

**JOURNAL**

**of the**

**HOUSE OF REPRESENTATIVES**

**of the**

**TWENTIETH LEGISLATURE**  
**STATE OF HAWAII**

**SECOND SPECIAL SESSION OF 2000**

**Convened Monday, August 7, 2000**  
**Adjourned Tuesday, August 22, 2000**

## CERTIFICATE

*We hereby certify that the minutes for each day's session as appears in this House Journal are true and correct and that the original copies have been duly signed by the Speaker and the Clerk of the House of Representatives and are on file in the Archives of the State of Hawaii.*

  
Speaker, House of Representatives

  
Clerk, House of Representatives

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**Note:** Recess was held on August, 10, 11, 14, 15, 16 and 17, 2000.

THE  
TWENTIETH LEGISLATURE  
STATE OF HAWAII  
SECOND  
SPECIAL SESSION OF 2000  
JOURNAL OF THE HOUSE  
FIRST DAY

**Monday, August 7, 2000**

The House of Representatives of the Twentieth Legislature of the State of Hawaii, Regular Session of 2000, convened at 10:09 o'clock a.m. with the Speaker presiding.

**"PROCLAMATION**

We, Norman Mizuguchi, President of the Senate, and Calvin K.Y. Say, Speaker of the House of Representatives, of the Twentieth Legislature of the State of Hawaii, pursuant to the power vested in us by Section 10, Article III of the Constitution of the State of Hawaii, and at the written request of two-thirds of the members to which each house is entitled, do hereby convene the Second Special Session of 2000 of the Twentieth Legislature of the State of Hawaii for a period of five (5) days, excluding Saturdays, Sundays, and any days of recess pursuant to a concurrent resolution, commencing on Monday, August 7, 2000.

/s/ Norman Mizuguchi  
NORMAN MIZUGUCHI  
President of the Senate

/s/ Calvin K.Y. Say  
CALVIN K.Y. SAY  
Speaker of the House of Representatives"

"THE TWENTIETH LEGISLATURE  
State of Hawaii  
State Capitol  
Honolulu, Hawaii

To the President of the Senate and the Speaker of the House of Representatives

Your petitioners, members of the Senate and the House of Representatives of the Twentieth Legislature of the State of Hawaii, respectively request that a special session of the Twentieth Legislature of the State of Hawaii be convened at 10:00 o'clock a.m., on Monday, August 7, 2000, for a period of five (5) days, excluding Saturdays, Sundays, holidays and any days of recess pursuant to a concurrent resolution, for the purpose of amending Sections 7 and 8 of Article IV of the Constitution of the State of Hawaii relating to staggered terms for the Senate, and Chapter 323C, Hawaii Revised Statutes, relating to privacy of health care information.

This written request to the presiding officers of the respective houses may be signed in counterparts. Each counterpart that is so signed shall be deemed an original written request, and all of the counterparts considered together shall constitute one and the same written request for a special session, notwithstanding that all of the members are not signatories to the original or the same counterparts. For all purposes, duplicate and unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document.

The written request and each of its counterparts may also be made by way of facsimile signature which shall bind the member signing the written request or the counterpart. Facsimile signatures shall immediately thereafter be confirmed by delivery to the

respective presiding officer of the counterpart containing the same original signature.

Signed by Senators Anderson, Buen, Bunda, Chumbley, Chun, Chun Oakland, Fukunaga, Hanabusa, Ige, D., Ihara, Kanno, Kawamoto, Levin, Matsunaga, Matsuura Menor, Nakata, Sakamoto, Slom, Tam, Tanaka and Taniguchi.

Signed by Representatives Abinsay, Ahu Isa, Auwae, Cachola, Case, Catalani, Chang, Espero, Fox, Garcia, Goodenow, Halford, Hamakawa, Herkes, Hiraki, Ito, Kahikina, Kanoho, Kawakami, Lee, Leong, Luke, Marumoto, Meyer, Morihara, Moses, Nakasone, Nekota, Okamura, Oshiro, Rath, Saiki, Santiago, Schatz, Souki, Stegmaier, Suzuki, Takamine, Takai, Takumi, Thielen, Whalen, Yamane, Yonamine and Yoshinaga."

The invocation was delivered by Representative Charlotte L. Nekota, after which the Roll was called showing all members present with the exception of Representatives Kahikina, Okamura, Stegmaier and Takamine, who were excused.

**INTRODUCTION**

The following introduction was made to the members of the House:

Representative Arakaki introduced Mr. Seiya Nishizato and Ms. Sayaka Kinjo, two young visitors from the Shimazoe No Oka Children's Home in Ozato, Prefecture of Okinawa, Japan, who were accompanied by his staff member, Ms. Linda Delaney.

**ORDER OF THE DAY**

**INTRODUCTION OF BILLS**

On motion by Representative Yonamine, seconded by Representative Pendleton and carried, the following bills (H.B. Nos. 1 and 2) passed First Reading by title and were referred to Printing: (Representatives Kahikina, Okamura, Stegmaier and Takamine were excused.)

**House Bill Nos.**

- 1 "A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE IV, SECTIONS 7 AND 8, OF THE CONSTITUTION OF THE STATE OF HAWAII, TO STAGGER SENATE TERMS AFTER REAPPORTIONMENT."

Introduced by: Representative Say.

Referred to: Committee on Judiciary and Hawaiian Affairs.

- 2 "A BILL FOR AN ACT RELATING TO THE PRIVACY OF HEALTH CARE INFORMATION ACT."

Introduced by: Representative Say.



Referred to: Committee on Judiciary and Hawaiian Affairs.

### INTRODUCTION OF RESOLUTIONS

The following resolution (H.R. No. 1) and concurrent resolution (H.C.R. No. 1) were announced by the Clerk and the following actions taken:

H.R. No. 1 entitled: "HOUSE RESOLUTION RELATING TO COMMITTEE ASSIGNMENTS," was offered by Representative Say.

On motion by Representative Case, seconded by Representative Yonamine and carried, H.R. No. 1 was adopted, with Representatives Kahikina, Okamura, Stegmaier and Takamine being excused.

H.C.R. No. 1, entitled: "HOUSE CONCURRENT RESOLUTION RELATING TO RECESS DAYS FOR THE SECOND SPECIAL SESSION OF 2000," was jointly offered by Representatives Case and Marumoto.

On motion by Representative Case, seconded by Representative Marumoto and carried, H.C.R. No. 1 was adopted, with Representatives Kahikina, Okamura, Stegmaier and Takamine being excused.

### HOUSE COMMUNICATION

A communication dated August 7, 2000, from Patricia Mau-Shimizu, Chief Clerk of the House of Representatives, to the Honorable Benjamin J. Cayetano, Governor of the State of Hawai'i, giving notice of the final form of House Bill No. 1, entitled: "A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE IV, SECTIONS 7 AND 8, OF THE CONSTITUTION OF THE STATE OF HAWAII, TO STAGGER SENATE TERMS AFTER REAPPORTIONMENT," in accordance with the provisions of Article XVII, Section 3 of the Hawai'i State Constitution. Said measure was introduced and passed First Reading in the Hawai'i House of Representatives on this date.

### ANNOUNCEMENTS

Representative Hamakawa: "Mr. Speaker, the Committee on Judiciary and Hawaiian Affairs will be holding a public hearing on House Bill 2, that's the medical privacy bill, this morning at 10:30 o'clock a.m. in Conference Room 325 with decision making to follow. A public hearing on House Bill 1, that's the staggered term elections bill, will also be held this afternoon at 3:00 o'clock p.m. in Conference Room 325 with decision making to follow.

"Public notification in anticipation of these hearings was posted and distributed on Friday, August 4, 2000. In addition, the bill drafts were made available for inspection and review on the same date."

Representative Garcia: "Mr. Speaker, thank you very much. On this Special Session day, we say 'aloha' to the newest member of the House, Ms. Charlotte Nekota, who I can speak very well of. I am sure she will discharge her duties very well on behalf of her district and of the people of Hawaii, especially in her capacity now as the Vice Chair of the Committee on Consumer Protection and Commerce. We also say 'aloha' Mr. Speaker, to a member of CPC who in his speech will reveal the reasons for his sudden resignation from this House.

"I've gotten to know Representative Cachola in a previous life. In his term as the Chairman of the Tourism Committee of this House, we have seen many accomplishments during his tenure. Most notably we have seen, under his tutelage, the creation and development of the Convention Center and other matters related to this very important industry that drives our economy. It is ironic that as I close the circle on my relationship with Mr. Cachola, I am once again holding a microphone, this time to speak of his departure from the House on this day.

"Mr. Speaker, in the Regular Session of 2000, we said goodbye to three of our very distinguished members who went on to different challenges in their lives. Another member, our fourth, was elevated to the Senate. Maybe I shouldn't say elevated - lateral - was laterally promoted to the Senate.

"And now we say goodbye to a fifth. Mr. Speaker, with your indulgence, and the members of the House, I would like to present a gavel to the outgoing Chair of the Water and Land Use Committee. But because of his sixteen years here in this Legislature, he will forever be known as the Chair of the Tourism Committee for his accomplishments therein. If the Vice Speaker would do the presentation honors, a certificate is being circulated and members, I would hope that you would pen your signature to this certificate for Representative Romy Cachola. I would like to hand the microphone over to Representative Cachola for his thoughts on this day."

Representative Cachola: "Mr. Speaker, and members of the House, I would like to make an announcement. Effective today, after this morning's session, I will tender my resignation from the House of Representatives.

"Today is my last day with this honorable body. I will be resigning from the House in order to run in a special election to fill a vacancy in Council District VII of the Honolulu City Council.

"I have in my hand, a written opinion dated June 19, 2000, from the State Attorney General. The AG's written opinion says that I do not have to resign to run in this special election. However, the Honolulu City Corporation Counsel recently informed me that I must submit my resignation from the House before filing nomination papers with the City Clerk's Office. Unfortunately, today is the last day to file nomination papers.

"Mr. Speaker, I have the utmost respect for the opinions of both agencies, however, the differing opinions force me to make the conscious decision to resign from the House.

"As to the rationale of the differing opinions of the State Attorney General and the City Corporation Counsel, I am not in a position to offer statements on their behalf. Please direct your inquiries to these agencies.

"Because of the contradicting opinions that lead to my resignation, my only disappointment is that I will not be able to continue representing the constituents of the 30<sup>th</sup> Representative District, especially now when we are convening a special session.

"Before I say 'mahalo and aloha,' I urge the next Legislature to clarify and further define the 'resign to run' law. The interpretation of the law must be resolved at the state level. Please look into clarifying what agency has jurisdiction in the interpretation of this law.

"I understand that this conflicting situation occurs also at the county level. In the case of my good friend, Representative Bob Herkes, Big Island County concurs with the AG's opinion on the 'resign to run' law. Representative Herkes will be able to complete his service to his constituents while running for the mayorship of

the Big Island. Meanwhile, the County of Honolulu requires me to resign. My concern is that each county may interpret the Constitution differently.

"Please also look into defining what is considered to be a 'safe haven.' I urge you to address this matter to prevent this conflict from ever occurring again. And you may name this the 'Cachola Law' if you want, Mr. Speaker.

"I thank the residents of the 30<sup>th</sup> Representative District for the opportunity to serve all of them. I am grateful that you have placed your trust in me. I can assure you that I gave the constituents of the 30<sup>th</sup> District my all. To the constituents of Council District VII, I will give you the same wholehearted effort in serving you if elected to the City Council.

"To each and every member of the House of Representatives, I am honored to have been a part of this honorable body for the past sixteen years. I thank you, Mr. Speaker, the House leadership, and members, for your priceless friendship, camaraderie, guidance and kokua. Together, we worked diligently to formulate policies that are in the best interest of the people of this state.

"To our loyal staff and support services – the House Majority Staff Office, Legislative Reference Bureau, Chief Clerk's Office and Sergeant-at-Arms, and others – it is an honor to have worked with you all. Thanks to your expertise and support, you make the House look good. You enabled us to serve our constituents efficiently and effectively.

"Many of you have said some kind words and that I should remain with this institution. This tells me that I will be missed in this House. I, too, will miss you all. Please know that if elected to the City Council, I will not be far – I will be just a seven iron shot away from all of you.

"Speaking of a seven iron shot, I will also be resigning as captain of the House golf team. The task of defending the honor of the House now rests with Captain Brian Yamane. And that's a big task.

"To the general public and members of the press, 'mahalo' for your support. I appreciate the public input and feedback that have guided us in our decisions, and for the media's important task of informing the public about our work.

"To my family, I thank you for your love and support from the day I first ran for public office. Together, we helped to make our community a better place to live for our neighbors as well as for our own family.

"Most of all, I thank God Almighty, for His guidance to do what is right, especially when faced with difficult decisions.

"Lastly, thank you, Mr. Speaker, for this opportunity to speak to the members of the House of Representatives, my constituents and the general public. To this institution, I now bid a fond farewell. 'Mahalo and aloha' to you all. Thank you."

Representative Cachola's letter of resignation is as follows:

"August 7, 2000

The Honorable Calvin K. Y. Say

Speaker, House of Representatives  
State Capitol, Room 431  
Honolulu, Hawai'i 96813

Dear Cal:

It is with deep regret that I must tender my resignation from the House of Representatives effective today.

Today is my last day with this honorable body. I am submitting by resignation from the House in order to run in a special election to fill a vacancy for Council District VII with the Honolulu City Council.

I am honored to have been a part of this honorable body for the past 16 years, working diligently to formulate policies that are in the best interest for the people of this state.

I look forward to working with you again. Best wishes on your future endeavors.

Mahalo and aloha.

Sincerely,  
/s/ Romy M. Cachola  
Rep. Romy M. Cachola  
State Representative, 30th District

cc: Office of the City Clerk, City and County of Honolulu"

Representative Pendleton: "Mr. Speaker. On behalf of the Republican leaders and the members of the Republican Caucus, we wish to bid farewell to our colleague from Kalihi, Representative Cachola.

"There are many things enjoyable about this job. But one of the unpleasant tasks is having to say farewell and 'aloha' to friends we have enjoyed serving with. Representative Cachola, we may not have seen eye to eye on all issues, but we share a common commitment to the people of Hawaii. We share a common passion to do all that we can to serve in the public's interest. It has been an honor to serve with you. We wish you Godspeed and farewell. 'Aloha.'"

#### ADJOURNMENT

At 10:29 o'clock a.m., on motion by Representative Yonamine, seconded by Representative Pendleton and carried, the House of Representatives adjourned until 10:00 o'clock a.m. tomorrow, Tuesday, August 8, 2000. (Representatives Kahikina, Okamura and Takamine were excused.)

## SECOND DAY

Tuesday, August 8, 2000

The House of Representatives of the Twentieth Legislature of the State of Hawaii, Second Special Session of 2000, convened at 10:00 o'clock a.m. with the Speaker presiding.

The invocation was delivered by Representative Marcus Oshiro after which the Roll was called showing all members present with the exception of Representatives Auwae, Catalani, Fox, Herkes, Meyer, Morihara, Okamura, Souki, Stegmaier and Yoshinaga who were excused.

By unanimous consent, reading and approval of the Journal of the House of Representatives of the First Day was deferred.

## INTRODUCTIONS

The following introductions were made to the members of the House:

Representative Chang introduced two friends from Taiwan, Mr. Steven Wang and Mr. Chia-en Hsieh.

Representative Ito introduced Mr. Dennis Yee and his daughter Ms. Jamie Yee, and his guests from Niigata, Japan, Ms. Tomoko Tsubokawa and, Ms. Naoko Tsubokawa, and friend, Mr. John Kaulupali.

Representative Kaho'ohalahala introduced family members of Ms. Kathy Kaohu, his office manager: Mr. Leland Pestana and his two sons, Mr. Joseph Pestana and Mr. Jacob Pestana; and a friend, Mr. Kacy Renfro, who are visiting from Oregon and Utah.

## ORDER OF THE DAY

## INTRODUCTION OF BILL

On motion by Representative Yonamine, seconded by Representative Pendleton and carried, the following bill (H.B. No. 3) passed First Reading by title and was referred to Printing: (Representatives Catalani, Herkes, Okamura and Souki were excused.)

House Bill No.

- 3 "A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE IV, SECTIONS 7 AND 8, OF THE HAWAII CONSTITUTION RELATING TO THE ELECTION AND STAGGERED TERMS OF SENATORS AFTER REAPPORTIONMENT."

Introduced by: Representatives Marumoto, Meyer, Auwae, McDermott, Leong, Moses, Fox, and Pendleton.

Referred to: Committee on Judiciary and Hawaiian Affairs.

## STANDING COMMITTEE REPORTS

Representative Hamakawa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 1) recommending that H.B. No. 1 pass Second Reading and be placed on the calendar for Third Reading.

Representative Hamakawa moved that the report of the Committee be adopted and H.B. No. 1, pass Second Reading and

be placed on the calendar for Third Reading, seconded by Representative Saiki.

Representative Whalen rose to speak in support of the measure with reservations, stating:

"Thank you, Mr. Speaker. I'll try to make it brief. I know many of you have heard this before. What really discourages me about the process that we're going through right now is that the bill has been lying on the desk. The decision was made by a certain group of people as to what the language would be, and we really have not had an opportunity to amend the bill or listen to instructions from those testifying. It's been more procedure over substance in the sense that there has been suggestions for changes, but we are not allowed to change the bill because we're so concerned about the deadline.

"Mr. Speaker, I agree that we don't want to waste taxpayers' money and extend the session any longer than we absolutely have to. However, it's been very clear from the testimony that there are problems in this amendment, this proposed amendment.

"One of the prime examples of this is the word 'majority' on page 2, line 11, I believe it is. The initial version that we looked at had that word in there with the 'majority' of the resident population of each Senate district, et cetera. What it did was it gave a formula to the Reapportionment Commission to determine which Senators would get two-year terms and which Senators would get four-year terms.

"The Attorney General's Office testified repeatedly that that word is necessary if we are to express our intent in the amendment to have the Commission use the voting public as the basis for which Senators will get four-year terms. By taking that out -- in yesterday's hearing I asked the Attorney General's Office, 'What formula would be used if that language was gone?' And basically, there was no response. With the word in there, he says it is very clear and understandable. There would be no problems with the Reapportionment Commission to determine which districts are entitled to four-year terms.

"Mr. Speaker, the only reason I've been able to garner, so far, as to why that word 'majority' was taken out of the language in this H.B. No. 1, is because we want to be able to give flexibility to the Reapportionment Commission to deal with the oddball situation that might arise with the realignment of the district boundaries.

"However, Mr. Speaker, on the other side of that coin, when we point to the various problems such as the multi-member Senate districts, the language that is there does not take care of, in any way whatsoever, what would happen if we had three Senators in one district, which is a possibility. The language is very clear. It runs contrary to our existing language in our Constitution. So the 'flip-back' that I hear from committee leadership is, 'well that's why we have in there "insofar as practicable."' They're not bound by that so they can make their necessary adjustments to continue to have the 12/13 split with the staggered terms.

"Well, Mr. Speaker, we have a glaring conflict in the language of this amendment. Yet, they do not want to put 'majority' in there because they say they don't want to bind the hands of the Reapportionment Commission because there might be some weird situation that arises where this 'majority' language could cause some problems. Well, if we can use 'insofar as practicable' to wipe out a whole section of this amendment, because on its face will not work, certainly that language will take care of the majority.

"What we've done by taking out 'majority of the resident population,' taking out the word 'majority,' is given the Reapportionment Commission total discretion in what they want to do. Because the way it's phrased, the only consistent factor between the 2000 election and 2006, which is the period of time we're looking at, is the Senator. So we've given the Reapportionment Commission the power to go right back to where we have it right now. Where we're looking at the Senators instead of the people in the district, which are the ones truly deserving or are entitled to the two- or four-year terms.

"Mr. Speaker, with regard to the question in and of itself, the Attorney General's Office repeatedly has said that they can defend it, but they would prefer a better question. In fact, they even gave us a question. It doesn't have to be my language. I don't care. As a matter of fact, the 'majority' language was the Majority staff's position originally. We could very easily tie that language into what we're doing because we're shifting the right to the four-year term away from the Senator to the people in the district as the intention of this amendment. That was clear from the AG's Office and those that testified. Yet the question goes right back to the candidates again. So the question itself is questionable as to how closely it plays in with our law in requiring a concise and accurate description of the constitutional amendment for the people to vote on.

"Mr. Speaker, going back to how I started this little talk in terms of the procedure that we're following. In the hearings, the purpose of the hearings is to give the public and, for instance, the Attorney General's Office an opportunity to discuss, explain to us, and give their input on whatever proposed bills. We should be there with open ears to listen, to weigh, and to see if it's a valid concern and adjust the bill, or in this case the amendment, to our Constitution accordingly. Yet, we have ignored the Attorney General's Office's opinion. We have ignored other testifiers who pointed out flaws in the amendment. Then in questioning we basically twist their arms to try -- not all of us, but some of us -- have twisted the arms of the testifiers to get them to agree to our position that the amendment is okay as written.

"Mr. Speaker, I don't think that that's the proper course for us to follow. In fact, looking at the mess that the medical privacy bill has created in bringing us back to Special Session, I would have assumed that we would have learned a lesson. That it is better to pass proper legislation than it is simply to try to get something out to appease a particular group of people.

"Mr. Speaker, we all are aware and know that the people that serve on the Reapportionment Commission are good people. They have the best of intentions, but all you have to do is look at the district boundaries and often the strange shapes that follow, and we can see that it is a political group. In fact, one of the testifiers pointed out that it is an extremely political group of people as they go ahead and go about establishing the new districts for the House, Senate and Councils. That being said, it is our duty to give them as much guidance as we have available to us in terms of directing them in which way they should carry out their responsibilities.

"In this particular case, by taking out the word 'majority' we have..."

Representative Pendleton then yielded his time to Representative Whalen.

Representative Whalen continued stating:

"By taking out the word 'majority,' we have taken away all discretion. The Attorney General's Office again said that without that word in there, there is nothing to guide them in how they are going to go about setting up these staggered terms. In fact, when questioned further, they acknowledged that without the word

'majority' in there, they couldn't comply with that section. Because the only way they could comply with that section is if the Senate districts were exactly the way they are today. That's the only way the Reapportionment Commission can comply.

"So what is the alternative? Well, they can't comply with that so that gives them the freedom to do anything they want to do with setting up the two- and four-year terms. We're going to probably hear from Judiciary leadership that, 'well we have it in the standing committee reports.' I want to remind those people that might have forgotten and those who might not be aware that the committee reports do not come into play unless someone is suing or has taken the matter to court and is trying to overturn the election or the Reapportionment's actions. Even then, the court will only look at the committee reports if on the face of the document they say, 'You know what, this is so confusing we cannot make heads or tails of it so we need further guidance.' So it's very easily looked at, with this, 'insofar as practicable...the resident population of each senate district...' Well that seems to give them a lot of discretion. We don't need to go any further. They have not abused their discretion. There's nothing on its face that's wrong, so there's no need to go to the committee reports.

"The committee reports, do lay out what we keep hearing is the intention. But it is nowhere in the language of the actual law. The committee reports are not law. There's no binding effect on anyone.

"Mr. Speaker, I know I've gone on longer than I intended to and I apologize for the members who are looking at this at Second Reading. You know, save your words and our time and do it later. However, I'm presenting this argument now, Mr. Speaker, and hopefully it's not a futile attempt to help us realize that we have a responsibility here to the people of Hawai'i. To the residents, to our constituents to do the best job we can do and not merely look at a calendar, not merely look at the ups or downs of trying to talk to the Senators and see if they will agree to amend this section.

"We have a higher responsibility and, in this particular case -- and I find it ironic with the second bill we're going to be talking about, medical privacy -- that we are more than willing to pass this constitutional amendment out to the voters, which on its face, as I said, is flawed. Yet, we're simply trying to get it out, for whatever reason. I'm not pointing fingers at any particular person. There are many concerns that people have regarding the Special Session, but certainly, our responsibility to do the job that we're elected to do should override the concern over if we go five days or six days or if we need to talk to the Senate.

"Mr. Speaker, I have not personally gone and spoke to the Senate because I don't feel it's my position as a member of the Committee. But certainly, we should be in discussion with them to see if they would make the same change. In which case, we could get this done quickly, Mr. Speaker. For those reasons, and others that I have not, believe it or not, have not gone into, I again express strong reservations to what we're doing. And the only reason I don't have a 'no' vote is because the current law is blatantly unjust and unfair to the people of Hawai'i. With this, at least we get rid of that. It gives the people the opportunity to get rid of that, but it's not much better, Mr. Speaker. Thank you."

Representative Rath then rose to speak in support of the measure with reservations, and asked that the remarks of Representative Whalen be entered into the Journal as my own, and the Chair "so ordered."

Representative Rath continued stating:

"I'd just like to make an additional comment. Mr. Speaker, this is a constitutional amendment and collocated in that should be the highest degree of fairness because this is how the people of Hawai'i



are represented. Representative Whalen has pointed out succinctly why this is flawed. We're here because the original bill was flawed. As long as we're going to spend the money, we're already into \$15,000, we ought to go ahead and take the time to give the people of Hawai'i something that is fair. It's going to be in our Constitution. So it's not something that we're going to come back and revisit again in all probability. So we ought to try to do our very best job to make sure that the people of Hawai'i have an equitable and fair system where their votes count and their selection for the term of office for the Senators are not selected in a partisan manner by a Reapportionment Commission. Thank you, Mr. Speaker."

Representative Thielen then rose to speak in support of the measure with reservations, stating:

"Thank you, Mr. Speaker. If the members would look at page 2 of House Bill No. 1 and look at the 105-word run-on sentence starting on line 9: the Reapportionment Commission can't accomplish it. We're giving them a directive. We're saying, 'Do this.' It can't be accomplished as the Representative from Kona has explained. If we were to add the word, 'majority of the population,' instead of terming it 'resident population,' then we give them the actual guidance that they need.

"The committee report has corrected the language on two points. First, the committee report, page 2, it uses the term 'majority of the,' and that is what should have been in the bill. Second, the term 'resident population' in the bill itself doesn't exist in the Constitution. So in the committee report it uses the term 'permanent resident.' And that's the term that should have been in the bill as well. What we're doing today is passing a defective bill, giving a mandate that cannot be accomplished. Frankly, that's embarrassing.

"I think that we should correct the bill now. If the Majority members are concerned about doing that without the Senate concurrence, then I would suggest that leadership get together with leadership in the Senate. Ask the Senate to correct the bill and then we can concur with the bill that they passed that will contain the correct language in it. Thank you."

Representative Hamakawa then rose to speak in support of the measure, stating:

"Just to give a short response. We heard the Deputy Attorney General speak and the Minority appointee to the 1991 Reapportionment Commission both stating that the word 'majority' is not essential in the bill as long as it's clarified in the committee report. They both stated that. I think we have clarified the usage of that term in the committee report. Secondly, I don't think it's our place to tell the Commission how to do their job. I think what we can do is provide guidelines and we have done that. It's up to the Commission to then use those guidelines to try to structure the reapportionment as best as they can.

"I think we need to leave some flexibility with the Commission. We have done that. We've taken our job very seriously. We've been working, as you know, Mr. Speaker, with the parties involved and we've come up with a bill that is fair, that's equitable to the residents of the voting population of the State of Hawai'i. Thank you."

Representative Marumoto then rose to speak in support of the measure with reservations, stating:

"Thank you. I'm happy that we are having this Special Session. I appreciate your responsiveness in holding the session and agreeing to correct the inequity in the Senate terms. The House Republicans support a change that would give challengers the same

chance for four-year terms as incumbents. I think most of us would have preferred a simpler method of setting two- or four-year terms rather than tossing the problem to Reapportionment Commission. Our bill, House Bill No. 3, would have given odd numbered districts a two- or four-year terms and even numbered districts the opposite. We thought that would make it simpler for people to understand and be a fairer method of doing this.

"We hope that the Reapportionment Commission will consider some of our recommendations, including this measure and the amendments that the Representative from Kona has so eloquently expressed, and that they will implement them. We hope that we are not 'buying a pig in a poke.' We don't know exactly how it will turn out since we're throwing so much of the power to the Reapportionment Commission, including giving them the power to draw up multi-member districts.

"So, we hope that they will come out with a good plan because otherwise we will have 'egg' on our collective faces. In hopes of them doing a good job, I cast a 'yes' vote. Thank you, Sir."

Representative Moses then rose to speak in support of the measure with reservations, stating:

"Thank you, Mr. Speaker. I heard discussion on the floor today that it isn't our place to give direction to the Reapportionment Commission. I believe it is. We're the lawmakers of this state and if we can't provide them guidance, then who would? So I think it is our duty. Not only providing the guidance, but I've heard also that the language is clear in the committee report. If it's clear in the committee report, why can't that language be placed in the bill itself? Then there's no need to even refer to the committee report. Again, it's our duty to do so. I agree with all the sentiments and statements made by our Representative from Kona. I also say that there is no harm, not only is it our duty, but there is no harm in putting the correct language in the bill. So therefore, I have reservations on the bill as currently written and hope that we consider the amendment. Thank you."

Representative Auwae then rose to speak in support of the measure with reservations, and asked that the remarks of Representative Moses to be entered into the Journal as her own, and the Chair "so ordered."

Representative Auwae continued, stating:

"I think we're here with this Special Session. I think it's good that we're making this correction. I think that's why we need to look at it and make a correction if it's necessary. We're not going to just rubber-stamp this. Thank you."

Representative Whalen then rose to speak in rebuttal, stating:

"It's been said before and it's a little bit frustrating because I believe the testimony is being misrepresented to members who were not able to attend the informational briefing or the public hearing we had yesterday.

"The Attorney General's original position was that 'majority' was necessary for this line. In the informational briefing, one of the Senators with leading questions led the Attorney General's Office down the road to say that it's not really necessary. But when another member of our Judiciary Committee started asking questions again of the Attorney General's Office with Mr. Anzai sitting right next to him, the last quote out of the Deputy Attorney General's mouth was that 'it is essential, it is necessary.' If our intent is to have as described in the committee report, if that is our intention for them to follow that, then 'majority' is essential. That was their original position in their testimony as well.

"Again, they came in, and Mr. Speaker, I don't want to lay it out, we all know how testimony works. In this particular case they had reversed their position again. However, when questioned, and I made it very clear in my questions, if 'majority' is out, is there any guidelines? Is there any formula? He said, 'no.' 'So isn't the word 'majority' necessary to accomplish our goal here of tying it to the voters in the district, the majority population so that we look at them? He said, 'yes.' So for those members who were not able to attend the meeting, I would like to clarify that for you. If you have any questions, I'd be glad to speak with the members afterwards. Because I believe it's being misquoted and misrepresented to this body that the Attorney General's position is, based on what they said in our hearings, that it is not essential. Because they say yes, they say no with the leading questions. Then when questioned specifically on the amendment itself, how does this work. They again come back and say, out of their own mouth, it is necessary to accomplish the goal. Thank you, Mr. Speaker."

Representative Halford then rose to speak in support of the measure with reservations, stating:

"I would like to vote today, yes with strong reservations as already expressed by my colleague. Thank you," and the Chair "so ordered."

Representative Hamakawa then rose to speak in rebuttal, stating:

"Mr. Speaker, I think some members hear what they want to hear, and they make what they want to make of it, but I think most of the members who were present at the hearing and at the informational briefing heard the Attorney General's deputy state that it's not essential. Thank you."

Representative Meyer then rose to speak in support the measure with reservations, stating:

"Mr. Speaker, I realize I've come in late and I may have missed much of the debate, but I was at the hearing yesterday and I did look at the Attorney General's testimony. In that testimony, this is not quite the same argument that my colleague from Kona has. The Attorney General made it clear that he thought the question on the ballot should be changed to be much more specific so that the voters would have a much clearer picture of what they'll be voting on. Thank you, Mr. Speaker."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 1, entitled: "A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE IV, SECTIONS 7 AND 8, OF THE CONSTITUTION OF THE STATE OF HAWAII, TO STAGGER SENATE TERMS AFTER REAPPORTIONMENT," passed Second Reading and was placed on the calendar for Third Reading, with Representatives Catalani, Herkes, Okamura and Souki being excused.

Representative Hamakawa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 2) recommending that H.B. No. 2 pass Second Reading and be placed on the calendar for Third Reading.

Representative Hamakawa moved that the report of the Committee be adopted and H.B. No. 2, pass Second Reading and be placed on the calendar for Third Reading, seconded by Representative Saiki.

Representative Thielen rose to speak in support of the measure with reservations, stating:

"I strongly support the privacy of health care information act. My concern is in delaying the effective date of the bill itself. I agree fully with delaying the effective date of the criminal penalties in

order that things can be worked out. The problem is when you say we're going to postpone the effective date of the bill; there are two things that will happen. One, the parties that are going to be impacted by this bill can sit back and think, 'Whew, we now have almost another year to go ahead and deal with this.' It takes the pressure off of their acting right now to get their organizations in line so they will protect health care information of patients.

"The second thing, it allows for the disbursement of the health care information of patients in a very broad spectrum, and it allows for it in a way that I think those who did not attend the hearing may not be aware. If any of our male colleagues happen to be taking Viagra, that information is known by pharmaceutical companies online and by financial institutions. So you go in for a loan and they have this kind of information, which is totally irrelevant to whether or not you should be able to get a loan.

"It's a very expanding scope of people and entities that end up with the information. The Office of Information Practices gave us this chart. It's amazing how far that information goes. What you thought was private between you and your physician no longer is private. It's out there on the Internet.

"I am concerned about delaying the effective date of the bill. I think that there will be a strong effort to try to kill that bill this coming session. I want to credit the Chair of our Judiciary Committee. He made it clear that he would not accept that kind of approach at all. He made it very clear. Unfortunately, we aren't in a dictatorship, not in this instance. I fully agree with the Chair of the Judiciary Committee, but there are a lot of other players, including the body on the other side, the Chamber on the other side, the Senators.

"So we now have put this bill at risk. We have a third problem and that is the federal law that is coming down the pike. We can't get an exemption from that federal law, Mr. Speaker, unless we have a bill in place. We now won't have a bill in place. The federal law can be much more onerous to small businesses. I don't think people in here were that aware of that fact. There's a reporting requirement and a lot of different requirements that it would be much better if we had our own self-destiny within our state to protect the health information of patients.

"So unless we act right at the very beginning of session next year -- and even then that might be too late -- unless we act at the beginning of session, get the Senate to act at the beginning of session, get it to the Governor, get the Governor to sign the bill, we're going to have the federal law forced down our throats. I don't think that is the best way to go. I do agree fully with extending the time frame for the criminal penalties, but I was sorry to see the bill, for the moment, actually die because it's in jeopardy for next session. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2, entitled: "A BILL FOR AN ACT RELATING TO THE PRIVACY OF HEALTH CARE INFORMATION ACT," passed Second Reading and was placed on the calendar for Third Reading, with Representatives Catalani, Herkes, Okamura and Souki being excused.

## ANNOUNCEMENT

Representative Case: "Mr. Speaker, we'll have a brief Majority Caucus immediately after session. Thank you."

## LATE INTRODUCTIONS

The following introductions were made to the members of the House:

Representative Takamine introduced his nine-year-old son, Mr. Trevor Takamine, 'my pride and joy,' accompanied by a friend, Ms. Carol Kung.

Representative Kahikina introduced two young visitors, Ms. Sarah Yuen from Aloha, Oregon, and her cousin, Ms. Ryanna Fernandez from Hilo, Hawaii.

#### **ADJOURNMENT**

At 10:45 o'clock a.m., on motion by Representative Yonamine, seconded by Representative Pendleton and carried, the House of Representatives adjourned until 10:00 o'clock a.m. tomorrow, Wednesday, August 9, 2000. (Representatives Catalani, Herkes, Okamura and Souki were excused.)

## THIRD DAY

## Wednesday, August 9, 2000

The House of Representatives of the Twentieth Legislature of the State of Hawaii, Second Special Session of 2000, convened at 10:10 o'clock a.m. with the Speaker presiding.

The invocation was delivered by Representative David Morihara after which the Roll was called showing all members present with the exception of Representatives Case, Herkes, Okamura and Stegmaier, who were excused.

By unanimous consent, reading and approval of the Journal of the House of Representatives of the Second Day was deferred.

## SENATE COMMUNICATION

The following communication from the Senate (Sen. Com. No. 1) was received and announced by the Clerk and was placed on file:

Sen. Com. No. 1, returning H.C.R. No. 1, entitled: "HOUSE CONCURRENT RESOLUTION RELATING TO RECESS DAYS FOR THE SECOND SPECIAL SESSION OF 2000," which was adopted by the Senate on August 8, 2000.

## INTRODUCTION

The following introduction was made to the members of the House:

Representative Kaho'ohalahala introduced his brother-in-law, Mr. Scott Humphrey from Jacksonville, Florida and his family: wife, Alecia Humphrey; and their children, Dana and Morgan.

At 10:15 o'clock a.m., the Chair declared a recess, subject to the call of the Chair.

The House of Representatives reconvened at 10:48 o'clock a.m.

## ORDER OF THE DAY

## SUSPENSION OF RULES

On motion by Representative Yonamine, seconded by Representative Pendleton and carried, the rules were suspended for the purpose of considering bills on Third Reading on the basis of a modified consent calendar. (Representatives Case, Herkes and Okamura were excused.)

## THIRD READING

## H.B. No. 1:

Representative Hamakawa moved that H.B. No. 1, pass Third Reading, seconded by Representative Saiki.

Representative Hamakawa rose to speak in support of the measure, stating:

"I rise to speak in favor of House Bill No. 1. I believe House Bill No. 1, in its current form, provides a comprehensive means of insuring the staggered senate terms after reapportionment is accomplished in a manner that is fair and equitable to both the electorate and the senators themselves.

"This bill has been praised by several community groups as being in the best interest of the public. Hawaii Clean Elections, The League of Women Voters of Hawaii, Common Cause Hawaii and others are in strong support of this measure.

"Despite this strong show of support, there have been concerns raised and conflicting opinions asserted as to the need to include the term 'majority' in the body of the bill.

"Mr. Speaker, as mentioned yesterday, I have the assurances of the Attorney General that the clarification in the committee report is sufficient to make the bill defensible against constitutional challenge. Further, when the 2000 census report is made available, we may find that drastic changes to current Senate and House districts will be required. The Reapportionment Commission in such case will already have its hands full in attempting to set true and accurate district boundaries. It was the intent of this body to provide guidance to the Reapportionment Commission, and not to bind their hands. I believe that the inclusion of the word 'majority' in the committee report, as well as additional clarification and statement of our legislative intent in that report provides this guidance.

"Further, concern has been raised that the question to be presented to the electorate may somehow be insufficient. I believe that the question as presented, is a true and accurate representation of the constitutional amendment. The Office of the Attorney General did testify in Committee that in its opinion, the ballot question was vague, and they did offer proposed language. However, I do not concur with the AG's opinion or recommend adoption of its proposed language.

"The language proposed by the Attorney General is as follows:

Shall the reapportionment commission assign two-year terms and four-year terms for senate seats so that the resident population of each senate district shall have no more than two regular senate elections for a particular senate seat within the six-year period following reapportionment; provided that if multi-member senate districts are created, the senators elected with the highest number of votes in those districts would fill the senate seats in those districts which were assigned the four-year terms?

"Is this really a better question? I believe the question stated in this bill is constitutionally sound. The current standard for appropriateness of a constitutional ballot question is set forth in the Hawaii Supreme Court case of *Kahalekai v. Doi*. In that case the Supreme Court noted that the ballot did not need to contain the full text of the proposed amendment. Instead the court noted that the ballot should contain 'a description of the proposition submitted in such language as to constitute a fair portrayal of the chief features of the proposition, in words of plain meaning, so that it can be understood by persons entitled to vote....' The court went on further to state that the ballot question is 'sufficient if enough is printed on the ballot to identify the matter and show its character and purpose.'

"I believe the current ballot question more than meets this constitutional requirement. It clearly and in simple terms expresses the character and purpose of the amendment to ensure that the staggering of senate terms is accomplished in a manner that is equitable and does not favor incumbent senators.

"Second. If we adopted the Attorney General's proposed language, we may be violating one of the major tenants of a constitutionally sound ballot question which is that it be of plain meaning and can be understood by persons entitled to vote.

"Sometimes, Mr. Speaker, attorneys forget that the electorate is comprised of more than just lawyers. Although I commend the Attorney General's Office for proposing what they believe to be a concise and specific ballot question, I trust the voters. I trust that they will educate themselves and will be well informed about the



purpose of this bill through educational materials that will be provided by the Legislative Reference Bureau. It would be impossible and unreasonable to believe that we can fully educate the electorate on the complexities of this amendment solely through the phrasing of the ballot question.

"I believe that you are aware, Mr. Speaker, that a great deal of preparation was done before the start of this special session to ensure that the language of this bill was correct and defensible, and that it accomplishes what we intended it to do.

"Both myself and Vice Chair Saiki, our senate counterparts, our House and Senate attorneys, and a myriad of other concerned parties spent countless hours preparing this measure. It is our collective belief that this bill is correct, defensible, and will accomplish what we have set out to do, which is to eliminate the inequities inherent in the current staggered term process. Thank you, Mr. Speaker."

Representative Marumoto rose to speak in support of the measure with reservations, stating:

"One of our staff testified, as an individual, before the Judiciary Committee, and I would like to paraphrase his testimony. Jim Hall was member of the 1981-82 Reapportionment Commission, and is currently a member of Neighborhood Board No. 5 which was one of the first boards to pass a resolution in favor of this special session to correct the present section of the Constitution dealing with staggered terms.

"He spoke in opposition to the measure as it is presently written and he wanted to register an objection to the process in which the measure was being hurried through the Legislature this session. Currently most citizens of Hawaii are pleased that House Bill No. 1 removes the focus from incumbents versus challengers to focussing on the voters in the respective districts. He is pleased but he felt that the Legislature could do a much better job of simplifying and clarifying this problem than what this measure represents.

"It wasn't too long ago that the President of the Senate and the Speaker of the House were wishing for greater involvement by the public in this proposed legislation. This particular measure materialized very recently -- and without Minority input I might add -- and is poised for passage with only a minimum of public discourse and participation. It was this same sort of rush to put something on the ballot that created the faulty amendment that we now wish to change. Ten years ago there was the same inadequate public education on the part of both the legislature and the media as to the full implications of the amendment that was passed. There is no dispute that the wording on the ballot bore little resemblance to what actually appeared in the State Constitution.

"Today the main thrust of HB 1 is to take an arcane and complicated constitutional procedure and punt the problem to the Reapportionment Commission. Further, I believe that there are insufficient guidelines in the proposed amendment for the Commission to follow. For example, if anyone here can explain in a few simple sentences what the following sentence means:

Insofar as practicable, the commission shall assign the two-year terms to senate seats so that the resident population of each senate district shall have no more than two regular senate elections for a particular senate seat within the six-year period beginning in the even-numbered year prior to the reapportionment year...

Jim said he would gladly shake that person's hand. This language reminds me of the definition of a camel: it's a horse designed by a committee.

"Just the phrase 'Insofar as practicable...' is really weasel wording meaning let the Commission figure out what they should do regardless.

"The proposed HB 1 also has a problem with the clause regarding multi-member senate districts. It is written as if there can only be

one or two member districts. The State Constitution provides, in Article IV, Section 6, that there can be as many as four members elected from any single district. Although it may appear unlikely that the Reapportionment Commission may decide not to revisit large multi-member districts, they do have the authority to do so, and for example, may decide that all Senators from the Big Island run at-large.

"There also seems to be a problem should newly created districts encompass two, three, or even four previous senatorial districts and cases where the homes of the incumbents all wind up in one district. How does one determine the length of term for the final winner?

"Mr. Hall suggested several amendments which have been totally disregarded.

A clear-cut method by which the Senate districts are numbered.

A provision that allows for flexibility should large multi-member districts be created.

Consider that after each reapportionment, all odd numbered districts regardless of incumbents are automatically awarded four-year terms followed by another four-year term and then a two-year term ended by the next reapportionment. The odd numbered districts would begin with a two-year term followed by two four-year terms. Thus odds and evens would all have served three terms without the ten years between reapportioning.

"I believe the above suggestions would be a far simpler and fairer way of performing the essential task of establishing staggered senate terms without any possible hint of favoritism towards incumbents. Thank you, Mr. Speaker."

Representative Rath rose to speak in support of the measure with reservations, stating:

"Well, this amendment, I have to hand it to the Majority. This language is slicker than 'dog snot'. It just slides right in there. It doesn't achieve that fair and equitable amendment that we all looked for as the Minority Leader so eloquently detailed out. I think we're going to end up with a new political term for this. We have gerrymandering. We all know what that is. Now we'll have 'term-fixing'.

"I think we could have looked at the other 49 states and found an easy way to adopt this for Hawaii. We didn't have to go out and reinvent the wheel because we're not good at reinventing wheels.

"I have to wonder about the way it is presented on the ballot because in our state, blank votes count as no votes. Thank you, Mr. Speaker."

Representative Halford rose to speak in opposition to the measure, stating:

"This bill fails the test of fairness, and fails to put Hawaii's people before politicians. The Senate removed the word 'majority' from the constitutional language -- 'majority' referring to Hawaii's voters. Relegating the concept of the voters to the obscure committee report rather than including the voters in the constitutional language. This is a clear demonstration of insincerity that we would put voters ahead of politicians.

"Additionally, the senate terms decision is left to the gerrymandering process, and is void of constitutional guidance by including the directive 'Insofar as practicable....' The language regarding the possibility of multi-member districts fails to work if there are more than two senators per district. I believe that this bill is so poorly crafted that we will need to rewrite it very soon. I recommend that we do that now. This important constitutional amendment is worth rewriting to be without flaws.

"While this amendment may be an improvement to the existing language, it still falls short both in a practical sense and in putting

our voters first. These are some of the reasons why I am voting no on this language."

Representative Goodenow rose to speak in support of the measure, stating:

"Just as a point of information. There are quite a few states that handle re-districting after reapportionment. There are many models. However, there are quite a few that do follow the situation of having the reapportionment committee determine the outcome prior, or as part of the reapportionment process. So it is not unique."

Representative Whalen rose to speak in support of the measure with reservations, stating:

"I won't go on with my speech that I made on Tuesday regarding what I thought were the important reasons why I stood with reserved support for the bill, and they remain the same today. However I did want to address a couple of matters that were brought up earlier and one is the Attorney General's opinion as was earlier stated.

"The ballot question should have the chief matter of the constitutional amendment there for the voters to look at. As you know the question as stated says, 'staggering of terms to be equitable to all candidates'. If you look at the way it is written in the committee report and everything else. The intent of the amendment is to take the focus of who gets the four-year term away from the senators, i.e. the candidates, and focus on the people of the district. So that question does not fairly and accurately represent what it is we're voting on. The AG's opinion is that that is what the amendment is doing. If you look at the committee report, that is what the amendment is there for. So the question as it is phrased does not address the chief matter, the purpose for which we are amending the Constitution.

"Secondly, the earlier statement was that we have given sufficient guidelines to establish our policy for how the staggering of terms will come about. That is inaccurate. The Attorney General's opinion in the Committee hearing was that without the word 'majority' there is no formula in that constitutional amendment.

"We kept hearing that the amendment is defensible. I don't think our standard should be to pass laws that are defensible. We should pass laws that are clear, and concise, and get the job done in the best available way. In this particular case the Attorney General, without ambiguity stated that you need the word 'majority' in the amendment in order to give the Reapportionment Commission a formula to follow. Without the word 'majority' in the language of the Constitution, they have the discretion to do what they want. The 'Insofar as practicable...' gives them a way out in every direction.

"The committee report, and I want to clarify this for those of you who are not lawyers and for those of us who are but maybe have forgotten it over time. The committee report is not binding authority. The committee report is merely an advisory statement that this body and the Senate will be attaching to the actual law. The court will not look at it. The Reapportionment Commission is not bound to look at it. And unless someone takes the amendment to the Supreme Court saying that it is improperly enacted, or it is unconstitutional on its face, the committee report does not come into play at all.

"I'm not saying that the Reapportionment Commission will not follow what's in the committee report. However to give the impression that because it is in the committee report somehow has established, and made clear and fast the formula and the policy that will be followed in establishing staggered terms is in error. They are not bound to follow the committee report. They are bound to follow what is in the Constitution. The Attorney General's opinion was exceedingly clear that if you do not have that word in there, there is nothing to tell the Reapportionment Commission how they are to establish who gets two- and who gets four-year terms. Again, I believe that by taking that out, wherever that responsibility lies,

and I'm not pointing fingers at anyone. I wasn't on that decision making body that actually made that final decision to take the word 'majority' out. But for whoever made that decision, I can only say that the idea was to give the Reapportionment Commission absolute discretion and flexibility in choosing whichever senators they want to give four years to versus two. I think we are dodging our duty and responsibility to give clear guidelines and to not give unnecessary discretion where we don't need to. Thank you, Mr. Speaker."

Representative Saiki rose to speak in support of the measure, stating:

"I would like to provide two very brief comments. The first response is to the Minority Leader's discussion regarding the recommendations of the Minority staff. I think many of those recommendations were incorporated into House Bill No. 3, which was introduced by the Minority Caucus. I think if members were to review that part of..."

Representative Whalen then rose on a point of order, stating:

"That bill, I do not believe, was introduced as a Minority Caucus bill. There are perhaps some of the Minority members who signed on, but I do not believe that is a Minority Caucus bill."

The Chair responded, stating:

"I can't say when it was submitted by your Minority Leaders, so we interpreted it to mean that it was from the Minority Caucus, even though you did not sign it.

"My response is as the Speaker's interpretation of the report that was submitted to me when I did solicit the members of the House for their input on this constitutional amendment. So whatever was submitted from the Minority, I interpreted to mean the Minority Caucus."

Representative Whalen then stood on a point of information, stating:

"Okay, then that bill introduced was not a Minority Caucus bill."

The Chair then returned to Representative Saiki asking him to "please proceed."

Representative Saiki continued, stating:

"House Bill No. 3 contained many of the recommendations of the Minority staff who testified at our Judiciary Committee hearing. Upon review of HB 3, I think members will find that it is really a 'mish-mash' of disjointed concepts that would prove unworkable if we were to pass that version."

Representative Thielen then rose with a question, interjecting:

"Is the speaker addressing House Bill No. 1 that is before us, or a bill that is not before us?"

The Chair responded, stating:

"He is addressing House Bill No. 1 that has incorporated portions of House Bill No. 3 that was submitted by the Minority Caucus.

Representative Saiki then offered for clarification that:

"The Minority Leader referred to the recommendations of the Minority staff's testimony submitted to our Committee. Many of these concepts were incorporated into House Bill No. 3, therefore I believe it is relevant to discuss those concepts this morning."

At 11:10 o'clock a.m., the Chair declared a recess, subject to the call of the Chair.

The House of Representatives reconvened at 11:19 o'clock a.m.

At this time the Chair recognized Representative Saiki who continued his remarks, stating:

"I will, for the sake of expediency, withdraw my discussion of House Bill No. 3.

"I just have one other remark to make, very briefly. As we mentioned in our House Judiciary Committee meeting a couple of days ago, we urge members of the House to read the Hawaii State Constitution, specifically the provisions dealing with the reapportionment process and the 1991 Reapportionment Commission's Final Report. Both of these documents show us that reapportionment is not a precise process. You cannot use a cookie cutter to complete this task. For this reason, the Reapportionment Commission is given an extent of discretion and flexibility to complete its task.

"There has been some discussion this morning that the constitutional amendment dealing with the reapportionment process should be very exact and specific. But if you look at one specific example handled by the 1991 Reapportionment Commission, it shows why the Commission requires some discretion and flexibility, and that issue has to do with 'canoe districts'.

"The Reapportionment Commission is not authorized to create 'canoe districts' between the islands of Kauai and Maui. But in 1991 the Commission did that by joining East Maui and North Kauai to create House District 12. The reason they did that, as reported in the 1991 Report, was because the residents of East Maui requested that they be joined with North Kauai instead of a portion of Oahu as was originally proposed by the Commission. The residents of East Maui felt that their interests and lifestyles were more compatible with those of Kauai.

"It is interesting to note that in forming this 'canoe district' the 1991 Commission probably violated a very explicit criteria within the Constitution. That provision states that the Commission shall not create a 'canoe district' outside of the island unit of Maui. That provision also does not contain any 'waffle' language such as 'insofar as practicable'. It is a very clear and direct mandate upon the Commission.

"We should, rather than focus on very specific nuances, acknowledge that reapportionment does require flexibility for the benefit of the residents. It is not a process done for the benefit of the incumbents, challengers or candidates. It is done for the benefit of residents and should be completed from a perspective that is conducive to their interests. Thank you."

The Chair, noting that there had been much discussion on House Bill No. 1, recognized Representative Moses as the final speaker on this measure.

Representative Moses rose to speak in support of the measure with reservations, stating:

"I find it ironic that the Judiciary Chair earlier talked about the Attorney General's provided language for the ballot amendment and how we had to reject that. However, when he said that we don't need the word 'majority', that is accepted. I find it ironic that we would accept part of his input but not the other part.

"I believe, as I stated yesterday in this body, that it is physically impossible to comply with the language without the word 'majority' because new people will be in the new district. I just find it impossible. They cannot comply with it, and that leads to the discretionary and flexibility language where they can come up with whatever they think is necessary.

"Since it is impossible to comply with, then they have to then go with their own flexibility and discretion, and I find that to be not what we should be doing as lawmakers. We should be providing precise language that doesn't eliminate anything that they need to do. But at least we can provide language for them. Thank you very much."

Representative Marumoto then rose to speak in rebuttal, stating:

"Mr. Speaker, please indulge me. I'd like to stand in short rebuttal, just for clarification.

"I just want to clarify that House Bill No. 3 referred to as the Republican bill was signed by eight Republicans. Generally we consider it a caucus bill, internally, when ten of us sign on to a bill or concept.

"Mr. Hall has a great deal of expertise in the area of reapportionment as he served on the 1981 Reapportionment Commission. He testified yesterday as an individual, and he took leave from the House to do so. He has been instrumental in assisting the Minority Leader in understanding this particular piece of legislation.

"The representative from Waimanalo brought up the point that the Reapportionment Commission should be given discretion to do its business. I would like to remind him that, in essence I agree with him. In 1978 I served in the Constitutional Convention. It was my proposal that we then move the reapportionment process from the legislature to the Reapportionment Commission. This was because, a few years previously when there had been a reapportionment, the legislature actually drew a box around a certain legislator's district — a Leeward Oahu senator—and they called it a 'boat harbor' because the lines were really gerrymandered to accommodate him. I thought that the Reapportionment Commission would be an improvement.

"The commission should be given very clear guidelines on how to operate and not given carte blanche like we do here in this measure. This is, however, an improvement over the current law so I am encouraging people to vote for this measure. Thank you."

Representative Hamakawa rose and asked that additional material be inserted into the Journal, and the Chair "so ordered."

Representative Hamakawa's submittal is as follows:

"State of Hawai'i  
Department of the Attorney General

August 9, 2000

The Honorable Calvin Say  
Speaker of the House  
Representative, Eighteenth District  
State Capitol, Room 431  
Honolulu, Hawai'i 96813

The Honorable Eric Hamakawa  
Chair, House Committee on Judiciary and Hawai'ian Affairs  
Representative, Third District  
State Capitol, Room 302  
Honolulu, Hawai'i 96813

Dear Speaker Say and Chairman Hamakawa:

RE: H.B. 1, S.B. 1, Proposing an Amendment to Article IV, Section 7 and 8, of the Constitution of the State of Hawai'i, to Stagger Senate Terms After Reapportionment.

This letter is written to clarify questions related to the testimony of Deputy Attorney General Aaron Schulaner on Friday, August 4, and the testimony of Deputy Attorney General Russell Suzuki on Monday, August 7 in regard to H.B. 1 and S.B. 1.

At an informational briefing on Friday, there was discussion regarding proposed language to a bill proposing a constitutional amendment changing the manner in which staggered senatorial terms would be determined. During the discussion, Representative Paul Whalen asked whether we believe that the word 'majority' was 'essential' in line 11, page 2 of a bill that was being circulated to clarify the criteria that the Reapportionment Commission would apply to assign two- or four-year terms following reapportionment. Mr. Schulaner did indicate that including the word 'majority' would

provide clear direction to the Reapportionment Commission in considering the majority of the resident population as a factor in its determination. Senator Avery Chumbley further questioned by asking whether the word 'majority' could be deleted from the proposal with the intent of including majority of the resident population as a criteria in the committee reports. In Mr. Schulaner's response to Senator Avery Chumbley's question he confirmed that such a proposal would provide guidance regarding use of that criteria.

At the hearing before the House Committee on Judiciary and Hawai'iian Affairs on Monday, Representative Paul Whalen asked Mr. Suzuki the same question posed to Mr. Schulaner. Mr. Suzuki responded that the word 'majority' was not essential and that following the Senate hearing on S.B. 1, which is identical to H.B. 1, he understood that the Senate Committee on Judiciary indicated that it would include a discussion of that issue in its committee report to clarify the intent of the Legislature.

S.B. 1 and H.B. 1 confer authority to the Reapportionment Commission, as part of the reapportionment plan, to stagger the terms of the senate seats following reapportionment, by assigning two-year terms to twelve senate seats. As written, that authority is left to the discretion of the Commission with the directive that insofar as practicable, the Commission is to assign two-year terms in such a way that in the six-year period beginning in the even-numbered year prior to the reapportionment year, the resident population, as determined by the Commission will have no more than two regular senate elections. The determination to include or exclude the word 'majority' in the bills is a policy decision for the Legislature to make. Under either version, determining the resident population of the new districts rationally requires the Commission to determine whether the majority of the voters of the new districts were from districts whose terms were shortened as a consequence of reapportionment or those who were not. It would be irrational to determine the resident population as the minority resident population. Thus, the omission of the word 'majority' does not render the bill indefensible. Within the context of these bills, the 'majority,' whether stated or not, is the only rational means of assigning the terms to the districts.

As to the ballot question in the bills, we believe that the question is defensible. In our written testimonies, we indicated that the question could be changed to more clearly reflect the amendment. However, when asked whether the question contained in S.B. 1 and H.B. 1 was defensible, we advised that it was. Amendments to the Constitution ratified by the electorate will be upheld unless they can be shown to be invalid beyond a reasonable doubt. *Kahalekai v. Doi*, 60 Haw. 324 (1979). Further, where the information disseminated to the public is neither deceptive nor misleading, and the public is given sufficient time within which to familiarize themselves with the contents and effect of proposed constitutional amendments, they will be presumed to have cast informed ballots. *Id.* The proposed question is not the sole means by which the public is informed of the contents of a proposed constitutional amendment. Under art. XVII, sec. 3 of the Hawai'i Constitution, proposed amendments are published 'once in each of four successive weeks in at least one newspaper of general circulation in each senatorial district wherein such a newspaper is published, within the two months' period immediately preceding the next general election.' Proposed amendments are posted in each polling place, and the Legislative Reference Bureau, in coordination with the Office of Elections, prepares extensive voter education materials for the public. The electorate bears a corresponding burden of educating and familiarizing themselves with the contents and effect of an amendment prior to going to the polls to cast their ballots. We do not believe that the ballot question presented is misleading or deceptive and, when read in conjunction with the proposed constitutional amendment allows the electorate to cast an informed vote on the question.

We hope that we have adequately responded to your concerns. Should you require further assistance, please contact us.

Very truly yours,  
/s/ Aaron H. Schulaner  
Aaron H. Schulaner  
Deputy Attorney General

APPROVED:  
/s/ Earl I. Anzai  
Earl I. Anzai  
Attorney General"

The motion was put to vote by the Chair and carried, and H.B. No. 1, entitled: "A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE IV, SECTIONS 7 AND 8, OF THE CONSTITUTION OF THE STATE OF HAWAII, TO STAGGER SENATE TERMS AFTER REAPPORTIONMENT," passed Third Reading by a vote of 46 ayes to 1 no, with Representative Halford voting no, and Representatives Case, Herkes and Okamura being excused.

The Chair directed the Clerk to note that H.B. No. 1 had passed Third Reading at 11:26 o'clock a.m.

## H.B. No. 2

Representative Hamakawa moved that H.B. No. 2, pass Third Reading, seconded by Representative Saiki.

Representative Thielen rose to speak in support of the measure with reservations, stating:

"Mr. Speaker, this bill is suppose to protect the privacy of health care information for patients. We are today by this action going to delay the effective date of this bill by one year, and possibly permanently, if we can't get it out of the legislature next session.

"A couple of things I've learned since yesterday's hearing. There was a case in Massachusetts where a computer researcher at Carnegie Mellon University put in the name of the Governor of the State of Massachusetts and his zip code, and up popped his health care information on the screen. The researcher thought that this might have been because the Governor was a state employee so the researcher also did this for registered voters in the Cambridge, Massachusetts area. Nearly 70,000 of those voters' health care information was accessible to this computer researcher. I think that we are probably facing something of the same sort here in Hawaii.

"There is also a surprising amount of information that has to do with health that is selling this kind of information. It turns out now that a direct mail database corporation has lists that you can buy from them for people who have bladder control problems, high cholesterol, and heaven knows how many male colleagues or men in Hawaii that are taking Viagra. That would be available through these databases now.

"I think this is a situation that we should correct now. I think we should delay implementation of any criminal penalties, but we should keep the pressure on. You might want to go on to the computer websites and see how much of your information is on there. And how much is available to your lending institutions. You might walk in to make a deposit and the tellers look at you rather quizzically and you're wondering whether they know about you more than you would like them to know about you.

"I think it is a mistake to delay the implementation of this bill today. I will vote for it with the hope that the Chair of Judiciary in the House, and the Chairs of Judiciary in the Senate will keep their commitment to get this bill moving and through the process next year. Thank you."



The motion was put to vote by the Chair and carried, and H.B. No. 2, entitled: "A BILL FOR AN ACT RELATING TO THE PRIVACY OF HEALTH CARE INFORMATION ACT," passed Third Reading by a vote of 47 ayes, with Representatives Case, Herkes and Okamura being excused.

The Chair directed the Clerk to note that H.B. No. 2 had passed Third Reading at 11:29 o'clock a.m.

### INTRODUCTION OF RESOLUTION

The following concurrent resolution (H.C.R. No. 2) was announced by the Clerk and the following action taken:

H.C.R. No. 2, entitled: "HOUSE CONCURRENT RESOLUTION RELATING TO RECESS DAYS FOR THE SECOND SPECIAL SESSION OF 2000," was offered by Representative Say.

Representative Yonamine moved that H.C.R. No. 2, be adopted, seconded by Representative Pendleton.

Representative Oshiro rose to speak in support of the measure, stating:

"Mr. Speaker, the reason for this resolution is that first, based upon the advice of the Attorney General's Office, we need to add these two additional recess days in order to meet the mandatory ten-day requirement for constitutional ballot questions.

"When we initially opened the session on Monday, August 7th, we thought that the ten days began on August 7th and ended on August 17th. Last night we were informed by the Attorney General's Office that the true implementation of the ten-day requirement begins on the day after the opening of the session which would be August 8th. Ten calendar days from August 8th would be August 17th, which is a recess day.

"We also learned from the Attorney General's Office that the earliest that we could vote on a constitutional question is the day after the tenth day which is August 18th, which is, this year, Admissions Day, a state holiday. As you know Mr. Speaker, we cannot hold a session on a holiday or weekend – Saturday and Sunday. Therefore, the earliest we can come back into session is August 21st.

"We need to have three readings of a measure in order for it to pass this Chamber. We will have Second Reading of the bill on Monday, August 21st, and Third Reading on Tuesday, August 22nd.

"I think it is important for the members to know that there is no additional cost for these two recess days. This is not an extension of the Special Session in any sense of the word. I ask for all the members' support on this resolution. Thank you."

Representative Pendleton rose on a point of inquiry, stating:

"It has to do with the title of this House Concurrent Resolution. Some constituents perhaps, voters, may wonder why it is titled 'Second Special Session'. I assume it has to do with the fact that the Senate previously met on a confirmation hearing. Is that correct Mr. Speaker?"

The Chair confirmed that "that is absolutely correct."

The motion was put to vote by the Chair and carried, and H.C.R. No. 2 was adopted, with Representatives Case, Herkes and Okamura being excused.

Representative Yonamine moved to keep the Journal open until 2:00 o'clock p.m. this legislative day for the purpose of receiving Senate Bills by the Clerk's Office, seconded by Representative

Pendleton and carried. (Representatives Case, Herkes and Okamura were excused.)

Representative Yonamine then moved that all Senate Bills received by the Clerk up to 2:00 o'clock p.m. this legislative day pass First Reading by title and be referred, seconded by Representative Pendleton and carried. (Representatives Case, Herkes and Okamura were excused.)

The Chair then announced that said Senate Bills shall be referred to the Committee on Judiciary and Hawaiian Affairs.

At 11:32 o'clock a.m., the House of Representatives stood in recess for the purpose of receiving Senate Bills.

### SENATE COMMUNICATIONS

The following communications from the Senate (Sen. Com. Nos. 2 and 3) were received in the Clerk's Office up to 2:00 o'clock p.m. this legislative day and in accordance with the motion made earlier, said Senate Bills passed First Reading and were referred.

Sen. Com. No. 2, transmitting S.B. No. 1, entitled: "A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE IV, SECTIONS 7 AND 8, OF THE CONSTITUTION OF THE STATE OF HAWAII, TO STAGGER SENATE TERMS AFTER REAPPORTIONMENT," which passed Third Reading in the Senate on August 9, 2000.

Sen. Com. No. 3, transmitting S.B. No. 2, entitled: "A BILL FOR AN ACT RELATING TO THE PRIVACY OF HEALTH CARE INFORMATION ACT," which passed Third Reading in the Senate on August 9, 2000.

### COMMITTEE REFERRALS

The following bills (S.B. Nos. 1 and 2) were referred to committee by the Speaker, as follows:

<u>S.B.</u>	
<u>Nos.</u>	<u>Referred to:</u>

- |   |  |
|---|--|
| 1 | Committee on Judiciary and Hawaiian Affairs. |
| 2 | Committee on Judiciary and Hawaiian Affairs. |

### ADJOURNMENT

At 2:00 o'clock p.m., the House of Representatives adjourned until 11:30 o'clock a.m., Monday, August 21, 2000.

**FOURTH DAY****Monday, August 21, 2000**

The House of Representatives of the Twentieth Legislature of the State of Hawaii, Second Special Session of 2000, convened at 11:36 o'clock a.m. with the Speaker presiding.

The invocation was delivered by Representative David D. Stegmaier, after which the Roll was called showing all members present with the exception of Representatives Herkes, Meyer, Okamura, Rath, Santiago and Thielen, who were excused.

On motion by Representative Yonamine, seconded by Representative Pendleton and carried, reading of the Journals was dispensed with and the Journals of the First and the Second Days were subsequently approved. (Representatives Herkes, Meyer, Okamura, Rath, Santiago and Thielen were excused.)

**INTRODUCTION**

The following introduction was made to the members of the House:

Representative Arakaki introduced Mr. John Arakaki and Dr. Lance Arakaki, relatives who were visiting from Los Angeles, California.

**SENATE COMMUNICATION**

The following communication from the Senate (Sen. Com. No. 4) was received and announced by the Clerk and was placed on file:

Sen. Com. No. 4, returning H.C.R. No. 2, entitled: "HOUSE CONCURRENT RESOLUTION RELATING TO RECESS DAYS FOR THE SECOND SPECIAL SESSION OF 2000," which was adopted by the Senate on August 9, 2000.

**MISCELLANEOUS COMMUNICATIONS**

The following communications (Misc. Comm. Nos. 1 through 4) were received by the Clerk and placed on file.

Misc. Comm. No. 1, dated July 6, 2000 from Nguyen Xuan Phong, Consulate General of Vietnam acknowledging the receipt of House Resolution No. 111, HD1, adopted by the Twentieth Legislature, Regular Session of 2000.

Misc. Comm. No. 2, dated July 14, 2000 from Brian de Vallance, Director of Intergovernmental Affairs, United States Department of Justice, acknowledging the receipt of House Resolution No. 69, HD 1 adopted by the Twentieth Legislature, Regular Session of 2000.

Misc. Comm. No. 3, dated July 24, 2000 from Sherri W. Goodman, Deputy Under Secretary of Defense, Office of the Under Secretary of Defense, acknowledging receipt of House Resolution 124, HD 2, adopted by the Twentieth Legislature, Regular Session of 2000.

Misc. Comm. No. 4, dated August 10, 2000 from Gail B. Manning, Director, National Conference of Lieutenant Governors, transmitting two resolutions adopted during the 2000 Annual Meeting, entitled: Resolution Supporting the Development of a National Dialogue on Long Term Care Reform and Resolution Promoting the States and Territories Participation in the National Environmental Policy Act.

**ANNOUNCEMENTS**

Representative Suzuki rose to remind all members of the Aloha United Way bento fundraiser scheduled for Tuesday, August 22.

Representative Case then rose to remind all members of the briefing with the Campaign Spending Commission and the State Ethics Commission immediately following today's legislative session in room 325.

**ADJOURNMENT**

At 11:45 o'clock a.m., on motion by Representative Yonamine, seconded by Representative Pendleton and carried, the House of Representatives adjourned until 11:30 o'clock a.m. tomorrow, Tuesday, August 22, 2000. (Representatives Herkes, Meyer, Okamura, Rath, Santiago and Thielen were excused.)

**FIFTH DAY****Tuesday, August 22, 2000**

The House of Representatives of the Twentieth Legislature of the State of Hawaii, Second Special Session of 2000, convened at 11:40 o'clock a.m. with the Speaker presiding.

The invocation was delivered in song by Representatives Ahu Isa, Arakaki, Kahikina, Kanoho and Kawakami after which the Roll was called showing all members present with the exception of Representatives Herkes, Kaho'ohalahala, Okamura, Santiago and Whalen who were excused.

On motion by Representative Yonamine, seconded by Representative Pendleton and carried, reading of the Journals were dispensed with and the Journals of the Third and Fourth Days were subsequently approved. (Representatives Herkes, Kaho'ohalahala, Okamura, Santiago and Whalen were excused.)

**SENATE COMMUNICATIONS**

The following communications from the Senate (Sen. Com. Nos. 5 and 6) were received and announced by the Clerk and were placed on file.

Sen. Com. No. 5, returning H.B. No. 1, entitled: "A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE IV, SECTIONS 7 AND 8, OF THE CONSTITUTION OF THE STATE OF HAWAII, TO STAGGER SENATE TERMS AFTER REAPPORTIONMENT," which passed Third Reading in the Senate on August 22, 2000.

Sen. Com. No. 6, returning H.B. No. 2, entitled: "A BILL FOR AN ACT RELATING TO THE PRIVACY OF HEALTH CARE INFORMATION ACT," which passed Third Reading in the Senate on August 22, 2000.

**ORDER OF THE DAY****INTRODUCTION OF RESOLUTIONS**

The following resolutions (H.R. Nos. 2 and 3) were announced by the Clerk and the following actions taken:

H.R. No. 2, entitled: "HOUSE RESOLUTION AUTHORIZING THE SPEAKER OF THE HOUSE OF REPRESENTATIVES TO APPROVE THE JOURNAL OF THIS HOUSE OF ANY LEGISLATIVE DAY BEING COMPILED AS OF THE 5<sup>TH</sup> LEGISLATIVE DAY," was jointly offered by Representatives Say, Oshiro, Case and Marumoto.

On motion by Representative Case, seconded by Representative Marumoto and carried, H.R. No. 2 was adopted, with Representatives Herkes, Kaho'ohalahala, Okamura, Santiago and Whalen being excused.

H.R. No. 3, entitled: "HOUSE RESOLUTION AUTHORIZING AND DIRECTING THE COMMITTEE ON THE JOURNAL TO COMPILE AND PRINT THE JOURNAL OF THE HOUSE OF REPRESENTATIVES, SECOND SPECIAL SESSION OF 2000, PURSUANT TO RULE 18 OF THE RULES OF THE HOUSE OF REPRESENTATIVES," was jointly offered by Representatives Say, Oshiro, Case and Marumoto.

On motion by Representative Case, seconded by Representative Marumoto and carried, H.R. No. 3 was adopted, with Representatives Herkes, Kaho'ohalahala, Okamura, Santiago and Whalen being excused.

**HOUSE COMMUNICATION**

A communication, dated August 22, 2000, to Mr. Dwayne Yoshina, Chief Election Officer, from Paul Kawaguchi, Clerk, State Senate and Patricia Mau-Shimizu, Clerk, House of Representatives, informing the Office of Elections that House Bill No. 1, entitled: "A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE IV, SECTIONS 7 AND 8, OF THE CONSTITUTION OF THE STATE OF HAWAII, TO STAGGER SENATE TERMS AFTER REAPPORTIONMENT," passed Third Reading in the House of Representatives on August 9, 2000, with 46 members voting in the affirmative, and in the Senate on August 22, 2000, with 23 members voting in the affirmative.

**ANNOUNCEMENTS**

Madame Clerk: "Mr. Speaker, I am in receipt of Senate Resolution No. 2, informing the House and the Governor that the Senate is ready to adjourn Sine Die. May this matter be received and filed," and the Chair "so ordered."

Representative Case then rose and stated:

"This is a reminder to all House Members that the Office of Elections will be taking over our House Chambers tomorrow and therefore if all Members could kindly clean out their desks at this point. Thank you."

Representative Garcia then rose and stated:

"In these Chambers yesterday, our colleagues from across the way honored the Medal of Honor recipients with certificates which praised them for the duties that they had dispensed with in earning those medals. On Saturday night at the Hilton Hawaiian Village there will be a reception honoring both the living and deceased recipients of the Medal of Honor. This House has been given an invitation to take part in that reception and we will also be presenting certificates on behalf of this House. Your Chairman of Public Safety and Military Affairs is helping to coordinate this event on Saturday night and invitations will be extended to our colleagues. I am particularly asking my colleagues for those of you who already know or would like to know that if there are any recipients from their districts or have families in their districts, they are encouraged to contact my office. I know there are recipients that are from Waianae, Kaneohe, Hilo, Waikiki, Waipahu, Pearl City and other areas. So if my colleagues want to know they may contact my office, I have the addresses of each of the recipients. We would like to extend certificates from this House on your behalf. So if you could contact my office for the information I would really appreciate it. Thank you."

Representative Takai then rose and stated:

"The last day of Regular Session 2000 we recognized a few of our colleagues who will not be returning next year because they have chosen to retire. Mainly Representatives Stegmaier, Santiago and Herkes. Since then we have also recognized Representative Romy Cachola who had to resign because he is running for the City Council. I would like to, at this time, recognize and thank a couple of our other colleagues who will not be returning, Representative Tom Okamura and Representative David Morihara. As the Chair

of the Higher Education Committee for the last four years, I think you would agree with me that Representative Morihara did a great job in pushing forward many of the major proposals that have since become either law, or in the case of the University of Hawaii, Constitutional Autonomy, a question on the ballot this November. So if I can get the support of our colleagues to recognize and thank our colleague from Maui for his ten years of dedicated service. Thank you, Mr. Speaker. And just for information, earlier last month we presented Representative Morihara with a certificate and a gavel. Thank you."

Representative Meyer then rose and stated:

"I just wanted to say a few words of aloha to Representative Morihara. I had the pleasure of playing golf with him a couple of years ago and just with a very few tips I played the best round of golf I had ever played. So I think he has another career in store for him. Good luck and try being a golf-pro my friend. Aloha."

Representative Morihara then rose and stated:

"Just a few comments and I have a short speech here prepared -- just kidding. I wanted to publicly thank all my colleagues in the House and as I have said in the past, I am very proud to have served with all of you. It is family commitments that are taking me home. But I wish you all the best and I know that with the talent here you will do a very good job. Thank you."

#### ADJOURNMENT

Representative Case moved that the House of Representatives of the Twentieth Legislature of the State of Hawaii, Second Special Session of 2000, adjourn Sine Die, seconded by Representative Marumoto and carried. (Representatives Herkes, Kaho'ohalahala, Okamura, Santiago and Whalen were excused.)

At 11:58 o'clock a.m., the Speaker rapped his gavel and declared the House of Representatives of the Twentieth Legislature of the State of Hawaii, Second Special Session of 2000, adjourned Sine Die.





## STANDING COMMITTEE REPORTS

## SCRep. No. 1      Judiciary and Hawaiian Affairs on H.B. No. 1

The purpose of this measure is to amend the Constitution of the State of Hawaii to provide for the staggering of senate terms following reapportionment.

The following parties submitted testimony in support of the measure: State of Hawaii Attorney General, League of Women Voters of Hawaii, Good Government Coalition, Small Business Economic Revival Force, Advocates for Consumer Rights, Kokua Council, Neighborhood Board No. 5, Community Work Day Program, Common Cause Hawaii, Hawai'i Clean Elections, a member of the 1981 Reapportionment Commission, a member of the 1991 Reapportionment Commission, and four individuals. The Office of Elections submitted comments on the measure.

Under current constitutional provisions, all twenty-five members of the Senate are elected for four-year terms that are staggered according to a constitutional plan established in 1978, as amended in 1992. Under the present staggered term schedule, twelve senators elected in 1998 are serving four-year terms that end in 2002. In addition to the senator elected in the special election for District 18, thirteen senators will be elected in 2000. However, because 2001 is a reapportionment year, the State Constitution requires that all senatorial terms end at the general election at which an apportionment plan becomes effective. Thus, the terms of the aforesaid thirteen senators elected in 2000 will end in 2002, resulting in two-year terms for these members. All twenty-five members of the Senate will be elected in 2002.

Article IV, section 8 of the State Constitution establishes the re-staggering of Senate terms following reapportionment. The current constitutional re-staggering scheme focuses on incumbent senators to insure fair treatment of incumbent senators whose terms were cut short. Thus, a senator re-elected in 2002, whose prior term of office was shortened to two years because of the occurrence of a reapportionment year, is assigned a four-year term, while a re-elected senator who served a four-year term immediately preceding re-election is assigned a two-year term. All challengers who are elected during the 2002 election will receive two-year terms notwithstanding the length of terms that the re-elected incumbents would have served.

This measure changes the focus from the senator to the electorate by replacing the language in article IV, section 8 of the State Constitution with a new criterion. This criterion will maintain the staggered senate terms using the same resident population base used by the Reapportionment Commission in establishing senatorial districts.

As amended, section 8 requires the Reapportionment Commission, as part of the reapportionment plan, to assign two-year terms to twelve senate seats to be filled in the election immediately following adoption of the reapportionment plan and to assign four-year terms to the remaining thirteen seats. The Commission should assign the two-year terms in such a way that in the six-year period beginning in the even-numbered year prior to the reapportionment year, the majority of the permanent residents of each new senate district as determined by the Commission will have no more than two regular senate elections.

As amended, the Constitution will require the Commission to calculate in some fashion, the number and/or percentage of permanent residents in each new senate district that resided in an old senate district as that district existed immediately prior to the reapportionment year. The assignment of the two-year terms beginning in 2002 shall be made to those districts in which the least number and/or percentage of these permanent residents (who had a regular senatorial election in 2000) are found.

Under this measure, if, prior to reapportionment, old District A had a regular (not a special) senatorial election in 2000 and would thus have a senator serving a two-year term that ran from 2000 to 2002, under the new reapportionment plan, the new District A (assuming that a majority of the permanent resident population in new District A resides in old District A or another district that had a regular senatorial election in 2000) will again be voting in the regular senatorial election in 2002. The senator elected to represent new District A, whether an incumbent or newcomer, would serve a four-year term, running from 2002 to 2006. In the six-year period commencing with the 2000 regular election (the even-numbered year prior to the reapportionment year) and ending prior to the 2006 regular election, the majority of the permanent resident population of new District A will have had no more than two regular senate elections (in 2000 and 2002).

Conversely, if, prior to reapportionment, old District B had been served by a senator serving a four-year term that ran from 1998 to 2002, under the new reapportionment plan, the senator elected in the 2002 election to represent new District B (assuming that a majority of the permanent resident population in new District B resides in old District B or another district that did not have a regular senatorial election in 2000), whether an incumbent or newcomer, would serve a two-year term, running from 2002 to 2004. The winner of the following election held in 2004, whether an incumbent or newcomer, would then serve the usual four-year term for senators, running from 2004 to 2008. In the six-year period commencing with the 2000 regular election (the even-numbered year prior to the reapportionment year) and ending prior to the 2006 regular election, the majority of the permanent resident population of new District B will have had no more than two regular senate elections (in 2002 and 2004).

If the Reapportionment Commission creates multi-member districts, as it may under the Constitution, it will, of course, need to initially determine, as to each senate seat, which will be assigned two-year terms and which will be assigned four-year terms, based upon the same criterion set out above. This measure provides that the senators (or if there is but one four-year term assigned to the district by the Commission, the senator) elected with the highest number of votes in the election following reapportionment would fill the senate seats (or senate seat) which had been assigned four-year terms by the Commission.

Your Committee finds that this measure maintains the existing staggered terms of senators treating incumbent senators and newly-elected senators equally with respect to the assignment of terms of office using the Reapportionment Commission and establishing criteria that considers the residents in each senatorial district. In this way, the proposed constitutional provision clarifies that a term of office attaches to a particular senate seat, rather than the individual elected to that seat.

As affirmed by the record of votes of the members of your Committee on Judiciary and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

The purpose of this measure is to amend the Constitution of the State of Hawaii to provide for the staggering of senate terms following reapportionment.

Signed by all members of the Committee.

**SCRep. No. 2      Judiciary and Hawaiian Affairs on H.B. No. 2**

The purpose of this measure is to retroactively delay the effective date of Chapter 323C, Hawaii Revised Statutes (HRS), from July 1, 2000, to July 1, 2001.

Your Committee received testimony in support of this bill from the Lieutenant Governor, Honolulu County Department of Human Resources, Hawaii Nurses' Association, Hawaii Insurers Council, Hawaii Transportation Association, Small-Business Economic Revival Force, Hawaii Medical Association, Hawaii Medical Service Association, Queen's Health Systems, Healthcare Association of Hawaii, Hawaii State Association of Insurance and Financial Advisors, Hawaii Employers' Mutual Insurance Company, Inc., Hawaii Independent Insurance Agents Association, Hidano Construction, Inc., First Insurance Company of Hawaii, Ltd., National Council on Compensation Insurance, HGEA-AFSCME, Hawaii Civil Rights Commission, Hawaii Health Systems Corporation, and a private individual. Testimony in opposition was received from the Office of Information Practices, Kaiser Permanente, Hawaii Coalition for Health, and three private individuals. Informational testimony was presented by two private individuals.

Act 87, Session Laws of Hawaii 1999, enacted Chapter 323C, HRS, relating to the privacy of health care information, to provide for the comprehensive regulation of the handling and disclosure of medical records. Act 87 was intended to protect the individual's right to privacy with respect to personal health information and records, including information about health care and health status. The effective date of Act 87 was July 1, 2000, to provide affected stakeholders ample time to propose amendments thereto.

In the 2000 Regular Session, Chapter 323C, HRS, was further amended and, pursuant to Act 140, Session Laws of Hawaii 2000, a medical privacy task force was statutorily established to advise and assist the Office of Information Practices.

It has come to the attention of the Legislature that Act 87 has created confusion among medical providers, hospitals, and workers' compensation insurers regarding the requirements of the new law and the liability of entities who are not in compliance. The Office of Information Practices has received numerous inquiries from doctors and others on the application of the new law. This uncertainty has created a chilling effect on the flow of necessary information. The task force of health care providers that helped to draft Act 87 has indicated that it is good law that needs time to be refined and clarified.

The Legislature finds that the current confusion warrants a delay in implementation of Chapter 323C, HRS, and the recent 2000 Regular Session amendments. The Legislature believes that this would allow time for the task force and interested stakeholders to develop appropriate statutory amendments that clarify specific provisions for consideration at the 2001 Regular Session. While delaying the implementation of Chapter 323C, HRS, as amended, your Committee believes that the medical privacy task force established by Act 140, SLH 2000, should be established and allowed to advise and assist the Office of Information Practices during this delayed implementation period of Chapter 323C, HRS.

Your Committee intends that this measure serve to extinguish all actions which have been or could have been brought under or in connection with Chapter 323C, HRS.

Notwithstanding the adoption of this measure, your Committee remains fully committed to the full implementation of the privacy of health care information law in July of 2001.

As affirmed by the record of votes of the members of your Committee on Judiciary and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

	NUMBER AND TITLE	Introduced/ Referred	First Reading	Second Reading	Third Reading	Action of Senate	Conference Committee	Final Action	Action of Governor	Further Action	Act No.	Vetoed
H.B. 1	A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE IV, SECTION 7 AND 8, OF THE CONSITUTION OF THE STATE OF HAWAII, TO STAGGER SENATE TERMS AFTER REAPPORTIONMENT	1 1	1	4	9	16			18		Const Am	
H.B. 2	A BILL FOR AN ACT RELATING TO THE PRIVACY OF HEALTH CARE INFORMATION ACT	1 1	1	7	13	16			18		1	
H.B. 3	A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE IV, SECTION 7 AND 8, OF THE CONSITUTION OF THE STATE OF HAWAII, TO STAGGER SENATE TERMS AFTER REAPPORTIONMENT	4 4	4									

NUMBER AND TITLE		Offered/ Referred	Report of Committee	Adoption	Action of Senate	Subsequent Action
H.C.R. 1	RELATING TO RECESS DAYS FOR THE SECOND SPECIAL SESSION OF 2000	2		2	9	
H.C.R. 2	RELATING TO RECESS DAYS FOR THE SECOND SPECIAL SESSION OF 2000	14		14	15	

	NUMBER AND TITLE	Offered	Referred	Report of Committee	Adoption
H.R. 1	RELATING TO COMMITTEE ASSIGNMENTS	2			2
H.R. 2	AUTHORIZING THE SPEAKER OF THE HOUSE OF REPRESENTATIVES TO APPROVE THE JOURNAL OF THIS HOUSE OF ANY LEGISLATIVE DAY BEING COMPILED AS OF THE 5 <sup>TH</sup> LEGISLATIVE	16			16
H.R. 3	AUTHORIZING AND DIRECTING THE COMMITTEE ON THE JOURNAL TO COMPILE AND PRINT THE JOURNAL OF THE OUSE OF REPRESENTATIVES, SECOND SPECIAL SESSION OF 2000, PURSUANT TO RULE 18 OF THE RULES OF THE HOUSE OF	16			16

[illegible]