) Relating to Juries.

Chapter 609 of the Hawaii Revised Statutes is proposed to be amended.

18) Relating to Attachment, Execution, and Garnishment Proceedings.

Chapters 651 and 652 are proposed to be amended. Chapter 653 of the Hawaii Revised Statutes entitled "Garnishment of Govern-

ment Beneficiaries" is proposed to be repealed as this chapter is proposed to be combined with Chapter 652.

#### 19) Relating to Crimes and Criminal Procedure

Sections 709-4, 709-51, 711-96, and 747-17 of the Hawaii Revised Statutes are proposed to be amended. These sections were not cited to be repealed by the Proposed Penal Code and warranted revision.

20) Relating to Statutory Revision; conforming Titles 1 to 27 of the Hawaii Revised Statutes to the Rules of Court and Titles 28 to 37 as amended by the Sixth Legislature, 1972, Regular Session.

The following chapters are proposed to be amended: 1, 11, 28, 39, 40, 53, 76, 78, 85, 88, 89, 96, 104, 121, 125, 128, 130, 142, 147, 172, 177, 206, 281, 286, 287, 288, 297, 304, 325, 328, 333, 334, 346, 352, 353, 356, 360, 371, 380, 383, 386, 387, 388, 416, 417, 418, 425, 431, 433, 434, 435, 437, 439, 440G, 442, 443, 444, 445, 448, 448E, 448H, 449, 451A, 453, 457, 457B, 458, 460, 467, 470, 471, 478, 480, 481, 484, 485, and 490 of the Hawaii Revised Statutes.

#### 21) Relating to Administrative Procedure.

Chapters 91 and 92 and Sections 40-91, 132-7, 132-12, 132-14, 144-13, 151-9, 157-13, 159-23, 178-10, 181-8, 205-6, 261-13, 261-17, 286-58, 286-59, 286-60, 286-95, 286-129, 287-2, 351-17, 376-3, 376-31, 377-9, 383-41, 386-88, 392-75, 431-68, 431-69, 433-2, 440-8, 448A-15, 452-6, 452-20, and 482-9 of the Hawaii Revised Statutes.

#### 22) Relating to Eminent Domain.

Chapter 101 of the Hawaii Revised Statutes is proposed to be amended.

#### 23) Relating to Banks and other Financial Institutions.

Chapters 401, 402, 403, 406, and 409 of the Hawaii Revised Statutes are proposed to be amended.

#### 24) Relating to Taxation.

Chapters 231, 232, 234, 235, 236, 237, 238, 243, 244, 245, and 246 of the Hawaii Revised Statutes are proposed to be amended.

#### 25) Relating to Counties.

Chapters 46, 47, 47C, 49, 52, 54, 62, and 265 of the Hawaii Revised Statutes are proposed to be amended.

#### 26) Relating to Public Utilities.

Chapters 269 and 271 of the Hawaii Revised Statutes are proposed to be amended.

#### 27 Relating to Nuisances Detrimental to Health.

Chapter 322 entitled Nuisances, Sanitary Regulations of the Hawaii Revised Statutes is proposed to be amended.

Your Committee has considered the recommendations of the Committee on Coordination, as set forth in Volumes I, II, and III of **The Report of the Committee on Coordination of Rules and Statutes** section by section with testimony from Committee on Coordination Reporter, Rhoda V. Lewis. The recommendations were considered studiously by Your Committee in 13 meetings, in public hearings, and in responses to its request for comment addressed to approximately 400 persons and associations.

Your Committee accepts the recommendations of the Committee on Coordination as set forth in Volumes I, II and III of **The Report of the Committee on Coordination of Rules and Statutes** except as follows:

#### 1) Relating to Courts

##### a) Chapter 601 (COURTS GENERALLY)

(i) Section 601-13 is revised by changing the period at the end of the first paragraph to a comma and adding the following "except as otherwise provided." Note should be taken of the general rule of statutory construction that specific provisions prevail over general provisions.

(ii) Section 601-17 is deleted by the Your Committee. It was formerly Section 634-20. The matter should be left to the rules of court.

##### b) Chapter 602 (SUPREME COURT)

(i) Section 602-5 is revised by adding ", or orders to show cause as provided by Chap-

ter 660," after habeas corpus in the first line and " , or such orders to show cause," after habeas corpus in the third line. The addition takes cognizance of provisions already provided for elsewhere.

(ii) Section 602-11 is revised by deleting the period in the last sentence and adding "so designated." The addition is for clarity without changing the provision's intent.

(iii) Section 602-21, second paragraph, is reworded, for purposes of clarity, without changing the meaning. It is to read: "Whenever in a statute it is provided that the statute is applicable "except as otherwise provided," or words to that effect, these words shall be deemed to refer to provisions of the rules of court as well as other statutory provisions."

c) Chapter 602 (CIRCUIT COURTS)

(i) Section 603-12 is revised after "except as otherwise provided" by adding "by statute". It is felt that the place of holding court is a jurisdictional matter which is within the prerogative of the legislature and therefore should be governed by statute.

(ii) Section 603-15 relating to summer trial has been retained and revised to read "Except for reasons which may be deemed sufficient by the circuit court, the trial of a contested civil case shall not be commenced during the months of July and August unless upon the consent of all parties." It is revised to apply to all contested civil cases. Formerly, this section related only to proceedings before a "circuit judge in chambers".

(iii) Section 603-21.5 is revised by deleting the comma after "provided" in the second line and adding "by statute." Again, the committee felt that jurisdictional matters are the prerogative of the legislature and should therefore be governed by statute.

(iv) Section 603-21.6 may have to be revised if the pending Probate Code is adopted.

(v) Section 603-21.7 is revised by deleting "by the rules of the court or" in the third line. The question raised here is who should confer the right of jury trial—the supreme court or the legislature? The present rules of court present no problem in this area, and reference to rules of court is unnecessary.

(vi) Section 603-21.9(4) is revised for purposes of clarity without changing its mean-

ing. It is to read "To admit to bail persons rightfully confined in all bailable cases, or to dispense with bail as provided by the State Constitution;"

(vii) Section 603-23 is revised by (a) deleting "several", (b) adding, at the end of the paragraph, "Nothing herein limits the powers elsewhere conferred on circuit courts.", and (c) adding after "corporation counsels," the words "or prosecuting attorneys,". The changes are for clarity.

d. Chapter 606 (CLERKS, REPORTERS, INTERPRETERS, ETC.)

(i) Section 606-4 is revised to read as follows:

"Sec. 606-4. **Custody; disposition of exhibits.** The clerks of the supreme, circuit, and district courts shall have the custody of all records, books, papers, moneys, exhibits, and other things pertaining to their respective courts.

The clerks shall have the authority and power, upon the written approval of a judge of the court given in particular actions or proceedings, to sell, destroy, or otherwise dispose of exhibits and things marked for identification, other than original files belonging to other actions, which have come into their possession or custody under this section, when such exhibits or things have not been already returned to their owners and when more than one year has elapsed since the final termination of the action to which the exhibits or things are related; provided that the clerk shall first give notice in writing of the things that are proposed to be disposed of, stating that the same are to be disposed of if not claimed and removed from the court by a day certain, such notice to be addressed to the party or the attorney of the party who introduced the exhibits or things in evidence or left them in the custody of the court at his last known address; and provided, further, that the clerk shall file an affidavit as to such notice and a list of the exhibits or things to be destroyed or otherwise disposed of under this section and the disposition thereof, with the action or proceeding to which the same belong.

All moneys received from sales under this section shall be forthwith deposited with the State director of finance as government realizations."



The revised paragraph deletes "if possible" and adds, along with style revision, "at his last known address". The changes are clarifications to emphasize that notice must first be given.

(ii) Section 606-12 is revised in the proposed last paragraph by deleting the first sentence up to the semicolon along with the words "provided, that" and thereafter amending the second sentence to read as follows:

"In an ex parte or uncontested case if there is no court reporter in attendance the court may direct the clerk to take notes of the oral evidence adduced or the judge may himself take such notes or may cause the oral evidence to be preserved on tape or by another mechanical device."

Your Committee revises the report because it feels the question whether or not there should be authorization to use a mechanical device in contested proceedings should be considered separately.

(iii) Section 606-13 is revised by adding to the last paragraph the following sentence:

"A transcript not prepared by an official court reporter shall be certified by a clerk of the court."

The addition is a clarification insuring that it is an official transcript.

#### e) Chapter 607 (COSTS)

(i) Section 607-4 is revised in subsection (c) by deleting the word "judge" and inserting in lieu thereof the word "court". The change is stylistic to make it clear that court officers, as well as a judge, may assess costs and disbursements.

(ii) Section 607-12 is revised in the first paragraph by deleting "\$2" and adding in lieu thereof "\$4" and by adding: "Every such witness, coming to attend upon court from any island other than that upon which the court is holding session, shall be entitled to \$6 for each day's attendance in addition to the actual round trip cost of plane or ship travel and 20 cents for each mile actually and necessarily traveled on the ground each way."

The second paragraph is revised to read as follows:

"The fees of witnesses may be taxed in

the bill of costs as provided by Section 607-9.

The changes are to make this civil cause section uniform with the criminal case Section 621-7. The witnesses' fee of \$2 is raised to \$4 and Section 621-7's provision for witnesses from neighbor islands has been added.

(iii) Section 607-13. **Note.** The changes are clarifying in furtherance of the principles set forth in **Yap v. Wah Yen Ki Tuk Tsen Nin Hue**, 43 H. 130.

(iv) Section 607-14 is revised by deleting from the end of the first sentence "ten percent and all sums to \$100, and two and one-half percent in addition on all sums over \$100, to be computed on the excess over \$100" and inserting in lieu thereof "a fee which the court determines to be reasonable but which shall not exceed the amount obtainable under the following schedule:

25 percent on first \$1000 or fraction thereof.

20 percent on second \$1000 or fraction thereof.

15 percent on third \$1000 or fraction thereof.

10 percent on fourth \$1000 or fraction thereof.

5 percent on fifth \$1000 or fraction thereof.

2.5 percent on any amount in excess of \$5,000."

Attorney's fees in actions of assumpsit was last revised in 1935; the present fees are felt by Your Committee to be far too low. Upon a written request for opinions, response was unanimous that the fees should be raised. Accordingly, the revision is made. The schedule is adopted from the Circuit Court Rule 10(d) on attorney's fees in default judgements.

f) Chapter 608 (EXPENSES OF COURTS) is not revised by Your Committee.

## 2) Relating to Court Proceedings



a) Chapter 632 (DECLARATORY JUDGEMENTS) is not revised by Your Committee.

b) Chapter 634 (CIVIL ACTIONS AND PROCEEDINGS, GENERALLY)

(i) **Note:** The deletions of Sections 634-6, 7, 8, 12, relating to restraining orders and process, do not terminate a plaintiff's remedy. The substance of the attachment provisions is preserved in the revised Section 651-3.5. If the defendant was wasting or damaging the property attached, or the property involved in an ejectment action, injunctive relief could be issued under the "all writs" provision Section 603-21.9. The subject matter of these sections is sufficiently covered elsewhere.

(ii) **Note:** The revision of Section 634-33, relating to joint contractual obligations, complement Section 483-2 relating to when a co-obligor is not discharged.

(iii) Section 634-58 is revised by adding to the end of the first paragraph "When service is made by a person specially appointed by the court, he shall make affidavit of such service.". The second paragraph is amended by deleting after "record" the words "made by the officer", and by adding after "record" the words "or the affidavit", after "contains" a comma, and adding after "examine the officer" the words "or person making service.". The additions provide consistency with revised Section 634-56 relating to service and HRCF Rule 4 (g) relating to return of process.

(iv) Section 634-67 is revised by adding to the end of the paragraph "The filing shall be deemed service upon the association twenty days after the filing". This addition gives a little more time for return.

(v) Section 634-76 relating to recording notice of pendency of action is amended by adding after the word "claimed" in the fifth line "or at any time afterwards,", and adding to the end of the first paragraph a semicolon in lieu of the period and the words "provided that in the case of registered land, Section 501-151 shall govern." It is further revised by deleting "in the United States District Court for the District of Hawaii" and inserting in lieu thereof "in the United States District Court."

The revisions are made for purposes of cla-

rification and style consistent with the meaning of the revised section.

3) Chapter 635 (TRIALS)

(i) Section 635-3 is revised to read as follows:

**"Section 635-3. Dismissal for Want of Prosecution.** The court may dismiss any action for want of prosecution after due notice to the claimants whenever claimants have failed to bring such action to trial within a period established by rule of court. Prior to dismissal of any action for want of prosecution, a court shall have adopted, promulgated, and published a rule or rules of court providing circumstances in which a claimant may seek relief from the judgment or order and such other safeguards as may be necessary.

The second sentence of the present Hawaii Revised Statute section has not been entirely superseded by the rules of court, as explained in *Kudlich v. Ciciarelli*, 48 Haw. 290, although the courts have ample power to prune dead wood from the court calendars. See 5 *Moore's Federal Practice*, Section 41.11(2).

The revision of Section 635-3 by Your Committee, provided above, is legislative authorization for dismissal of actions by the court for want of prosecution.

(ii) Section 635-12 in the Committee on Coordination's report is revised in order to state the general principles that a right of jury trial must be specifically conferred, as well as to clarify points resulting from the deletions by Your Committee of references to rules of court in Section 603-21.7, 635-13 and elsewhere. This draft has been further revised by Your Committee to provide that both matters enumerated in subsection (c) shall be governed by the rules of court.

It is intended that the case law shall continue to apply to matters such as were involved in *Harada v. Burns*, 50 Haw. 528, 532, where there was a legal counterclaim in an equitable action. When certain issues are to be decided by a jury and others by the court, the court may determine the sequence in which such issues shall be tried.

Section 635-12, as fully revised, is to read as follows:

**“Sec. 635-12. No jury, when.**

(a) When there is no right of trial by jury or the right has been waived, the issues shall be determined by the judge without the intervention of a jury.

(b) Whenever provision is made by statute for trial without the intervention of a jury, the same shall not be deemed to preclude trial of an issue with an advisory jury, or trial by jury by consent of the parties.

(c) Whenever provision is made by statute for waiver of a jury, the same shall not be deemed to preclude trial by jury when, in accordance with the rules of court, (1) an order of the court relieves a party from his waiver or (2) approval of or consent to the waiver is required in a criminal case and has not been given.”

(iii) Section 635-13 has been revised by deleting the words “or conferred by rule of court” from the proposal of the Committee on Coordination. The phrase raises the question whether a new right of jury trial may be conferred by a rule of court. Your Committee feels that the legislature should not recognize such a right.

Section 635-13 is to be read with Section 635-12.

(iv) **Note:** Section 635-14 is approved as in the report. However, Your Committee has reservations on the wisdom of permitting the rules of court to provide for masters outside of the areas of probate and equity.

(v) Section 635-17 is retained in its present form in the Hawaii Revised Statutes and the proposal of the Committee on Coordination is deleted in whole.

The Committee on Coordination recommended that the legislature allow the court to comment to the jury in civil as well as criminal actions. Your Committee felt that would be a very significant change from present practice and should be handled by a separate bill, if at all.

(vi) Section 635-17.5 has been omitted. This new section was proposed because of the deletion of Section 635-52. Your Committee has decided to retain Section 635-52; so Section 635-17.5 is unnecessary.

(vii) Section 635-29 is revised by deleting in subsection (a) “the rules of court” and inserting the words “Section 635-30”.

(viii) Section 635-30 is revised to read as follows:

**“Sec. 635-30. Peremptory Challenges, Criminal Cases.** In criminal cases if the offense charged is punishable by life imprisonment, each side is entitled to 12 peremptory challenges. If there are two or more defendants jointly put on trial for such an offense, each of the defendants shall be allowed 6 challenges. In all other criminal trials by jury each side is entitled to three peremptory challenges. If there are two or more defendants jointly put on trial for such an offense, each of the defendants shall be allowed two challenges. In all cases the State shall be allowed as many challenges as are allowed to all defendants.”

Your Committee has decided that the number of peremptory challenges in criminal cases should remain in the statutes. This is consistent with the treatment of civil cases in **The Report of the Committee on Coordination of Rules and Statutes**. Accordingly these sections have been revised.

(ix) Section 635-31 is deleted. The order of challenging jurors is a matter properly left to the rules of court.

(x) HRS Section 635-52 is retained and is not deleted as in **The Report of the Committee on Coordination**. Only technical phraseology changes are made: deleting from the second and third lines the parenthetical phrase “(unless the court directs a non-suit, or orders a verdict)”, and inserting in lieu thereof the following:

“(unless the court directs a verdict, or orders entry of a judgment of acquittal)”.

**The Report of the Committee on Coordination** recommended that the first paragraph be left to the rules of the court, but Your Committee feels that the right of argument to the jury should continue to be covered in the statutes.

**d) Chapter 636 (JUDGMENTS)**

(i) Section 636-3 is revised by adding a new paragraph to read:

“In the case of registered land, Section 501-102 shall govern”. This addition is to call attention to special provisions covering registered land.

(ii) Section 636-15 has been revised by deleting in subsection (1) the words and punctuation “unless the right has been waived,” and inserting in lieu thereof: “unless the court in its discretion upon motion orders trial without jury on any or all issues.”

The change was made to take care of, for example, the following situation: under HRCP Rule 38(d) plaintiff cannot withdraw his demand for jury trial without the consent of the opposing party. In cases of default, under the revision made by Your Committee, the court would have the discretion to grant a motion to withdraw a demand for jury trial.

#### e) Chapter 641 (APPEALS)

(i) **Note:** In Section 641-2, the word “final” in paragraph (a) pertains not only to “final judgments”, but also to “final orders” and “final decrees”. In paragraph (b) the word “interlocutory” pertains not only to “interlocutory judgments” but also to “interlocutory order” and “interlocutory decree”.

(ii) Section 641-11.5 relating to appeals in criminal proceedings from district courts is revised by adding to the first sentence the word “final” before “decisions” and “judgments”. The first sentence is to read: “Appeals upon the record shall be allowed from all final decisions and final judgments of district courts in all criminal matters.” The addition is for purposes of clarity consistent with its meaning.

(iii) Section 641-12 relating to appeals in criminal proceedings by the State is revised by deleting from subdivision (1) the words “demurred to, or”. The deleted words are unnecessary.

(iv) Section 641-16 is revised to read as follows:

#### “Section 641-16. Stay in Criminal Cases.

(a) The filing of a notice of appeal shall operate as a stay of execution and shall suspend the operation of any sentence or order of probation; however, the defendant is not admitted to bail, he may elect to

commence service of sentence as provided by law. The giving of oral notice in open court at the time of sentence by the defendant or his counsel of intention to take an appeal shall likewise operate as a stay of execution of any sentence or order of probation, but such stay shall not be operative beyond the time within which an appeal may be taken.

(b) Admission to bail after the giving of oral notice in open court of intention to take an appeal or upon an appeal shall be as provided in the rules of court.

This section is felt by your Committee to be a substantive matter which is within the prerogative of the legislature and therefore should be governed by statute. It has been drafted to be in conformity with the present Hawaii Rule of Criminal Procedure, Rule 38.

In effect, since the enactment of Section 711-85, the main reason for defendant’s position of election has been removed since Section 711-85 provides for mandatory credit toward service of sentence for any days spent in custody or confinement in connection with the acts for which sentence was imposed. **Note:** Hawaii’s criminal procedure is programmed to be revised by a committee under the Judicial Council.

(v) Section 641-18 is revised by adding to the end of the sentence after “record” the words “as provided by the rules of court.” The addition provides clarity on timing and other matters related to service.

(vi) Section 641-41, relating to the time for appeal in cases of suspended sentences is shifted into Title Part II from Part III because it concerns appeals in criminal proceedings.

#### f) Chapter 655 (DEPOSIT AND DELIVERY)

**Note:** Section 655-4. The deletion of this section does not alter the authority of the court in this area; the general powers of the court to supervise fiduciaries is sufficient.

g) Chapters 631, 637, and 642 are recommended by the Committee on Coordination to be repealed. Your Committee is in accord with the recommendations.

h) A new paragraph is added in the section on effective dates to read:

"A judgment entered in a district court on or after January 1, 1972 which, prior to the repeal of Section 636-2, was docketed and recorded under Section 636-2, upon the taking effect of the amendments of Section 636-3 shall be deemed to have been recorded under Section 636-3."

### 3) Relating to Remedies.

a) Chapter 654 (SPECIAL PROCEEDINGS FOR IMMEDIATE POSSESSION OF PERSONAL PROPERTY) is not revised by your Committee.

b) Chapter 658 (ARBITRATION AND AWARDS)

(i) Section 658-11 is revised by deleting in the fourth and fifth lines the words and punctuation "in the manner prescribed for service of notice of a motion in an action," and reinserting the phrase after the word and punctuation "served," in the second line. The revision is made for purposes of clarity without changing the section's meaning.

(ii) Section 658-12 is revised by inserting in the first sentence "of the circuit court" after the word "clerk". The addition is made for purposes of clarity without changing the section's meaning.

c) Chapter 659 (EXTRAORDINARY LEGAL REMEDIES)

(i) The deletion of the statutory provisions on mandamus, certiorari, prohibition, and other extraordinary legal remedies does not signify that the writs have been abolished. The matter is covered by rules of court and case law.

(ii) Section 659-48 is revised by changing the period at the end of the sentence to a comma and adding the following "or is made by the attorney general as provided by Section 659-51." The addition is made to conform this section with revisions made by your Committee in Section 659-51.

(iii) Section 659-51 is revised by changing the period in the title to a semicolon and adding thereafter "; burden of proof". Also a second paragraph is added to read as follows:

"If the proceeding is commenced by verified petition of the attorney general

and concerns a public office, the respondent shall have the burden of proof."

Because of the deletion of the insertion proposed in Section 659-52, and to cover the matter of burden of proof in the case of quo warranto brought by the attorney general to test the title to a public office, an addition has been made to this section preserving the case law. See *Lymer v. Kumalae*, 29 Haw. 392, 395.

**Note:** The words "may direct that a new appointment be made" is construed to include that the court may direct that a new election be held when that is the method of filling a vacancy.

(iv) Section 659-52 is revised by deleting the added provision in the proposal of the Committee on Coordination. The provision's purpose was to guard against any change in the law as to burden of proof. Your Committee is not in disagreement with this purpose. In view of the provision made in Section 659-51, however, the added provision in Section 659-52 is unnecessary.

d) Chapter 660 (HABEAS CORPUS)

(i) Section 660-15 is revised by adding "This section is subject to Section 607-3, pursuant to which prepayment of the expense may be waived or the sum required may be reduced or remitted." This provision grants a judge the discretionary power to waive, reduce, or remit expenses in special cases as paupers and others unable to meet the traveling expenses in order that he is not statutorily denied a personal appearance before the court for purposes for which the writ was issued.

(ii) Section 660-17 is revised by adding after "execution" the words "if ordered by the court". The amendment is made to conform to the discretionary cost provision added by your Committee in Section 660-15.

(iii) Section 660-30 is revised by deleting the words "if sufficient bail is offered," and "if sufficient bail is not offered". In lieu thereof, this section is revised by adding in the first line after "be admitted to bail" the words "or bail may be dispensed with as provided by the State Constitution." The second sentence is revised by adding to the beginning "If the person cannot furnish the bail ordered, then". Section 660-30 is thus to read:

“Section 660-30. **Admitted to bail, when.** If the person is detained for any cause or offense and admittance to bail is a matter of right, he shall be admitted to bail, or bail may be dispensed with as provided by the State Constitution. If the person cannot furnish the bail ordered, then he shall be remanded with an order of the court, expressing the sum in which he is held to bail and the court at which he is required to appear.”

The changes have been made for purposes of clarification without altering the section's meaning.

(iv) Section 660-31 is revised by deleting “for want of bail” and adding “because he cannot furnish the bail ordered.”. It is further revised by deleting “giving” and adding in lieu the word “furnishing”, and by adding at the end of the sentence after “discharged” the words “from custody.” The changes are made for purposes of clarity consistent with the section's meaning.

(v) Section 660-32 is revised by deleting the words “enlarged on” and adding in lieu thereof, “admitted to”. The change is made for purposes of clarification.

e) Chapter 664 (**BOUNDARIES, FENCES, WAYS, WATER RIGHTS**)

(i) Section 664-7 is revised by inserting in the third line after “land adjoining,” the words and punctuation “and the attorney general,”; and by deleting from the second sentence all that follows after the words “place of hearing”. Your Committee felt that the attorney general should get notice of the time when the commissioner will be prepared to hear an application to have the boundaries of land decided. Discretionary notice in the Hawaiian language is unnecessary today and has been deleted.

(ii) **Note:** The Report of the Committee on Coordination in the revision of Part II has inserted the word “occupant” in several places for consistency. The word “occupant” includes persons who have planting agreements or grazing rights.

f) Chapter 665 (**ESCHEAT**) is not revised by your Committee.

g) Chapter 666 (**LANDLORD AND TENANT**)

(i) This chapter is not revised by your Committee.

(ii) **Note:** In any conflicts which may occur between this Part I of Chapter 666 relating to Landlords and Tenants and later legislation in this area, the later legislation will prevail.

(iii) Your Committee submitted Chapter 666 of **The Report of the Committee on Coordination** to the Interim Committee on the Proposed Landlord-Tenant Code. Such Committee did not further revise Chapter 666.

h) Chapter 667 (**MORTGAGE FORECLOSURES**)

(i) Section 667-1 is revised by deleting the words “by judicial sale”. The section has the same meaning whether the deleted words are included or not.

(ii) Section 667-5 is revised by deleting in the first sentence of the next to the last paragraph the word “and” between “501 and 502”; in lieu thereof, insert “or” and add after “502” the words and punctuation “ ‘ as the case may be.”. The revision is a style change for purposes of clarity consistent with the original section's meaning.

**Note:** The words “in the English language” have been deleted as superfluous. This deletion does not change the general requirement that publication must be in the English language. There are many other sections of the Hawaii Revised Statutes which do not specify the English language, it being assumed.

There is no general requirement in the Hawaii Revised Statutes that English is the required language. The deletion is made here in the interest of uniformity.

(iii) Section 667-11. As revision or deletion of this section may affect mortgagors and mortgagees, the committee held a public hearing on this matter. All testimony was in favor of the deletion recommended by the Committee on Coordination. As your Committee is in accord with the recommendation, this section is not revised.

i) Chapter 668 (**PARTITION OF REAL ESTATE**) is not revised by your Committee.

j) Chapter 669 (**QUIETING TITLE**)

(i) Section 669-8 is revised to read as follows:

“Section 669-8. **Recording of Judgment.** The registrar of conveyances or the assistant registrar of the land court, as the case may be, shall receive and record or file and register every certified copy of judgment quieting title to property rendered by the circuit court under this chapter whenever the certified copy of judgment is presented to him for record or registration.”

The revision takes note of the requirement of registration in cases of land court property provided by Chapter 501.

#### 4) Relating to Evidence

a) Chapter 621 (EVIDENCE AND WITNESSES, GENERALLY)

(i) Section 621-6. **Witnesses, Commitment in Criminal Cases** is deleted because it is superseded by Act 214 of the Session Laws of 1971, State of Hawaii, numbered by the revisor HRS Section 718-1 to 8.

(ii) Section 621-7 is revised to read as follows:

“Section 621-7. **Fees; Criminal Cases.** Every witness legally required to attend upon a court or a grand jury in any criminal case, other than a public officer or employee, shall be entitled to \$4 for each day's attendance and 20 cents for each mile actually and necessarily traveled, each way. Every such witness, coming to attend upon court from any island other than that upon which the court is holding session, shall be entitled to \$6 for each day's attendance in addition to the actual round trip cost of plane or ship travel and 20 cents for each mile actually and necessarily traveled on the ground each way. Any police officer or other public officer or employee (except the county attorney, prosecuting attorney or deputy county attorney or deputy prosecuting attorney), coming to attend as a witness from a district other than that in which the court is holding session, shall be allowed his travel cost and mileage fees as provided in this section.

A public officer or employee, if not salaried, shall receive witness fees.”

The principal changes are (a) to permit the stipulated travel amounts for both directions

rather than one way; (b) to allow travel costs and mileage fees to public officers whenever they travel from another district without regard to their place of residence and (c) to allow witness fees to public officers only when not salaried. The remaining changes are style changes.

Change (a) above is to permit the witnesses to return from a criminal court or grand jury on other than their personal funds in criminal cases. Change (b) takes note that where the public officer comes from and not where he resides is important. Change (c) removes the discrepancy of permitting witness fees to public officers coming from a district other than that in which the court is holding session while not allowing such fees to public officers coming from the same court district.

(iii) Section 621-8 is revised by deleting in the last line “from the place of his residence”. The deletion is made to conform to the change made in Section 621-7.

(iv) Section 621-18 is revised in the fifth line by deleting the words “hereinafter mentioned” and inserting in lieu thereof “otherwise provided”. The change permits reference of the exception to other than this section, notably Chapter 621C. The exception in husband and wife cases in Section 621-18 continues to apply as originally construed.

(v) Section 621-20.5 is revised to conform to subsection (b) and to 1970 amendments of the Federal Rules of Civil Procedure which have been recommended for adoption in Hawaii by the Standing Rules Committee. The words “or mental” have been inserted in the last line of subsection (a); the parenthetical phrase “(including the blood group): has been inserted in subsection (b); and new subsection (c) has been added.

The other change consists in the deletion of the proposed paragraph (2) of subsection (b) and the subsection of paragraph (2) of HRCF, Rule 35(b). Paragraph (2) as originally written referred over to the rules of court but did not incorporate the pertinent rule.

(vi) Section 621 is revised by your Committee to conform to the recent Supreme Court decision of *State v. Santiago*, \_\_\_ Haw. \_\_\_, December 29, 1971, No. 4966. Your Committee notes that this section is substantially affected by *Asato v. Furtado*,

52 Haw. 284.

Section 621-22, as revised, reads as follows:

**“Section 621-22. Discrediting Witness by Proof of Conviction.** Where, without the presence of the jury, it has been shown to the satisfaction of the court or person having authority to hear, receive, and examine evidence that a witness has been convicted of one or more felonies, or of misdemeanors involving moral turpitude, he may be questioned as to such convictions, and if, upon being so questioned, he either denies or refuses to answer, the party so questioning may prove such convictions. However, in a criminal case where the defendant takes the stand, the defendant may not be questioned or evidence introduced as to whether he has been convicted of any indictable or other offense unless the defendant has himself introduced testimony for the sole purpose of establishing his credibility as a witness.

Where such questioning or proof is permissible hereunder, the time, place and type of each offense may be elicited or proved.

(vii) Section 621-25 is revised by deleting the “Except as otherwise provided, a” and by adding (a) in the beginning of the first sentence the word “A”, and (b) a new paragraph to read as follows:

“A party shall not be deemed to have produced a witness within the meaning of this section if he has called the witness as an adverse witness as provided by the rules of court”.

The addition is presently such a well-known practice that to cover it by “Except as otherwise provided” may create uncertainty as to the purposes of the addition. In recognition of the rule relating to the calling of an adverse party in a civil case (HRCF, Rule 43(b)), the new paragraph has been added.

b) Chapter 622 (DOCUMENTARY EVIDENCE)

(i) Section 622-51 is revised by adding the following:

“(3) ‘officer’ means a public officer, but

does not include a person before whom a deposition has been taken.”

The insertion is to provide clarity on the meaning of the word “officer” in regards to the procedure on depositions.

#### 5) Relating to Deposition and Discovery Proceedings

##### a) Chapter 624 (DEPOSITIONS AND DISCOVERY)

(i) Section 624-25 is revised by deleting the words “discovery is sought in aid of an action pending in a court of this state in which case the matter shall be” and inserting in lieu thereof the words “matter is”. The change has been made to take into account a 1970 amendment of the federal rules which has been recommended for adoption in Hawaii, Rule 34 relating to production of documents will contain an added provision reading as follows:

“(c) **Persons not Parties.** This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.”

(ii) Section 624-35 is revised to read as follows:

“Section 624-35. **Costs.** The costs of depositions may be taxed in the bill of costs as provided in Section 607-9.”

The change is to make the wording uniform with the revised Section 607-12.

(iii) Section 624-41 is revised by deleting the recommendation of the Committee on Coordination and inserting in lieu thereof:

“Section 624-41. **Action for.** A person who, before action, is desirous of perpetuating his own testimony or the testimony of any other person, may proceed in accordance with the rules of court or may bring a civil action in the circuit court of any circuit in which it is fair and equitable to the parties that the matter be heard, setting forth (1) that the plaintiff expects to be a party to an action cognizable in a court of this State but is presently unable to bring it or cause it to be brought, (2) the subject matter of the expected action and his interest therein, (3) the facts which he desires to establish by the proposed tes-



timony and his reasons for desiring to perpetuate it, (4) the names of the persons he expects will be adverse parties and their addresses, and (5) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each; and praying for an order authorizing the plaintiff to take the depositions of the persons to be examined named in the action, for the purpose of perpetuating their testimony.

Personal service shall be made on the expected adverse parties as in other civil actions. In case service cannot be made in the State, service may be made as provided by Sections 634-60 and 634-60.5; but if an action is brought under this section, service shall not be made by publication."

This revision provides for an action to perpetuate testimony, provided service can be made without resorting to publication. The required allegations are the same as in a proceeding under the rules, but use of an action may be desirable for the reasons explained in the Reporter's Notes Section 624-41 of the Report of the Committee on Coordination.

b) Chapter 624 (NOTICE TO ADMIT, INSPECTION, AND DISCOVERY)

The provisions of this chapter have either been superseded by the rules of court or been transferred to other chapters; accordingly, this chapter is proposed to be repealed. Your Joint Interim Committee is in accord.

6) Relating to Limitation of Actions

a) Chapter 657 (LIMITATION OF ACTIONS)

(i) **Note:** Section 657-1. The change in paragraph (3), renumbered (4), does not preclude the recovery in a replevin action of damages for the depreciation in value due to the injury to the goods or chattels. The six-year statute will apply to all aspects of the replevin action.

(ii) Section 657-3. The revisions proposed by the Committee on Coordination are deleted; Section 657-3 is left as it presently is in the Hawaii Revised Statutes.

(iii) Sections 657-16. This section is proposed to be amended by the Committee on Coordination to conform to the Uniform Probate Code. Questions were raised as to

whether the four-month provision in Section 657-16 should be one year as in the present statute. Your Committee did not revise this section and recommends that it be further reviewed along with the Uniform Probate Code.

(iv) Section 657-17. The word "suspended" means that the period of four months from the date of death shall not be deemed or taken as any part of the time limited for the commencement of the action. Section 657-17 is revised by deleting in the caption the words "of obligor" and inserting in lieu thereof the words "of person liable". The change is made for clarity.

(v) Section 657-20 is revised by deleting the recommendation of the Committee on Coordination and inserting in lieu thereof the following:

"Section 657-20. **Extension by Fraudulent Concealment.** If any person who is liable to any of the actions mentioned in this part or Section 663-3 fraudulently conceals the existence of the cause of action or the identity of any person who is liable for the claim from the knowledge of the person entitled to bring the action, the action may be commenced at any time within 6 years after the person who is entitled to bring the same discovers or should have discovered, the existence of the cause of action or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations."

The revision has been adopted from Section 600.5855 of the Michigan Compiled Laws in order to make it clear that the statute applies when the identity of the person who may be sued is concealed.

7) Relating to the Practice of Law

a) Chapter 605 (ATTORNEYS)

(i) Section 605-1 is revised to read as follows:

"Section 605-1. **Attorneys; qualifications.** (a) The supreme court may examine, admit, and reinstate as practitioners in the courts of the State, such persons as it may find qualified for that purpose, who have taken the prescribed oath of office. The supreme court shall have the sole



power to revoke or suspend the license of any practitioner.

b) In order to be licensed by the supreme court, a person shall be a citizen of the United States, of good moral character, and satisfy such residence and other requirements as the supreme court may prescribe."

In **Potts v. Richardson**, opinion filed on 20th October, 1971 in the U. S. District Court, District of Hawaii, the 6-month continued residence requirement in the former rule of the Supreme Court, and the 1-year requirement of the statute were found unconstitutional; the case is not being appealed. This Committee believes that certain residency requirement for valid reasons established by the supreme court would not be unconstitutional. As the supreme court may elect other requirements, the revision adds that a person in order to be licensed must "satisfy such residence and other requirements as the supreme court may prescribe." Other changes are style changes.

(ii) Section 605.6 is revised as follows:

"Section 605-6. **Rules.** The supreme court may prescribe qualifications for admission to practice and rules for the government of practitioners."

The revision reinstates provisions of the present HRS Section 605-6 in view of the revised Section 605-1.

(iii) Section 605-13 is revised by deleting "army, navy, or air force" and inserting in lieu thereof the words "military forces". The change is for purposes of clarity and style.

#### 8) Relating to Actions By and Against the State.

##### a) Chapter 661 (ACTIONS BY AND AGAINST THE STATE)

Section 661-6 is revised by adding in the second paragraph after "all of whom shall be" the words "citizens of the United States or". The addition is made for purposes of clarity without changing the section's meaning.

##### b) Chapter 662 (STATE TORT LIABILITY ACT)

(i) Section 662-2 is revised by deleting the second sentence in its entirety.

The federal statute, 28 U. S. C. Section 2674 contains language similar to the second sentence of HRS Section 662-2. However, the purpose of the federal statute is to prescribe the measure of damages in two states where there otherwise would be no applicable measure of damages. In those two states the only measure of damages under state law is punitive damages, and the United States is not liable to punitive damages. This reasoning does not apply to our statute.

The measure of damages should be the same as in any other case. That also is the federal law, except in the case of the two states above referred to.

(ii) Section 662-14 is revised by adding in the third line after the word "State" the words "or such agency". The addition is made for purposes of clarity without changing the section's meaning.

(iii) A new provision is added by inserting at the end of the effective date paragraph of the bill the following:

"; provided, that the amendment of Section 662-2 shall apply to all actions commenced or pending on or after July 1, 1972."

The addition clarifies when such action against the state applies.

#### 9) Relating to Torts

##### a) Chapter 663 (TORT ACTIONS)

(i) **Note:** The phrase "except as otherwise provided" in Section 663-6 pertains primarily to Sections 657-13 to 657-20. Specificity to Chapter 657 was not inserted, however, because such specificity may exclude provisions located elsewhere.

(ii) Section 663-17. The recommendation set forth in **The Report of the Committee on Coordination** is deleted; the present HRS Section 663-17 with the revisions set forth below is inserted. Pending the Rules Committee revision adopting new rules pertaining to third party practice, only minor changes have been made.

"Section 663-17 is revised by deleting

the caption and inserting in lieu thereof **“Enforce-of right to contribution”**; by amending the fourth sentence by deleting the words “shall amend his pleadings” and inserting in lieu thereof “may amend his pleadings”; by inserting the word “or” in the third line of the third paragraph after the words “for all” and preceding the word “part”; and by amending the last paragraph by deleting from the last line the word “cross-complaint” and inserting in lieu thereof “pleading”.

The change “shall amend” to “may amend” is in conformity with the present HRCF Rule 14. The change in the last paragraph is to make it clear that, if joint tortfeasors are adjudged to be such in a single action, the issue of proportionate fault must be litigated between them whether or not the plaintiff has sued or claimed against both of them.

b) Section 577-3 is not revised by the Joint Interim Committee.

#### 10) Relating to Land Court Proceedings.

a) Chapter 501 (LAND COURT REGISTRATION)

(i) Section 501-151 is revised by adding to the last paragraph the following sentence: “Notice of pendency of an action in a United States District Court, as well as a State court, may be filed and registered.”.

(ii) **Note:** Sections 501-212 through 501-217. Your Interim Committee in approving Sections 501-212 through 501-217 does so with the understanding that no substantive changes are intended.

#### 11) Relating to Recording and The Requirements Therefor.

a) Chapter 502 (BUREAU OF CONVEYANCES: RECORDING)

(i) Section 502-43 is revised as being unnecessary by deleting from the sixth line the abbreviation “A. D.” which precedes the designation of the year.

#### 12) Relating to Liens.

a) Chapter 507 (LIENS) is not revised by your Committee. Style changes in language are primarily proposed.

#### 13) Relating to Land Court Proceedings.

a) Chapter 510 (COMMUNITY PROPERTY)

(i) **Note:** A special provision is to be inserted in the bill as follows:

“(d) In case of any change in conditions after the entry of judgment pursuant to this section, either spouse may by motion showing the change in conditions, apply to the same court for the modification or rescission of the judgment. In such case notice to the other spouse shall be given in such manner as the court may direct. Upon the hearing of the motion the court shall either deny the motion or modify or rescind the prior judgment, as to the court may appear to be just, proper, equitable, and to the best interests of the community.”

The provision is inserted in order to make it clear that Chapter 510 is not being revised. It has only the effect remaining under Act 242, Session Laws 1949.

#### 14) Relating to Decedent's Estates.

**Note:** Your Committee has not considered the effect of the proposed probate code on the revisions suggested under this title. The section attached to the end of this proposed bill, noting that any acts passed at the same session of the legislature in conflict with any provision contained in this Act shall have the effect of subsequent Acts, will eliminate inconsistencies. This title should be reviewed, however, along with any proposed legislation in the area of probate.

a) Chapter 531 (PROBATE: JURISDICTION AND PROCEDURE) is not revised by your Committee.

b) Chapter 533 (DECEDENT'S ESTATES)

(i) Section 533-17 is revised by adding a new paragraph in order to preserve a provision presently contained in Section 603-22(4). That paragraph is to read as follows:

“When the dower or curtesy in real estate cannot be set apart without great injury to the owners, the court may ascertain the value of the dower or curtesy in money, and order the same to be paid on such terms as shall be just and reasonable.

c) Chapter 535 (SPECIFIC PERFORMANCE OF DECEDENT'S CONTRACTS TO CONVEY REAL ESTATE) is not revised by your Committee.

**15) Relating to Guardianship and Trust Proceedings**

Chapters 551 (GUARDIANS AND WARDS), 552 (UNIFORM VETERAN'S GUARDIANSHIP ACT), 554 (TRUSTS AND TRUSTEES: ACCOUNTS) are not revised by your Committee.

**16) Relating to Family Court Proceedings.**

a) Chapter 571 (FAMILY COURT)

(i) Section 571-7 is revised by adding after the second sentence, a new sentence to read: "Referees shall not engage in the practice of law while they hold office." The addition is to apply the same provision as applied to judges in HRS Section 601-8.

(ii) Section 571-74. The recommendation as set forth in **The Report of the Committee on Coordination** is deleted. The present HRS section is inserted, unchanged, because a bill on this matter is presently pending in the legislature. One amendment in Section 571-84 in the fourth paragraph is not being made for the same reason.

b) Chapters 577 (CHILDREN), 578 (ADOPTION), 579 (ILLEGITIMATES: PATERNITY PROCEEDINGS), and 580 (ANNULMENT, DIVORCE, AND SEPARATION) are not revised by your Committee.

**17) Relating to Juries.**

**Note:** Chapter 609 (JURORS) was not revised by your Committee. Your Committee recommends that Chapter 609 of **The Report of the Committee on Coordination** be taken up with **H. B. 908** during the Regular Session, 1972.

**18) Relating to Attachment, Execution, and Garnishment Proceedings.**

Chapters 651 (ATTACHMENT AND EXECUTION), 652 (GARNISHMENT), and 653 (GARNISHMENT OF GOVERNMENT BENEFICIARIES) were not revised by your Committee.

Your Committee recommends legislation as in Chapters 651, 652, and 653 of **The Report of the Committee on Coordination of Rules and Statutes**. Because of the significant changes proposed and the large effect it will have if passed, your Committee further recommends that the Judiciary Committee of both houses have public hearings on these pieces of legislation in order that the matter may be considered in depth.

**19) Relating to Crimes and Criminal Proceedings.**

(Titles 37 and 38 of the Hawaii Revised Statutes)

Your Committee approves the Committee on Coordination's revisions of Sections 709-4, 709-51, 711-96, and 747-17 in Titles 37 and 38 relating to crimes and procedures. The sections not considered because the proposed penal code intends to repeal them are Sections 725-8, 725-11, 727-14, 727-15, 727-16, 727-18, 727-19, 729-5, and 747-19.

**Note:** A section is to be added to all bills and is to read as follows:

"Section \_\_\_\_ The amendments made by this Act shall not affect or repeal any other act passed at the same session of the legislature, and all such acts shall have full effect. So far as such Acts conflict with any provision contained in this Act, they shall have the effect of subsequent Acts.

Section \_\_\_\_ This Act upon its approval shall take effect July 1, 1972."

The addition will eliminate inconsistencies between acts under the statutory revision program and acts under specific area legislation. Because the latter is specific to the area of legislation and is deliberated on singularly, it should prevail.

The Reporter's notes set forth in **The Report of the Committee on Coordination of Rules and Statutes** are not necessarily the views of the Committee on Coordination nor of your Committee. However, your Committee found the notes helpful; and in general they represent the reasons for the changes. Where your Committee has not accepted the recommendations of the Committee on Coordination and made other changes, this Committee Report explains the changes made.

Volumes I, II and III and the Supplementary Report of **The Report of the Committee on Coordination of Rules and Statutes** are appended to this Committee report and is entitled: "EXHIBIT APPENDED TO REPORT OF JOINT INTERIM COMMITTEE APPOINTED UNDER H. C. R. No. 24 OF THE 1971 SESSION". Copies of **The Report of the Committee on Coordination** should be read with this Joint Interim Committee Report and therefore were requested by your Committee to be printed for wide distribution. The Committee on Coordination had printed six hundred copies under its general appropriation by Act 68, L. 1971.

A **Supplementary Report of the Committee on Coordination** covering Chapters 1 through 490 (Volumes 1 through 6) of the Hawaii Revised Statutes was submitted by the Committee on Coordination. The **Supplementary Report** consists of one volume of marked up statutes, and one volume of drafts of bills to enact the proposed changes. Because of printing delays, it was not received until January 3, 1972, and your Committee did not have time to consider the **Supplementary Report**. Your Committee recommends that it be reviewed by the Judiciary Committees of the respective Houses during the Regular Session 1972, and, if necessary, be further reviewed between the 1972 and 1973 legislative sessions by a joint interim committee.

Your Committee is of the opinion that the statutory revisions as proposed in **The Report of the Committee on Coordination of Rules and Statutes** are long overdue, that the revisions will update and unify the statutes of Hawaii in a comprehensive manner, and that the recommendations of the Committee on Coordination as set forth in Volumes I, II, and III of **The Report of the Committee on Coordination of Rules and Statutes** and as revised herein by your Committee should be enacted into law during the 1972 Session of the Legislature of the State of Hawaii.

Representatives O'Connor, Duponte, Roehrig, Aduja and Carroll.

Managers on the part of the House.

Senators Nishimura, Kawasaki, Toyofuku and Rohlfing.

Managers on the part of the Senate.

#### **Spec. Com. Rep. No. 10 (Majority)**

Your joint Senate—House interim committee on planning, programming and budgeting, appointed in accordance with **Senate Concurrent Resolution No. 1**, 1971 regular

session, to review and evaluate the implementation of Act 185, S.L.H. 1970, The Executive Budget Act, and to consider legislative improvements in support of Act 185 implementation, begs leave to report as follows:

#### **BACKGROUND**

The work of your committee during the interim period was a continuation of the legislative initiatives undertaken during the past several years to bring about greater accountability and effectiveness in State government. While the focus of these initiatives has been on budget reform, and particularly on that reform known as planning-programming-budgeting (PPB), attention has also been given to the kinds of legislative improvements which should be made to strengthen the legislative as a policy-making body. The framework for your committee's tasks may best be viewed as one built by the accomplishments of previous interim committees, including the following:

**The Joint Interim Committee on Education** (1967-70), which provided the impetus for the implementation of PPB in the Department of Education.

**The Joint Interim Committee on Budget Format and Review** (1969), which developed the PPB format which was ultimately translated into the specifications of Act 185.

**The Joint Interim Committee on Legislative Review and Organization** (1970), which evaluated the initial implementation of Act 185 and assessed the impact of PPB on the process and organization of the legislature.

In continuing the work of these committees, your committee grouped its tasks into four broad areas: (1) evaluation of the statewide implementation of Act 185 as coordinated by the Department of Budget and Finance; (2) evaluation of the specific progress of the Department of Education as requested by **Senate Concurrent Resolution No. 88**; (3) assessment of the program structure for higher education as requested by **Senate Concurrent Resolution No. 87**; and (4) determination of the principles which should guide the legislature in the development of a more effective process and committee structure for budget and program review and identification of other improvements to strengthen legislative policy-making. This report of your committee is structured accordingly.

**EVALUATION OF ACT 185  
IMPLEMENTATION AS  
COORDINATED BY THE  
DEPARTMENT OF BUDGET  
AND FINANCE**

*General evaluation.* The legislative guidelines for the implementation of Act 185 provided for three transitional years during which State government would move from the traditional budgeting system to a PPB system. In the first transitional year, the Department of Budget and Finance, the central staff agency responsible for coordinating the implementation of Act 185, prepared and submitted to the legislature a draft program structure and program and financial plans (PFPs) for two program areas, public welfare and environmental quality control. This initial effort was assessed by the legislature last year to be a promising start. For this year, the second transitional year, the administration was required to submit a revised program structure, updated program and financial plans for public welfare and environmental quality control, PFPs for agriculture and the statewide information system, and a modified variance report. It has complied with these requirements. Your committee finds generally that the submissions, particularly the program and financial plans, demonstrate considerable effort and progress, and the Department of Budget and Finance and the various agencies involved with preparing documents for the program areas are to be commended for their contributions. Your committee believes that the work accomplished during the first two transitional years has placed the State in a sound position to implement the requirements of Act 185 for all programs by the 1973 legislative session.

*The State program structure.* The revised State program structure dated July 1, 1971 represents an improvement over the previous program structure. An exception is that portion of the structure dealing with higher education which is discussed separately in this report. In reviewing the structure with State agencies, your committee was made aware that reservations exist among some agencies over various aspects of the structure which relate to their particular programs. It is desirable that the agencies should have the opportunity to suggest changes to the structure and that the Department of Budget and Finance, in coordination with the agencies, should refine the structure up to a given point in time for the 1973-75 budget preparation period and thereafter for each new budget and pro-

gram planning cycle. Your committee understands that the Department of Budget and Finance will continue to provide an opportunity for agency input. This is desirable. While no statewide program structure can be expected to completely satisfy everyone, it should be *reasonably* satisfactory to everyone, including the agencies and the legislature.

From the standpoint of the legislature, the test of the program structure will be its usefulness in making program and budgetary decisions, beginning in 1973. The legislature hopes that the program structure will be one that can be followed in making appropriations, thereby minimizing the necessity to appropriate funds in a manner different from that presented in the budget and program and financial plans. For this reason, it would be appropriate for the subject matter committees of the legislature to review those portions of the structure which are within their program responsibilities and to make their recommendations to the Senate Committee on Ways and Means and the House Finance Committee in this session of the legislature and periodically thereafter. This process will serve as the continuing legislative mechanism to assure that the State program structure will be consistent with the appropriations approach and requirements of the legislature.

*Program and financial plans.* Act 185 requires the submission of program and financial plans which present for each year of a six-year programming period, estimates of program costs, program revenues, levels of program effectiveness, and program size as well as narratives which describe the major features and issues of programs and the results of analysis. These plans are intended to take the place of the traditional departmental budget displays and justifications.

The administration's submission last year was evaluated as an encouraging submission which indicated that the Act 185 specifications can be implemented. Much that was said of last year's submission can also be said of the administration's submission to the 1972 session of the legislature. The program plan details are well-written, concise, and cover meaningful program issues. In addition, the program and financial plans are logically arranged, including in one place all of the information pertaining to a particular program. Such an arrangement will facilitate program and budget review. It has also been observed that this year's submissions have

made effective use of computer assistance through SWIS, a welcome development in view of past uncertainties as to the ability and readiness of SWIS to support Act 185 implementation. Your committee encourages the continuance and further development of computer support for Act 185 implementation, wherever computer applications represent a more economical and efficient approach to the storage, retrieval and display of data and to the performance of analysis.

In future preparation and submission of program and financial plans, the administration is requested to take into account the following guidelines and considerations:

1. *Capital investment expenditures.* In displaying capital investment expenditures, the latest submissions show the debt service costs for each program and for each CIP project. The intent of Act 185 is that wherever capital investment expenditures are specified, *the capital outlays for specific programs and projects are to be displayed rather than debt service costs.* The entire matter of how best to display capital investment expenditures was fully considered by the joint interim committee on budget format and review. The alternative of displaying capital expenditures by debt service costs was rejected for two principal reasons: (a) The disaggregation of debt service by programs and projects (and by cost elements and cost sub-elements) is of limited value in legislative decision-making; (b) cost displays would be complicated wherever there is a mixture of financing for a program or project, e.g., cash from federal funds and borrowing through general obligation bonds. This is not to say that the legislature is not concerned with debt service costs resulting from borrowing for capital investments. However, its focus is mainly on the *total effects* of past and proposed capital outlays on future debt service, and this information is already called for in other types of Act 185 displays. The display of capital expenditures in terms of actual and proposed capital outlays will also obviate the necessity of showing capital *appropriations* separately in program and project displays and in financial summaries just so long as those expenditures which are already authorized by prior appropriations are clearly identified as "non-add."

2. *Optional displays.* The latest submissions contain a number of displays which are not specifically required by Act 185. These include:

Report P52—Multi-Year Financial Plan, Total Expenditures (Excluding Capital Investments)

Report P53—Multi-Year Financial Plan, Capital Investment Expenditures

Report P54—Multi-Year Financial Plan, Capital Investment Appropriations

Report P56—Multi-Year Financial Plan, Program Revenues.

The specifications of Act 185 do not preclude the administration from submitting data in addition to the data required. However, if the administration wishes to hold down the number of pages in the documents to prevent them from becoming too unwieldy, the aforementioned displays may be deleted. This observation also applies to the optional display of debt service costs by programs and projects.

3. *Program narratives.* While narratives for programs at the lowest level present the kinds of information required by Act 185, the narratives for programs above the lowest level are limited to condensed program descriptions. It is the intent of Act 185 that for these programs above the lowest level, there would be narratives explaining any analysis conducted, the tradeoff possibilities between programs, etc. Because programs at these levels may involve more than one agency, it is understandable that inter-agency coordination, or some other mechanism, must be established before meaningful narratives can be prepared. As the administration moves further along in Act 185 implementation, your committee believes that more complete narratives can be developed for these programs. This is an aspect which should be considered in preparing future submissions.

*Issue papers and analysis.* A number of issue papers for various programs have been prepared and submitted as part of the program and financial plans. These are generally clear and incisive and focus on key issues and problems. Your committee recognizes that analysis is the crux of PPB, and that only through analysis can there be a basis for making better decisions. It expects some analysis to be conducted in connection with the 1973 submissions. At the same time, your committee also recognizes that until analytical competencies are further developed, too much cannot be expected too soon. To assure that analytical resources will be applied to



programs and problems on a priority basis, the Department of Budget and Finance, in coordination with the agencies, should formulate a schedule of the analysis for each program planning cycle and inform the legislature of the specific analyses and issue papers which the administration proposes to undertake. The legislature, in turn, should make known its priorities for analysis to the administration.

In the future, analytical documents and issue papers should probably be submitted separately or in a separate volume rather than as an integral part of the program and financial plans. Such an arrangement would serve to reduce the bulk of the PFPs. However, the results of analysis and study of issues should be summarized in the program narratives.

*Variance report.* While the administration was not required to submit a variance report in the Act 185 format to this session of the legislature, it has done so for two program areas, social problems and environmental protection. The submissions have served as a good test of the variance report specifications. The requirements have been followed, and the explanations for variances are explicit and straightforward.

The Department of Budget and Finance should take note of two aspects concerning the variance report: (1) in the future, the variance report should be submitted separately from the program and financial plans inasmuch as its submission date (December 1 of each year) is different from the submission date of the PFPs; (2) in the summary of variance from planned levels of effectiveness, the format separates the planned and actual variances for the first quarter of the current fiscal year from the planned and estimated variances in the ensuing three quarters. Such a separation is not required by Act 185 and, as a practical matter, it is not feasible. An early format considered by the joint interim committee on budget format and review did identify such separation, but after subsequent review, it was deliberately omitted from the Act 185 specifications.

*Modified variance report.* The administration was requested to submit to the 1972 legislative session a modified variance report which was to have served as a basis for program and budget review. The report was to have covered for each budget category in the General Appropriations Act a comparison

between: (1) the amount budgeted for fiscal year 1971—1972 as against the amount actually expended in the first quarter and the estimated expenditures for the remaining three quarters of the fiscal year (the actual and the estimated to be separately identified but with one combined total); and (2) the number of positions budgeted as against the actual number of filled positions in the first quarter and the estimated number of filled positions in the remaining three quarters (with the actual and the estimated to be separately identified).

The modified variance report submitted by the administration shows little or no variances in expenditures. In almost every budget category, the actual amount expended and the amount expected to be expended in the current fiscal year are equal to the amount appropriated. This is unrealistic. In view of the restrictions placed by the governor on expenditures and in view of the positions which have not been filled, there are bound to be variances.

Your committee expects a more accurate and realistic report in the future. By December 1, 1972, the administration should submit another modified variance report. Such a report would cover the budgeted vs. actual expenditures and positions for FY 1971—72 as well as the budgeted vs. actual and estimated expenditures and positions for FY 1972—73.

## DEPARTMENT OF EDUCATION

It is now five years that the Department of Education has been implementing PPB. In the last two years, it has been required to conform to the requirements of Act 185. For the 1972 session of the legislature, the department was required to submit updated and improved program and financial plans, supplemental displays for major program groupings, and issue papers and analytical documents for new areas as well as refined and updated versions of prior analyses and a variance report. In making its submissions to the legislature, the department may be said to have complied, in a formal sense, with the requirements of the legislature, but the quality of the submissions fall far short of what might reasonably be expected of a department which has had five years of experience in implementing PPB.

Your committee is aware that the department attributed some of its Act 185 im-



plementation difficulties to organizational problems. The fact remains that the legislature had provided for the personnel resources for the department's PPB effort, and the resources available should have been applied to that effort regardless of their organizational placement. Your committee was informed during the interim period that the formal responsibility for the PPB effort had been assigned to the department's office of business services. This meant, in effect, that the office had the function of executing PPB but not the personnel resources. On the other hand, the planning office had the resources but not the responsibility for coordinating the PPB effort. The result was that the latest effort in PPB implementation was, for all practical purposes, leaderless, and the kinds of management controls which should have been in effect to assure quality submissions were absent. Your committee understands that the governor has approved a departmental reorganization plan to assign the functions of planning, programming and budgeting to the office of planning. Hereafter, there should be no misunderstanding as to fixing of responsibilities for Act 185 execution, and the appropriate standing committees of the legislature should exercise their legislative review and oversight prerogatives to assure that these responsibilities are, in fact, executed.

While the Department of Education has received through the governor's approval what it essentially wanted in terms of organizational arrangements, it is your committee's observation that the mere centralization of planning, programming and budgeting functions in the office of planning will not solve all of the problems which have plagued the department's PPB implementation efforts. Yet to be defined is the role of the planning office as it relates to the role of the office of instructional services, which has the responsibility for curriculum planning, and the office of business services, which has the responsibility for capital improvements. The absence of definition of the respective roles of these offices in Act 185 implementation will result in continued fragmentation of the PPB effort. This is a matter which deserves the personal attention of the superintendent and the Board of Education.

The shortcomings of the latest Department of Education submissions are these:

The program and financial plans are illogically arranged, with information pertaining

to a particular program scattered throughout the document. In addition, there is a lack of narrative support for program costs and very little discussion of program issues.

Supplemental displays are characterized by fuzzy objectives, weak and confusing narratives, and inconsistencies and incorrect use of the cost categories required by Act 185. In the case of one display (educational complexes); there are no planned levels of effectiveness and no mention of any provisions for evaluation.

Analytical documents continue to state objectives imprecisely, fail to present meaningful alternatives, contain excessive educational jargon understandable only to educators and are imprecise or incomplete in displaying costs. (It should be noted that an exception is the analytical document on vandalism, which is clearly written and presents alternatives in a straightforward manner.)

The variance report is virtually useless for program review. It omits planned and estimated levels of effectiveness and program size for the current fiscal year, position count variances, capital investment variances, summaries at levels I, II and III for budgeted vs. actual and estimated expenditures and levels of effectiveness expected vs. levels attained, and narratives to explain summary differences. Whatever explanations for variances are included are either stock or imprecise explanations. Moreover, administration and support programs are not covered at all by the report.

In addition, it is your committee's evaluation that the Department of Education has not incorporated into its system certain essential elements which have previously been brought to the attention of the department by successive legislative interim committees, *to-wit*:

. CIP planning and budgeting have still not been integrated with the general process for program planning and budgeting.

. Analysis has not been scheduled in a manner which enables results to be incorporated in the program and financial plans presented to the legislature.

. There is no evidence of PPB under Act 185 being communicated below the State office level. The department's expectations of districts and schools in contributing toward

the accomplishment of statewide educational objectives and their roles in a PPB system remain unspecified.

Your committee expects the department to evaluate its own submissions and efforts. The yardstick of quality and progress is readily available in the recent work done in other major program areas which have been brought under Act 185 implementation. Your committee believes that only through critical self-appraisal will the department be able to define for itself what needs to be done to implement PPB more effectively than it has to date.

#### UNIVERSITY OF HAWAII PROGRAM STRUCTURE

As requested by the legislature, your committee conducted a special review of the program structure for higher education. The current structure is based on a structure developed by the Western Interstate Commission for Higher Education (WICHE). The structure was developed by WICHE primarily to provide a standard framework to facilitate comparison of data among higher education institutions.

Your committee's evaluation is that the WICHE classification structure is inappropriate as a *program structure* (and as an *appropriations structure*) for higher education in Hawaii for two basic reasons: (1) the major focus is on organizations rather than the programs of higher education; and (2) it does not provide for looking at higher education as a *system*. Your committee recognizes the value of common classifications for data collection, but this in no way means that such classifications must therefore be the basis for legislative decision-making. WICHE itself, in its latest draft structure, emphasized that its classifications can be reorganized in a structure that is compatible with the specific higher education objectives of institutions and that programs may be aggregated in one way for institutional purposes and in another manner for external purposes. WICHE suggests that alternative structures may be developed to suit local needs, and university officials also acknowledged that because the "building blocks" of the WICHE classification structure are common to any of several alternatives, a more suitable program structure for displaying higher education could be developed without affecting data collection and classification.

The university was asked to develop alternatives, and your committee understands that it has, in consultation with the Department of Budget and Finance, been developing an alternative program structure. This effort should be completed as quickly as possible and presented to the higher education committees of the legislature and to the Senate Committee on Ways and Means and the House Committee on Finance so that a determination can be made in the 1972 legislative session as to the suitability of the alternative as a program structure and as an appropriations structure.

#### CONCERNS AND GUIDELINES

In its review and evaluation of Act 185 implementation, your committee reviewed a number of associated problems and concerns and, where appropriate, determined what guidelines might be established or course of action pursued. These areas of concern include the following:

*PPB staffing.* A number of agencies expressed the need for additional staff or additional training in order to implement PPB. It is very possible that some agencies have found themselves overburdened, but your committee believes that this condition is largely temporary. The transition period requires agencies to work with the old budgeting system while implementing the new system under Act 185. In addition, agencies may not yet have a sufficient number of personnel trained to perform PPB functions, and personnel may feel that they are not yet equal to the continuing task of analysis. Your committee believes that some of the staffing problems will be eased as different types of training reach more personnel. Workload problems should also be eased once the State moves through the transition period, drops the old budgeting system, and is on the single system under Act 185. For these reasons, your committee believes that personnel requirements for PPB should not be projected on the basis of the unusual one-time conditions of the transition period. The State should probably go through one budget cycle under the new system before reaching a determination as to what new staffing patterns might be required. In the meanwhile, it would be appropriate for the Department of Budget and Finance to begin to study personnel needs as they relate to specific PPB functions of the agencies and how its central staff might assist the agencies, particularly in terms of technical support for analysis.

*Financial ceilings for budget-making.* In the conference committee report to the 1971 General Appropriations Act, the legislature expressed its concern that the absence of financial ceilings in budget-making and programming has resulted in agency recommendations which are unrealistic when viewed in the context and against the limitations of the total financial resources of the State. The problem of unrealistic planning, programming and budgeting on the part of the agencies will continue unless the administration process provides for informing the agencies of the tentative dollar allocations to major program areas even before the agencies begin to plan, program and budget. Only under realistic financial constraints will there be induced in agencies, as part of the budget development process, the necessity to rank priorities and to analyze the tradeoff possibilities between programs. Your committee has thoroughly reviewed this matter and believes that the governor should assure that a process of tentative dollar allocations to agencies for all proposed expenditures, including capital investments, is provided for in instructions for the preparation of the budget and program and financial plans.

*Miscellaneous and supplemental appropriation requests.* In the past, the legislature has received numerous miscellaneous appropriation recommendations from agencies subsequent to the submission by the governor of the budget and the financial plan. As a matter of sound budgeting principle and practice, all such miscellaneous recommendations, whether for operating expenditures or capital investments, whether for continuing programs or new programs, should be reflected in the budget and program and financial plans. If any such appropriations are recommended subsequent to the preparation and submission of the budget, a revised State financial plan should be submitted to the legislature and those portions of the budget and program and financial plans which are affected by the recommendations should likewise be revised and submitted.

*Collective bargaining.* Your committee believes that the timetables for collective bargaining should be consistent with the budgeting cycle so that agreements reached which require legislative action are properly reflected in the State financial plan, the budget and program and financial plans. This is a matter which should be reviewed by the governor. In addition, if through some circumstance, collective bargaining agreements

are reached subsequent to the submission of the budget, a revised financial plan should be submitted to the legislature, including identification of the incremental expenditures resulting from such agreements and the specific manner in which revenues and/or other expenditures are to be adjusted to meet the expenditure requirements of the agreements.

*Private agencies and counties.* Your committee has reviewed the question as to whether agencies outside of State government but dependent on State appropriations, such as the Hawaii Visitors Bureau, private hospitals, and the counties, need to conform to Act 185 requirements. It has been determined that while all of the requirements of Act 185 may not be applicable in all such cases, the State agencies which are responsible for administering the appropriations should review all appropriation requests to ensure that *all relevant information* required by Act 185 is, in fact, included in submissions to the legislature.

*Central agency responsibilities for PPB.* Under Act 185, central agency responsibility for its implementation is assigned to a single agency, the Department of Budget and Finance. In the past, question has been raised as to the role of the Department of Planning and Economic Development. This question was settled by the joint interim committee on legislative review and organization which explicitly stated that central agency responsibility for planning, programming and budgeting resides in the Department of Budget and Finance as provided for in Act 185. The governor should continue to monitor central agency responsibilities to assure adherence to legislative intent.

*The judiciary.* While it is a separate branch of government and should not be under executive branch controls, the judiciary, like the executive agencies, is required to conform to Act 185. To bring about a coordinated submission of the required PPB documents to the legislature, the judiciary's efforts need to be consistent with the program planning and budget preparation cycle of the administration. Continuing cooperation by the judiciary in meeting executive branch timetables is both desirable and necessary to meet Act 185 requirements.

## LEGISLATIVE PROCESS AND ORGANIZATION

Your committee has assessed the effects of

PPB on the process and organization of the legislature, and it believes that each house of the legislature in terms of its process and its organization should be moving in a direction which will enable it to accommodate and utilize PPB more effectively. Some changes have already been made, and to guide further changes, your committee recommends that certain principles be followed while reserving to the respective houses the right to determine the specific changes to be effected.

*Legislative process.* An effective legislative process for program and budget review and for legislative decision-making on appropriation requires a delineation of responsibilities between the committees responsible for finances (the Senate Committee on Ways and Means and the House Committee on Finance) and the subject matter committees of the respective houses. In addition, the specific process governing program and budget review should be defined in appropriate rules. Generally, the process should provide for the following:

- . Increased, meaningful participation by all members of the legislature.
- . Establishment of an overall financial plan to govern budgetary decisions and the mechanism for adherence to the plan.
- . Systematic review of proposed program expenditures and examination of program issues.
- . Clearly defined points and levels of decision-making.
- . Continuous consideration and identification of the full-cost implications of budgetary decisions.

What is envisioned is that each of the two financial committees of the legislature would be primarily responsible for formulating the overall financial plan for each respective house, advising the subject matter committees of the dollar ceilings allocated to major program areas, and ensuring that proposed expenditures for individual programs do not exceed the dollar ceilings allocated for the major program areas. Subject matter committees, in turn, would determine the appropriations for specific programs within the major programs for which they are responsible. A process which is developed on the basis of the foregoing principles should have the

effect of bringing about more efficient utilization of legislative committees and more systematic and effective legislative decision-making.

During the 1971 session, the legislature adopted a transitional appropriations format whereby the legislature focused on programs rather than agencies and assessed the full-cost implications of programs rather than treating capital and operating costs as separate requirements. By using such a format, the legislature moved in the direction intended by Act 185. While the specific appropriation categories may change in 1973, your committee believes that the transitional format has provided a sound foundation for accommodating the statewide PPB submissions for the 1973—75 biennium and that the format developed should be refined and continue to be used.

*Committee Organization.* The specific number and kinds of legislative committees to be established are matters to be decided by each respective house in terms of its own requirements. Generally, however, the legislature should be moving in a direction of developing committees with more of a program focus. Such a focus will enable the legislature to utilize PPB more effectively. Whatever specific committees are established, the committee organization should provide for the following:

- . Committees of sufficient scope to enable all members of the legislature to participate in decision-making in major program areas.
- . Committees reflecting major missions of State government and responsible for programs with common or related objectives.
- . Flexibility to establish subcommittees if desired.
- . Committees with the adaptability to consider budgetary as well as non-budgetary issues.
- . Committees which reflect the legislature's concern over current and emerging issues of major importance.

The committees established by each house of the legislature need not be identical, but to facilitate decision-making in a bicameral system, some common framework for committee organization would be desirable. In the 1971 General Appropriations Act, the fol-

lowing major program areas were identified:

Ecology, Environment and Recreation

Economic Development

Education and Culture

Government Direction and Support Services

Health

Human Resources

Human Rights and Justice

Public Employment

Transportation

These subject matter areas along with three other subject matter areas, legislative financial planning and management, inter-governmental relations, and legislative support, provide a common basis for structuring legislative committees. While any of a number of committees could be established, it would be desirable for all committees to relate to these major program areas. The Citizens Conference on State Legislatures, in its 1970 *Report on an Evaluation of the 50 State Legislatures*, ranked Hawaii's legislature seventh among the states. One aspect which precluded a higher ranking is said to be the committee structure which existed at the time of the study. Your committee believes that as Hawaii's legislature further develops its committee organization along major program lines, the overall result should be a more effective legislature.

*Legislative staffing.* The advent of PPB, with its requirements for more intense legislative review and analysis as a basis for better decision-making, means that the legislature must begin to strengthen its staff support. This does not necessarily entail increased numbers of staff personnel but personnel of a different competency, particularly in terms of legislative analytical capabilities. Your committee believes that as the legislature proceeds to develop improved staff capabilities, certain principles should guide its approach to staffing, including the following:

There should be clear delineation between the function of staff support to individual legislators and staff support to the subject matter areas.

Each individual legislator should be provided with personal clerical support and administrative and legislative assistance so that he can discharge his personal responsibilities as a legislator.

The subject matter areas should be provided with basic clerical and professional support to enable committees responsible for the subject matter areas to discharge their continuing basic responsibilities for program and budget review.

In addition to basic support, provisions should be made for special staff support in a subject matter area if special developments require additional temporary staffing.

Professional staff competency should be acquired and further developed to serve as the permanent staff nucleus for continuing legislative work in the subject matter areas.

Of some urgency is the necessity for the legislature to develop by the 1973 legislative session, when the first statewide PPB submissions will be before the legislature, staff analytical capabilities in subject matter areas. This means that the legislature should acquire and develop its professional staff nucleus during the next interim period to assist in developing legislative programs during the interim period and to provide technical support in the subject matter areas during the legislative session. Your committee believes that the assistance of the legislative auditor should be obtained to ensure that the professional staff is properly trained and fully operative by the 1973 legislative session.

*Missions of legislative staffs and legislative service agencies.* Your committee believes that it is appropriate that the missions of the staffs of the legislature be clarified and that, similarly, the major missions of the various legislative service agencies be clarified so that the entire range of legislative support responsibilities are clearly understood by everyone, including members of the legislature. In its review, your committee was guided by the principle that the organization and major missions of the legislative staff and legislative service agencies should collectively result in the following: (1) comprehensive legislative services; (2) assignment of primary missions to each legislative service agency; (3) specialization of staff competencies; and (4) establishment of avenues for coordination and cooperation among legislative service agencies. The major missions have been defined as

follows:

*House and Senate Staffs*

. Provide all bill drafting services to the legislature, including the preparation of single house and concurrent resolutions, except that it may request assistance from the legislative reference bureau and the legislative auditor on specialized matters within their respective competencies.

. Provide all committee report writing services to the legislature, except that it may request assistance from the legislative reference bureau and the legislative auditor on specialized matters within their respective competencies.

. Conduct spot research on all matters as may be requested by the legislature and its committees, except that it may request assistance from the legislative reference bureau and the legislative auditor on matters within their respective competencies.

. Provide all legislative housekeeping services.

. Assist the legislature in the preparation of majority and minority legislative programs.

. Provide staff services to legislative committees, including interim committees, except that it may request the assistance of the legislative reference bureau and the legislative auditor in areas of their respective competencies.

. Act as legal counsel to the legislature and render opinions on legal, parliamentary and constitutional questions for the respective bodies.

*Legislative Reference Bureau*

. Conduct such basic and legal research as may be necessary for the enactment of substantive legislation, upon request by the legislature, legislative committee, or on its own initiative.

. Disseminate its research findings to the legislature on all research projects undertaken upon the request of the legislature or legislative committee.

. Serve in an advisory capacity to the legislature and its committees on all matters within its competencies and responsibilities.

. Provide statute revision and codification services.

. Maintain a reference library for use by the legislature and legislative service agencies.

. Control the operations of any legislative data processing program as may be established.

. Assist legislative service agencies upon requests on matters within its competency.

*Legislative Auditor*

. Conduct program, operations, and financial audits of state and local governments and report to the legislature on its findings and recommendations.

. Conduct research and evaluation relating to the management, execution and performance of state and local government programs, upon request by the legislature or on its own initiative and disseminate its findings to the legislature.

. Serve in an advisory capacity to the legislature and its committees on all matters within its competencies.

. Assist legislative service agencies upon request on matters within its competencies.

*Ombudsman*

. Assist the legislature by receiving, hearing, and acting on citizens' complaints on governmental operations.

. Report to the legislature on the disposition of citizens' complaints.

. Advise the legislature of problem areas in government operations and make recommendations for statutory amendments if such amendments are shown to be appropriate by its investigations.

. Refer findings to the legislative auditor on matters that affect its functions and responsibilities.

As outlined above, the major missions of the legislative staffs and legislative services are generally consistent with current and emerging practices, with statute, and in the case of legislative auditor, with the require-



ments of the Constitution. However, there are two issues which need to be resolved by the legislature. With respect to the statute revision function, which currently resides in the judiciary, both the legislative auditor, in a 1966 audit report, and the joint interim committee to improve the judicial branch, in a 1970 report, concluded that the function of statute revision and codification was a legislative function which should be transferred to the legislature. Its appropriate placement would be in the legislative reference bureau, provided that LRB is transferred from the University of Hawaii to the legislature. Both of these transfers should be made at the appropriate time. Your committee believes that an agency, whose basic function is to service the legislature, should not be under the control of the executive branch. The organization of statute revision and legislative reference bureau functions under the legislature should make for improved execution of these functions and would be consistent with the basic tenets of separation of powers provided for in the State Constitution.

*Other legislative improvements.* A number of state legislatures have implemented or are beginning to implement more efficient methods for bill drafting, printing and statute production. Computer technology, in particular, has developed to a point where prospects for its application to various legislative operations are promising. Some states have already developed integrated computer-based systems for drafting, amending and printing bills and in preparing session laws.

As it examines more economical and efficient methods to improve its operations, the legislature should avoid a piecemeal approach and focus on legislative operations, and improvements to those operations, in terms of a *system*. A systems approach will ensure that any improvements made to any one operation will be compatible with other operations.

The legislature should also begin to review its needs to develop its own information capability. If it is to be able to arrive at decisions and discharge its legislative functions independently, the legislature should not be completely reliant on only that information which the executive branch provides. Your committee believes that these are matters which should be further pursued by appropriate legislative committees and that the legislative auditor should be asked to begin to

structure, in terms of a system, the various legislative operations which can be improved upon through the application of modern technology.

## RECOMMENDATIONS

Based on the findings and evaluations presented in this committee report, your committee submits the following recommendations:

### *Recommendations to the governor:*

1. That for the purpose of providing agencies with a rational and realistic basis for program planning and budgeting, he ensure the establishment of a process by which agencies shall be informed of the tentative financial ceilings under which programs are to be planned, programmed and budgeted. Such ceilings should be established to guide the agencies in their preparation of the 1973 submissions of the budget and program and financial plans and should apply to capital investment as well as operating and other expenditures.

2. That he ensure that all miscellaneous and supplemental appropriations recommended by the administration are reflected in the State's financial plan. If any such appropriations are recommended subsequent to the preparation and submission of the budget, a revised State financial plan shall be submitted to the legislature.

3. That he review the timetables for collective bargaining to assure that agreements which require legislative appropriations are incorporated in the budget and program and financial plans submitted to the legislature.

4. That he continue to monitor the respective roles of the central staff agencies to ensure implementation of that provision of Act 185 which assigns central agency responsibility for planning, programming and budgeting to a single agency, the Department of Budget and Finance.

### *Recommendations to the Department of Budget and Finance:*

1. That it continue to coordinate and provide the different kinds of training appropriate to the development of competencies in planning, programming and budgeting in the various agencies of State government.



2. That in the next cycle for the preparation of the budget and program and financial plans, it review how the functions of planning, programming and budgeting are being performed in the agencies, how its own staff relates to the PPB functions in the agencies, and to what extent the agencies may require additional PPB staffing or PPB training not merely to prepare the various documents but to conduct systematic analysis. The department should prepare and submit a report of its findings and preliminary staffing recommendations to the 1973 session of the legislature.

3. That in displaying expenditures for the capital investment cost category in the program and financial plans, it show the actual capital outlays expected rather than the debt service requirements which are anticipated to be generated as a result of those outlays. The capital investment outlays, and all other program costs, shall be identified in the program and financial plans regardless of whether the expenditures were authorized by prior appropriation acts, are authorized by existing law, or require new appropriations, except that the amounts requiring new appropriations shall be appropriately identified.

4. That in coordination with the agencies of State government, it develop a schedule of the analysis to be performed and issues to be studied by the various agencies in connection with the preparation of the next budget and program and financial plans and that it submit such a schedule to the Senate Committee on Ways and Means and the House Committee on Finance by the 40th day of the 1972 legislative session.

5. That in coordination with agencies, it continue to review and refine the State program structure, including objectives and effectiveness measures.

*Recommendation to the University of Hawaii:*

1. That it complete its efforts to develop a program structure for higher education in lieu of the WICHE structure and that it submit its recommended program structure, together with statements of objectives, measures of effectiveness and program size indicators to the respective higher education committees of the legislature, to the Senate Committee on Ways and Means and to the House Committee on Finance by the 40th day of the 1972 legislative session.

*Recommendations to the Department of Education:* That it move swiftly to implement those recommendations previously made by legislative committees and not yet accomplished by the department, including the following:

1. The integration of the process for program planning and budgeting and the process for capital facilities planning and budgeting.

2. The communication of PPB concepts throughout the department's organization, including districts and schools.

3. The scheduling of analyses in such fashion that the results thereof may be properly reflected in the program and financial plans presented to the legislature.

4. Definition of the functions of planning, programming and budgeting, how various units within the department relate to these functions, and the establishment and exercise of management and operational controls to ensure that the functions are properly executed.

5. The upgrading of PPB documents, particularly in the presentation of viable alternatives, the documentation of full-system costs, the correct use of cost categories, statements of meaningful objectives, avoidance of educational jargon, and more meaningful narratives.

*Recommendation to the Judiciary:*

1. That in meeting its requirements under Act 185, it ensure that its efforts for preparation of the budget and program and financial plans coincide with the timetable of the executive branch so that a coordinated submission of the required documents may be made to the legislature.

*Recommendations to the respective houses of the legislature:*

*On legislative process*

1. That they provide through the adoption of appropriate rules in each house processes for program and budget review, review of supplemental appropriations and review of miscellaneous appropriations.

2. That they be guided by the processes developed by the committee and the principles which provide for:

a. Increased, meaningful participation by all members of the legislature.

b. Establishment of an overall financial plan to govern budgetary decisions and the mechanism for adherence to the plan.

c. Systematic review of proposed program expenditures and examination of program issues.

d. Clearly-defined points and levels of decision-making.

e. Continuous consideration and identification of the full-cost implications of budgetary decisions.

3. That they implement a systematic cycle for program and budget review and beginning in the 1972 legislative session, coordinate all legislative requests for program analysis and issue papers through the Senate Committee on Ways and Means and House Committee on Finance.

#### *On legislative organization*

1. That they provide through the adoption of appropriate rules committee structures and committee responsibilities which are responsive to and which can effectively utilize the emerging system of planning, programming and budgeting.

2. That while the kinds and number of committees should be determined by each house, committee structures should relate to the major program areas identified in the 1971 General Appropriations Bill and reflect the principles which provide for:

a. Committees of sufficient scope to enable all members of the legislature to participate in decision-making in major program areas.

b. Committees reflecting major missions of State government and responsible for programs with common or related objectives.

c. Flexibility to establish additional committees or subcommittees if appropriate.

d. Committees with the adaptability to consider budgetary as well as non-budgetary issues.

e. Committees which reflect the legislature's concern over current and emerging

issues of major importance.

#### *On legislative staffing*

1. That they clearly delineate the functions of staff support to subject matter areas from the functions of other types of staff, such as staff to individual legislators, staff to leadership, and basic staff support to each house.

2. That they establish a permanent professional staff nucleus to provide technical support in the subject matter areas during legislative sessions and to assist in developing legislative programs during the interim period. The assistance of the legislative auditor is requested to ensure that the professional staff is properly trained and fully operative by the 1973 legislative session.

#### *On the format for appropriations*

1. That they continue to use and refine the General Appropriations Bill format developed in the 1971 legislative session.

#### *On the missions of legislative staff and legislative service agencies*

1. That they familiarize themselves with the major missions of the legislative staff and legislative service agencies so that they can utilize their services more effectively.

2. That they transfer at some appropriate time the legislative reference bureau functions from the University of Hawaii to the legislature, and the statute revision function from the judiciary to the LRB, inasmuch as these are exclusively legislative functions.

#### *On legislative improvements*

1. That they request the technical assistance of the legislative auditor to identify and develop, in phases, the application of advanced technology to improve legislative processes and management, including (a) the use of computer support to strengthen the information capabilities of the legislature; and (b) the development of an integrated system for bill-drafting, printing and publication of session laws.

#### **SUMMARY**

Political scientist Dr. Allen Schick, an authority on budgeting and the legislature, recently wrote the following about budget

reform among the states: "The most unusual and enlightening success story comes from Hawaii where the State legislature disregarded the unwritten rule that budget innovation is the prerogative of the chief executive and seized the initiative in promoting and designing a comprehensive PPB system for the State. To be sure, this assertive role led to some conflicts with the governor's office and with agencies which had to cope with multiple and diverse instructions. But it also made Hawaii the first (and probably the only) government in the United States to enact a budget law that specifies and mandates both the principles and forms of the PPB system. Since the law was passed in 1970, the Department of Finance and legislative leaders have cooperated to work out a suitable timetable for phasing PPB into the State budget system."

Despite Dr. Schick's high marks for Hawaii, your committee believes that actual proof of the "success story" is yet to come.

The first statewide submissions under Act 185 in 1973 should be the first real indicator as to how far the State has come and how far it needs to go in bringing about a better system for making decisions and for making government more accountable to the public. The road ahead requires continued cooperation between the executive branch and the legislature and diligence on the part of each branch in pursuing its respective roles. Your committee believes that both are equal to the task at hand.

Representatives Suwa, Akizaki, Inaba, Kaneshiro, Kishinami, Kondo, Kunitamura, Morioka, Wong, Yap, Yim, Ajifu, Chong, Fong, Oda and Poepoe.  
Managers on the part of the House.

Senators Yoshinaga, Ching, Hara, Taira, Wong, Yamasaki, Anderson and Henderson.  
Managers on the part of the Senate.  
Senator Anderson did not concur.