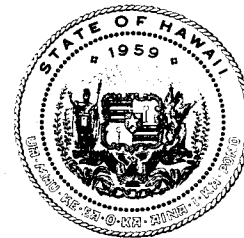


ROBERT BUNDA
PRESIDENT
DONNA MERCADO KIM
VICE PRESIDENT
COLLEEN HANABUSA
MAJORITY LEADER
CAL KAWAMOTO
MAJORITY FLOOR LEADER
SHAN S. TSUTSUI
MAJORITY CAUCUS LEADER
FRED HEMMINGS
MINORITY LEADER
BOB HOGUE
MINORITY FLOOR LEADER
PAUL WHALEN
MINORITY POLICY LEADER

The Senate
The Twenty-Second Legislature
of the
State of Hawaii

STATE CAPITOL
HONOLULU, HAWAII 96813



December 11, 2003

MEMORANDUM

TO: Members of the Judiciary and Hawaiian Affairs Committee,
Appointed Members of Senate Leadership & Interested Members
of the Public

FR: Senator Colleen Hanabusa, Chair

RE: Decision Making and Chair's Recommendation to adopt a Final
Report in accordance with S.R. 147

Decision Making on the Final Report in accordance with S.R. 147
is scheduled for Monday, December 15, 2003 at 2:00 p.m. I would
appreciate your cooperation in establishing a quorum.

The Chair's Recommendation is to adopt the Final Report
attached to this memorandum.

Please feel free to contact me if you have any questions or
concerns.

FIRST DISTRICT
LORRAINE R. INOUE
SECOND DISTRICT
RUSSELL S. KOKUBUN
THIRD DISTRICT
PAUL WHALEN
FOURTH DISTRICT
SHAN S. TSUTSUI
FIFTH DISTRICT
ROSALYN H. BAKER
SIXTH DISTRICT
J. KALANI ENGLISH
SEVENTH DISTRICT
GARY L. HOOSER
EIGHTH DISTRICT
SAM SLOM
NINTH DISTRICT
LES IHARA, JR.
TENTH DISTRICT
BRIAN T. TANIGUCHI
ELEVENTH DISTRICT
CAROL FUKUNAGA
TWELFTH DISTRICT
GORDON TRIMBLE
THIRTEENTH DISTRICT
SUZANNE CHUN OAKLAND
FOURTEENTH DISTRICT
DONNA MERCADO KIM
FIFTEENTH DISTRICT
NORMAN SAKAMOTO
SIXTEENTH DISTRICT
DAVID Y. IGE
SEVENTEENTH DISTRICT
RON MENOR
EIGHTEENTH DISTRICT
CAL KAWAMOTO
NINETEENTH DISTRICT
BRIAN KANNO
TWENTIETH DISTRICT
WILLIE C. ESPERO
TWENTY-FIRST DISTRICT
COLLEEN HANABUSA
TWENTY-SECOND DISTRICT
ROBERT BUNDA
TWENTY-THIRD DISTRICT
MELODIE WILLIAMS ADUJA
TWENTY-FOURTH DISTRICT
BOB HOGUE
TWENTY-FIFTH DISTRICT
FRED HEMMINGS
CHIEF CLERK
PAUL T. KAWAGUCHI

SPEC. COM. REP. NO.

Honolulu, Hawaii
, 2003

RE:

Honorable Robert Bunda
President of the Senate
Twenty-Second State Legislature
Regular Session of 2004
State of Hawaii

Sir:

Your Special Committee comprised of the Senate Committee on Judiciary and Hawaiian Affairs and two members of Senate Leadership, to which was referred S.R. No. 147 entitled entitled:

"SENATE RESOLUTION REQUESTING THE SENATE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS AND TWO MEMBERS OF SENATE LEADERSHIP TO CONDUCT AN INTERIM STUDY OF THE SENATE RULES REGARDING DECISION-MAKING BY STANDING COMMITTEES AND CONFERENCE PROCEDURES REGARDING DECISION-MAKING BY CONFERENCE COMMITTEES,"

begs leave to report as follows:

The two leadership members are Senator Donna Mercado Kim, Vice President of the Senate, and Senator Shan S. Tsutsui, Majority Caucus Leader.

The purpose of this measure is to ensure that Senate decision-making procedures by standing committees and conference committee procedures related to decision-making by conference committees meet constitutional muster and are open and fair.

Your Committee received testimony from the State Attorney General, Hawaii Clean Elections Coalition, Green Party of Hawaii, Hawaii Women's Political Caucus, The League of Women Voters of Hawaii, Advocates for Consumer Rights, and six individuals.

Hearings on this measure were held on October 20, 2003, November 24, 2003, and December 15, 2003. The final report was disseminated to the Senate and the public on December 22, 2003.

2004-0236 Special CR SMA-5.doc



The hearings received some public comments that were outside the scope of the subject matter of this measure, but were nonetheless heard by your Committee in the interest of openness and accessibility and are addressed in this report.

Public Input and Response

Your Committee emphasized the process of obtaining public opinion to the fullest possible extent with the timely notices and complete opportunity for everyone to be heard at the hearings.

Your Committee held a duly noticed hearing on November 24, 2003 at 2:30 p.m. to receive comments on a draft report distributed on November 10, 2003. The Attorney General was present but did not have any comments or testimony on the report. Your Committee received testimony from Brenda Erickson of the National Conference of State Legislatures (through Senator Les Ihara), Arvid T. Youngquist, Hawaii Clean Elections Coalition, Paulette A. Tam, The League of Women Voters of Hawaii, Green Party of Hawaii, Rev. Sam Cox, Judy A. Rantala, Carolyn Martinez Golojuch, MSW, Richard S. Miller, Ruth Ellen Lindenberg, Jim and Yoshie Tanabe, Advocates for Consumer Rights, The Interfaith Alliance Hawaii, Hawaii Clean Elections Coalition, Reverend Daniel L. Hatch, Jerry C.L. Chang, and Life of the Land.

Your Committee has taken the unusual step of attaching the testimony as an appendix to this report, in order not to risk mischaracterizing, misinterpreting, or otherwise misrepresenting the testimony on this very sensitive matter.

Your Committee notes that the testifiers generally supported the draft report, with the most prevalent comments relating to:

- (1) Referral of bills to the proper committee;
- (2) The power of the money chairs in conference committee. Your Committee's approach is to make the comments known to the entire Senate by attaching the testimony hereto, and to defer the ultimate decisions to the members of the Senate, particularly as to the conference committee procedures discussed above; and
- (3) Deferral of bills by standing committee chairs.



Background

This measure requests the Senate Committee on Judiciary and Hawaiian Affairs along with two members of Senate leadership to study the Senate rules relating to decision-making by standing committees and conference committee procedures as applied to the decision-making by conference committee. The purpose of the study is to consider whether the Senate rules and the conference procedures "need to be amended to ensure that Senators' voting rights are fairly apportioned and considered."

This measure was an outgrowth of the concern raised by certain Senators of the apparent conflict between the Joint Senate-House 2003 Committee on Conference Procedures, paragraph 8, relating to decision-making meetings, and Rule 22(1) and (2) of the Senate Rules of the Twenty-Second Legislature, relating to decision-making by standing committees. The issue is whether requiring a majority vote of all of the chairs of a conference committee violates the requirement of a majority vote of the quorum of a standing committee. Your Committee notes at the outset that the Attorney General has stated that the current procedures are constitutionally permissible.

Opinion of the Attorney General

Your Committee requested the input of the Attorney General to render a definitive decision as to whether Rule 22(1) and (2) of the Senate Rules, relating to decision-making by standing committees, and paragraph 8 of the Joint-Senate House 2003 Committees on Conference Procedures (conference procedures), pass constitutional muster. In response, the Attorney General submitted written testimony that concluded that:

- (1) In the absence of a constitutional mandate, or unless the procedure is in derogation of a constitutionally guaranteed right, the Legislature has exclusive authority to determine the procedures necessary to conduct legislative affairs;
- (2) The equal protection clause and the one person, one vote principle does not require a properly apportioned legislative body to distribute power and influence so



that every legislator is as powerful and influential as every other member of the body;

- (3) The United States Supreme Court has held that:
 - (i) Changes which affect only the distribution of power among officials have no direct relation to, or impact on, voting; and
 - (ii) The only legally protectable interest of legislators is in not having their final vote on a legislative act completely nullified;
- (4) Aside from procedures expressly prescribed by the Hawaii Constitution, there are no constitutional parameters that need to be factored into a committee's recommendations for fairly apportioning and considering senators' "voting rights";
- (5) The Hawaii Constitution provides in Article III, section 12, that each house shall determine the rules of its proceedings, thus allowing the Legislature to have broad discretion to determine how and when individual Senators are to act on a measure, when members of a committee are to act on a measure, and when committee chairs and other Senate leaders will act on a measure; and
- (6) Article III, section 12 of the Hawaii Constitution specifies that decision-making on matters referred to the committee shall be open to the public.

Thus the Attorney General concluded that the decision-making provisions of the Senate Rules and the provisions of the Joint Senate-House 2003 Committees on Conference Procedures meet constitutional muster.

Notwithstanding the testimony of the Attorney General, your Committee has set forth provisions for consideration and discussion. It is the position of this Committee that the Senate Rules are to be considered by each Senator. Every Senator will have the opportunity on the floor of the Senate to propose and debate any revisions to the rules.



Committee on Conference Procedures

For most part, joint conference procedures require that both houses agree to the same rules. (Mason's 773-4) Any changes proposed by the Senate to the joint conference procedures must be approved by the House. Therefore, any proposed conference procedures recommended herein are not effective unless similarly approved by the House. Joint conference procedures are promulgated by the Senate President and the Speaker of the House, usually after consultation with their respective caucuses.

Notwithstanding, it has been the practice that certain procedures may differ by the respective Houses. An example is the need for a quorum for the House conferees to convene the first meeting in conference. Thus, if the Senate proposes a change in the decision-making process for itself, it is the contention of this Committee that such a difference is permissible and sanctioned by past practice.

1. Conference Decision-Making

The Joint Senate-House 2003 Committees on Conference Procedures (conference procedures), paragraph 8, is the focus of S.R. No. 147 as it relates to decision-making meetings, states in pertinent part:

- a. A quorum of the Conference Committee shall be present for the decision-making meeting. A quorum shall be a majority of the House Committee managers and a majority of the Senate Committee managers and shall include a majority of the chairs of the conference committee for their respective chamber.
- b. To report a measure out of Conference Committee in amended form (CD), a majority of the chairs for each respective chamber and a majority of the quorum of managers for each respective chamber must vote in favor of the proposed amendments, provided that no Conference Committee Report concerning a measure with fiscal implications shall be reported out of a Conference Committee without the signatures of the chairs (or their designee) of the fiscal committees of each chamber.

A conference draft (CD) does not pass final reading until it is reported out of conference. Thus, a major step for the bill is to pass conference in order to make it to the floor for final reading.



The Hawaii Constitution is again silent on conference committee proceedings. A bill referred to conference has already passed the three constitutionally required readings in each house under section 15 of article III of the Hawaii Constitution. In addition to these six readings, there is a constitutional provision for a final reading under section 15 of article III. A vote on final reading is on the conference committee report. (Mason's 772-1)

Every member of the conference committee is a "manager." A "chair" of the conference committee from each house is appointed the "lead." Current rules require both a majority of the quorum of managers and a majority of the chairs to report out a CD. The issue presented by S.R. No. 147 is the fairness of requiring a majority of the chairs to vote out a CD. What if there is only one chair or two chairs for one house? In that instance, one chair would have the power to prevent the passage of a CD although a majority of managers and the other chairs vote to pass it out, which would be unfair on its face. This appears to conflict with the view embodied in S.R. No. 147, which promotes the position that the rules should "...ensure that Senators' voting rights are fairly apportioned and considered[.]" Yet your Committee reiterates that the Attorney General found this practice to be constitutional.

Conference procedures are within the discretion of the houses of the legislature. "The houses may provide for such procedure as they may agree upon unless constitutional requirements prevent." (Mason's, 775) Current conference procedures are constitutionally sufficient. The procedure relating to the voting power of chairs was adopted on April 12, 2001, for application in the 2001 legislative session conferences and has been applied since then.

If a conference committee is not able to agree, the committee can be discharged and a new conference committee appointed in the same manner as the original committee. (Mason's, 771-6) Thus there is recourse if a bill is not passed out of conference because a majority of the chairs of either house do not support it. However, this can be impracticable in view of the time constraints of conference proceedings.

The proposed change supported by the testifiers is to have the majority of the conferees with no differentiation between the chairs and managers. This is analogous to the standing committee



decision-making. The most prevalent concern is that of the fiscal bills which will be addressed at length in the following section.

An alternative solution may be to have one chair or three or more chairs appointed. In this respect there will be no possibility that one or two chairs of a house effectively vetoing a bill. In the case of single referral bills, there should only be one chair in conference.

Bills in conference tend to receive more public scrutiny and media attention. In this regard, appearances count. Conferring power to a few conference chairs who could defeat a bill in conference, while justified for the money chairs in budget and appropriation bills, may not similarly be justified in other legislation. Further, current conference voting tends to be postponed because of the necessity to obtain the approval of a money committee chair who is also a conference chair, as is often the case in many bills. The money chair is often in more than one conference meeting simultaneously.

Your Committee recognizes that there are three alternatives to current conference committee decision-making procedures:

- A. To amend the current wording of paragraph 8(b):
 - b. To report a measure out of Conference Committee in amended form (CD), a majority of the chairs for each respective chamber and a majority of the quorum of managers for each respective chamber must vote in favor of the proposed amendments~~[, provided that no Conference Committee Report concerning a measure with fiscal implications shall be reported out of a Conference Committee without the signatures of the chairs (or their designee) of the fiscal committees of each chamber].~~ No Conference Committee report for a measure with fiscal implications shall be filed with the appropriate Clerk unless the fiscal committee chairs have previously approved of the fiscal portion of the measure, without regard to whether the fiscal committee chair or vice chair is a chair of the Conference Committee. The fiscal committee chair of each house shall inform the lead chair as soon as the budget is closed with the money figures or other recommended revisions to the conference draft pertaining solely to fiscal implications. The fiscal committee chair or vice chair of each house shall inform the Clerk of their respective house of the bills needing their approval before being filed.

Bills with fiscal implications usually need to await the closing of the budget, which depends upon the money chairs -



the chairs of the Senate Ways and Means committee and the House Finance committee. To accommodate this consideration, the conference rules could be amended to require that all bills in conference with fiscal implications await the closing of the budget, rather than appointing the money chairs as conference committee chairs for these bills. These bills must be identified at the outset of conference, and need not await the vote of the money chair. As soon as the budget is closed, the other conference bills with fiscal implications can be voted out, which would alleviate the need in recent years of holding a massive conference committee vote meeting in the evening of the decking deadline. The budget is usually closed before that evening, so that other conferences can proceed to vote and legislative staff agencies have time to prepare a CD in its final form for decking. As a stop-gap measure, conference rules may provide that any bill with fiscal implications that is passed out in conference must have the approval of the money chair in each house before being decked.

Your Committee points out that the authority of the fiscal committee chairs, in the event they are not appointed to the conference committee, over a bill that is in conference is limited solely to fiscal matters. Your Committee believes this authority is necessary in view of the importance of state finances. In the event that a fiscal committee chair is not also a conference committee chair or member of the conference committee, an issue arises as to whether or not this procedure is an open vote. The Attorney General is of the opinion that this is permissible, because the fiscal committee chair is not a member of the conference committee. If the fiscal chair was on the conference committee, the vote of the fiscal chair would have to be public. Your Committee surmises that this irony is the unintended consequence of an open vote rule that applies to the committee members only. Seen in this light, the fiscal standing committee chair, whether or not serving on the conference committee, is effectively the sole decision maker and not the conference committee on fiscal matters. This is not a preferred outcome but nonetheless one that invites discussion in light of the Attorney General's opinion.

B. To add a provision to clarify the number of appointed chairs:



Appointment of Conference Committee Chairs and Managers

There shall be one chair appointed from the Senate for a measure that is a single referral, with the chair being the chair of the standing committee to which the measure was referred. There shall be not less than three chairs appointed for all other measures, of which not more than one chair from the Senate may be the chair or vice chair of the Committee on Ways and Means whose vote shall be limited to fiscal matters, other than the budget bill.

C. To amend the current provision to delete the differentiation between chairs and managers:

Appointment of Conference Committee Members:

All Senators appointed to a conference committee shall be deemed to be members of the conference committee; provided that the Senate President shall appoint one chair who shall perform the ministerial duties such as calling the meeting to order, summoning Senators to attend the meeting, taking the vote, and posting the meeting notices. For purposes of voting, the chair shall be considered a member of the conference committee.

Voting by Conference Committee

To report a measure out of Conference Committee, a majority of the members of a conference committee must vote in the affirmative of the proposed amendments.

2. The Role of the Money Chairs in Conference

The Chair or Vice Chair of the Senate Committee on Ways and Means and the Chair or Vice Chair of the House Committee on Finance are usually selected as one of the chairs of a conference committee. Their roles are usually for the purpose of deciding on money matters contained in the bill, such as an appropriation or other fiscal implication. Your Committee is cognizant of the perception that the money chairs may have excessive power over a conference bill as in some instances, their individual vote could determine whether the bill does not pass out of conference, despite an affirmative vote from a majority of the managers. Yet your Committee recognizes the importance of the role of the money managers in conference with regards to the budget and financial plan. Your Committee proposed a remedy to this situation in Section 1, conference decision-making, above.

3. Scope of Amendments

Your Committee received disturbing testimony to the effect that Conference Committees amend bills to insert unrelated subject



matters. The Joint Senate-House 2003 Committees on Conference Procedures (conference procedures), relating to bill amendments, provides:

The authority of the Conference Committee shall be limited to resolving differences between the Senate and House drafts of a bill or resolution. Accordingly:

- a. With the exception of the Executive Budget, the Judiciary Budget and the Budget of the Office of Hawaiian Affairs, a Conference Committee shall not amend a bill or resolution by inserting into the bill or resolution any unrelated or new subject matter.
- b. To assure the integrity of individual bills, the merging of two or more distinct but related bills into one encompassing bill shall not be allowed.

This provision is the first paragraph of the conference procedures, which indicates its importance. Your Committee takes this opportunity to caution all conference chairs to be cognizant and vigilant of this procedure, so that any proposal to amend the conference draft passes the test of this provision. Public perception is negative about the secrecy and arbitrariness of conference proceedings. Your Committee reminds conference chairs that the manner in which proposed amendments are considered could alter the public's perception of the merits of the conference draft. Your Committee urges conference chairs to openly discuss all proposed conference amendments and whether those amendments pass the test of this provision, including proposed conference drafts that are exchanged between chairs. In this manner, the public can be assured that the Legislature is fairly complying with its rules.

Nonetheless, your Committee believes that clarification of this provision is advisable in view of the persistence of this issue. Your Committee presents the following as an alternative:

- a. With the exception of the Executive Budget, the Judiciary Budget and the Budget of the Office of Hawaiian Affairs, a Conference Committee shall not amend a bill or resolution by inserting into the bill or resolution any unrelated or new subject matter[-] or any provision contained in another bill that has not been heard; provided that any insertions may be made in aid of the bill's intent, purpose, effectuation, or clarification.



4. Selection of Conference Committee Members

Your Committee heard testimony inquiring about how conference chairs and managers are chosen. The current conference procedures are silent on this matter. Under current practice, the President selects the chairs and managers. Every Senator may request the President to be selected to serve on a particular conference committee.

In the interests of informing the public, your Committee presents the following as an alternative:

Appointment of Conference Committee Chairs and Managers

Chairs and managers (or members) shall be appointed by the Senate President upon recommendation of the lead chair in the conference, who shall be designated by the President. Every chair and manager (or member) shall have voted in the affirmative or with reservation to pass the measure on third reading. Every Senator who voted in the affirmative may submit a request to the President to be a member of any conference committee. Conference chairs and managers (or members) may be changed after their initial selection in the same manner.

5. Binding Votes

Your Committee is concerned that there may be instances where a conference chair verbally votes affirmatively on a conference draft and later refuses to sign the conference committee report. Your Committee believes this is unacceptable, and presents the following as an alternative to the present conference procedures in paragraph 9:

- a. A majority of the Senate chairs of a Conference Committee shall attest to the action of the Conference Committee by signing the Conference Committee report on behalf of their respective managers. A chair who has voted in favor of the action during the roll call vote shall sign the report accordingly or, due to the unavailability of the chair, the Senate President may sign for the chair. The "Record of Votes of a Conference Committee" sheet detailing the votes of the managers of the Conference Committee shall be attached to the report as a part thereof.

Effect of Senate Rules on Conference Procedures

As discussed above, the issue is whether requiring a majority vote of all of the chairs of a conference committee violates



requiring a majority vote of the quorum of a standing committee. As discussed earlier, your Committee notes that the Attorney General has stated that the current procedures are constitutionally permissible.

Because the conference procedures are jointly adopted by both houses, your Committee believes that the Senate Rules should be amended to confer authority upon the Senate President to adopt appropriate conference procedures, without being restricted by consistency with Senate Rules.

Your Committee presents the following alternative as an addition to the Senate Rules:

Rule . Conference Committee Procedures

The Senate President shall have authority to adopt appropriate conference committee procedures.

Procedures for Amending the Senate Rules

Rule 86 of the Senate Rules provides:

- (1) No rule of the Senate shall be amended or rescinded nor shall any new rule be adopted, without one day's notice of such change. Any such action shall require a majority vote of the members of the Senate.
- (2) Any rule may be suspended for a particular purpose upon a majority vote of the members of the Senate.
- (3) Any violation of these Rules shall be referred to the President for appropriate action.

The adoption of rule changes is made by Senate Resolution adopted on the floor in compliance with Rule 86 of the Senate Rules.

Senate Rules Interface with House Rules

Because the Senate is an independent body of the legislature, the Senate Rules may be different than the rules of the House. Section 12 of article III of the Hawaii State Constitution states in pertinent part: "Each house shall ... determine the rules of its proceedings[.]"



Senate Rule Changes and Discussion of Issues

Based upon the testimony received at the hearing, your Committee has determined that certain clarifying amendments can be considered to the Senate Rules to address concerns about procedures and voting.

6. Bill Referral

In 1959, the Rules of Procedure of the Senate, Legislature of the Territory of Hawaii (1959 Rules), provided in Rule 55(2) that the Senate President makes the referral to the appropriate standing committee. In 2001, a rule change was made in Rule 45(3) to provide that the majority leadership make the referrals. Testimony indicated to your Committee that the process of bill referral should be clarified in the interests of informing the public of what actually occurs.

Rule 46 of the Senate Rules provides in pertinent part:

- (2) The majority staff office shall make recommendations to the majority leadership on the referral of each such bill to appropriate Leadership or Standing Committees.
- (3) Each such bill shall be referred by members of the majority leadership appointed by the President, to one or more appropriate Leadership or Standing Committees for consideration.

Your Committee presents the following alternative to the current wording of Rule 46(3):

- (3) Each such bill shall be referred by members of the majority leadership appointed by the President, which appointment shall not include the President, to one or more appropriate Leadership or Standing Committees for consideration[-], based upon the relation of the subject matter of the bill to the purview of the appropriate standing committee as described in Rule 17; provided that all bills containing any appropriation or having any fiscal impact shall be referred to the Committee on Ways and Means as the committee of last referral.

The alternative wording is intended to ensure that the bill is referred to the appropriate committee with jurisdiction over the substance of the bill. Your Committee notes that the



President is currently not a member of the majority leadership for purposes of bill referral, but nonetheless the issue was raised and needs to be clarified.

Your Committee notes that a referral may be changed under Rule 46(4) of the Senate Rules, upon written request of any chair who is aggrieved by the referral. Thus, there is recourse for any committee chair who wishes to contest the referral of any bill.

7. Holding a Hearing on a Bill

Rule 23 of the Senate Rules provides for the scheduling of hearings on a bill:

- (1) Subject to this rule, the selection and scheduling of a bill for public hearing shall be at the discretion of the chair of the committee having jurisdiction over the bill.
- (2) The chair's determination that a bill will have a public hearing shall be final notwithstanding the opposition of a majority of the members of the committee.
- (3) At the written request of a majority of the members of the committee, the chair shall schedule a bill for public hearing.

The rule was adopted for the 1993 Session and has not been amended. The rule does not require that the committee hold a hearing on every bill referred to it. The decision of whether to hold a hearing is at the discretion of the Committee Chair. Rule 23(3) provides procedures for committee members to force a hearing on a bill.

Time constraints (between bill referral and second reading or between second and third readings) dictate against having more elaborate or formal procedures such as a committee meeting to decide on whether to hold a hearing on a bill. A meeting of the committee members would necessitate public notice and recording of the vote. The actual hearing on the bill would be at a later point in time. This is simply impracticable. The current practice is necessary due to the inherent limitations of the constitutionally mandated legislative days and three readings in each house.

Furthermore, the decision on whether to hold a hearing is implicit in the authority of the Chair, who was selected with the



concurrence of the colleagues in the Senate who have in effect delegated that authority to the Chair for reasons of the subject matter expertise and procedural efficiency.

Your Committee references the testimony of the Attorney General: "The Equal Protection Clause of the Fourteenth Amendment and the 'one person, one vote' principle does not require a properly apportioned legislature to distribute power and influence so that every legislator is as powerful and influential as every other member of the body." Therefore, your Committee does not recommend any amendment to the current Rule 23.

8. Decisions to Defer

A standing committee chair's deferral of a decision-making on a bill has been raised as an objection to the current practice. Your Committee views this matter as inherent in the duties of committee chairs, as provided in section 611(a) of Mason's Manual of Legislative Procedures, 2000 edition (Mason's): "To call the committee together and to properly perform its functions." Further, the decision to defer is not made pursuant to a motion to postpone indefinitely requiring a vote under parliamentary procedure.

A measure that is deferred can be restored to the standing committee's hearing agenda at any time, because the measure is not being held. A committee chair may have many reasons to defer a measure, including the fact that the testimony indicates that it may be imprudent or unnecessary but may have some merit, or that the chair desires the bill to be redrafted by the proponent of the bill before going forward with it. Though it can be frustrating to the public, the procedure is a necessary part of the committee process.

Your Committee notes the parliamentary procedure found in Mason's 365, motion to postpone definitely, or Mason's 334, motion to lay the question on the table: "A motion to lay the question on the table until a certain time is a motion to postpone definitely." (Mason's 334)

However, in view of the public sentiment expressed at a hearing for public input held on November 24, 2003, your Committee has proposed an amendment to the Senate Rules. In the interests of explicitness of the Senate Rules, your Committee offers the following addition to the Senate Rules on bill deferrals:



Rule . Deferral of a Bill

The Chair of a Committee may defer further consideration of a bill and state publicly the reasons therefor at the hearing; provided that any member or the committee may move to take a vote on the deferral, in which case the chair shall proceed to take a vote immediately or at the next scheduled hearing of the committee. Upon such motion, a majority vote of the quorum of the committee shall be required to defer a bill.

9. Standing Committee Decision-Making Rules

Rule 22 (1) and (2) of the Senate Rules of the Twenty-Second Legislature, relating to decision-making by standing committees, was adopted as Rule 21 for the 1995 Session, and provides in pertinent part:

- (1) The chair of a standing committee may commence a decision-making meeting and open discussion on matters referred to the committee without a quorum; provided that the decision-making by the committee on matters that are referred to it shall be conducted with a quorum of the committee present. A quorum shall be a majority of the membership of the committee.
- (2) A favorable vote of a majority of the members present at a decision-making meeting duly constituted with a quorum is required to report a matter out of committee. A member voting "with reservations" shall be counted as a favorable vote.

The rule provides for a vote by a majority of the quorum, which could be less than a majority of the entire committee. The Constitution is silent on the quorum and vote requirements in committee. In contrast, the Hawaii Constitution does provide requirements pertaining to floor sessions. Section 13 of Article III of the Hawaii State Constitution states in pertinent part, "A majority of the number of members to which each house is entitled shall constitute a quorum of such house for the conduct of ordinary business, of which quorum a majority vote shall suffice; but the final passage of a bill in each house shall require the vote of a majority of all the members to which such house is entitled[.]" Thus the passage of a bill on second reading constitutionally requires a majority of the quorum. Similarly, the passage of a bill out of committee requires a majority of the quorum.



Further, a less-than-majority vote in a standing committee is constitutionally permissible because section 12 of article III of the Hawaii Constitution states in pertinent part: "Each house shall ... determine the rules of its proceedings[.]"

An argument could be made that a standing committee could prevent a bill from reaching the floor by a majority vote of the members present rather than the majority of the entire committee. For example, a five person committee could decide on a bill with a vote of two members of a three-member quorum. Public opinion may view this vote as inherently unfair. This view is embodied in S.R. No. 147, which states that a goal of the committee is "...to ensure that Senators' voting rights are fairly apportioned and considered."

However, most Senators are normally stretched for time during the Session and cannot attend every hearing (including decision-making) at all times. There are simply too few Senators who can serve on every committee. An effort is made by Senate Leadership to distribute committee membership to provide for the maximum possible number of Senators on each committee. The number of committees could be shrunk, but this means that the entire gamut of issues could not be adequately considered. As discussed above, the opinion of the Attorney General supports the constitutionality of this rule.

Possible solutions are to:

- (1) Increase the number of members of a committee so that a vote of the majority of the quorum (which is a majority of the committee) presents the appearance of adequate representation; or
- (2) Change the rules to require a majority of the entire membership of the committee to vote on a bill.

Increasing the number of members of a committee could necessitate a reduction in the number of committees. Requiring a majority vote of the entire membership of a committee could cause scheduling problems, especially in light of the number of committees. Your Committee did not find a solution which is practical.



Caucus Meetings

Senator Les Ihara expressed a concern at the hearing on November 24, 2003, that meetings of the caucus, now engaged in private, should be considered as a committee meeting under Senate Rule 21, requiring meetings to be public if the caucus votes. This discussion ensued from Senator Hanabusa's remarks detailing the recommended procedures your Committee would follow thereafter.

It was clarified that the recommendation of your Committee is not to have senators vote, but to merely discuss this report in caucus. Notwithstanding, a discussion on the openness of caucus merits discussion herein.

Your Committee is of the opinion that caucus meetings are not mandated to be open to the public, for the following reasons:

- (1) Section 92-10, Hawaii Revised Statutes (HRS), relating to the applicability of the sunshine law to the legislature, relegates the matter to the Senate Rules:

§92-10 Legislative branch; applicability. Notwithstanding any provisions contained in this chapter to the contrary, open meeting requirements, and provisions regarding enforcement, penalties and sanctions, as they are to relate to the state legislature or to any of its members shall be such as shall be from time to time prescribed by the respective rules and procedures of the senate and the house of representatives, which rules and procedures shall take precedence over this part. Similarly, provisions relating to notice, agenda and minutes of meetings, and such other requirements as may be necessary, shall also be governed by the respective rules and procedures of the senate and the house of representatives.

- (2) Senate Rule 21, relating to meetings of committees, refers to decision-making sessions of leadership committees and standing committees. The caucus will not vote on any proposed amendments to the Senate Rules. Rather, the whole Senate will vote and debate the proposals on the floor when the Session commences in January 2004. Therefore, the caucus meeting is for informational purposes.
- (3) The Senate Rules are otherwise silent on caucus meetings.



- (4) Closed caucus meetings are necessary to the functioning of the legislature. A democratic government is not circumvented in the process. Open meeting requirements are intended to provide for open decision-making or "the formation and conduct of public policy - the discussions, deliberations, decisions, and action of governmental agencies." (section 92-1, HRS)

Caucus meetings allow Senators to express opinions and discuss issues, which is a necessary to make enlightened and informed decisions at a later time. No rule or law should require the mental processes of a legislator to be made public, which is what an opening of a caucus meeting to the public would be tantamount to and would have a chilling effect on the deliberative process.

A distinction must be made between a meeting of a regulatory agency and a meeting of a legislative caucus. A regulatory agency decides who wins or loses a case before it, or promulgates rules. A legislative caucus does not decide cases and does not vote on a bill.

- (5) Any Senator is free to bring any matter discussed in caucus to the floor of the Senate for a comment, debate, and criticism.

Conclusion

Your Committee presents this report as a discussion of the issues and a presentation of alternatives to the current Senate rules and conference rules. Your Committee's recommendation is that the members of the Senate take appropriate action on the Senate floor, in the interests of maintaining open discussions and obtaining input.

Respectfully submitted on
behalf of the members of the
Special Committee,

COLLEEN HANABUSA, Chair





hanabusa1

From: Sen. Les Ihara, Jr.
Sent: Friday, November 14, 2003 12:14 AM
To: Sen. Colleen Hanabusa
Cc: Sen. Cal Kawamoto; Sen. Suzanne Chun Oakland; Sen. J. Kalani English; Sen. Carol Fukunaga; Sen. Bob Hogue; Sen. Robert Bunda; Sen. Shan Tsutsui; Sen. Donna Mercado Kim
Subject: FW: Conference Committees

To SR 147 Committee Chair & Members: I have provided FYI an email response from NCSL to a request to research conference committee procedural practices in other state legislatures.

LES IHARA, JR.
State Senator, 9th District

From: Brenda Erickson
Sent: Thursday, November 13, 2003 11:16 AM
To: senihara@capitol.hawaii.gov
Subject: Conference Committees

Senator Ihara:

Conference committee procedures usually are incorporated as part of either the joint or Senate/House/Assembly rules. I know of two states that don't use conference committees--Delaware by tradition and Nebraska because its legislature is unicameral.

Most commonly, a conference committee report must be approved by majority vote of the conferees from each chamber. The second most frequently used vote requirement is majority of all conferees. I am not aware of any other legislature that gives special "approval or veto" power over conference reports to a fiscal (or any other) committee chair. When appointing conferees, however, some chambers include the chair (or a member) from the standing committee with jurisdiction--which could be the fiscal committee if the bill being considered had fiscal implications.

I hope this information is helpful. Please let me know if you have any questions or need further assistance.

Sincerely,

Brenda Erickson
NCSL Legislative Management Program
7700 East First Place
Denver, CO 80230
phone: 303-364-7700, x1391
e-mail: brenda.erickson@ncsl.org

hanabusa1

From: Arvid T. Youngquist [thirr33@yahoo.com]
Sent: Monday, November 17, 2003 6:45 PM
To: Colleen Hanabusa
Subject: Follow-Up Testimony on Draft Report to S.R. No. 147 Hearing of 10/20/2003

Senate Judiciary & Hawaiian Affairs Committee

Chairman Sen. Colleen Hanabusa
Vice Chair Sen. Suzanne Chun Oakland
Senate Majority Leadership
Sen. Donna Mercado Kim (Vice President)
Sen. Shan S. Tsutsui (Majority Caucus Leader)
Hearing on Draft Report for S.R. No. 147
Monday, Nov. 24th, 2003 2:30 PM

Thank you for transmitting an electronic version of your hearing notice. I appreciate it very much and plan to attend in person to testify.

I would like to provide the following additional remarks relative to the language of the draft report.

There were two options offered regarding Committee decision making: (a) increase the Committee membership (b) decrease the number of Committees.

I think a **third option** should be also considered: have less members on Committees, except for the Ways and Means (and the Finance Committee). These committees both have 15 members. Since these are both important Committee assignments, perhaps the number 15 should be retained.

But for the House to have 15 on CPC & JUD, and the Senate to have less on equivalent Committees places a disproportionate membership during the Session. There is no remedy to this.

Having either 3 or 5 members at most, & limiting Committee memberships to not more than 3 separate Committees, and also having either the Chair or the Vice Chair of all Committees be alternately from Oahu or the Neighborhor Islands might assist in providing the proportionate representation during the Session, and furthermore limiting the number of Committee obligations to 3 might take the burden of multiple memberships and duties off the legislators.

In the **House**, AGR & EDB Committees with **14** members is disproportionate in representation. In the Senate CPH, ECD, EDU, HMS, JHW, & TMG are each **7** member Committees. ENE, HTH, & TSM are **6** member Committees. And LBR, SAT, & WLA Committees are **5** member Committees. Senators in Committees with **6** or **7** members could be excused some of the Committee assignments, so that Committee hearings are well-represented by Senators, and also so that they are not so thinly spread out. Since the House has twice as many members as the Senate, multiple Committee assignments is less of a problem, and in fact it may be desirable for the freshmen legislators.

But for the Senators, reducing the number of Committee members and limiting the number of Committees on which they must serve might alleviate the difficulty in hearings & decision-making.

Most of what I wanted to discuss have been covered in my previous communications (Emails), but

this final follow-up is something that escaped me initially.

Mahalo for this opportunity to provide testimony and in-put on your draft report to S.R. No. 147 which very much appears to be a collaborative work in progress. I am looking forward to your decision-making on the **Final Report** and a conclusive vote during January 2004.

Sincerely yours,

\s\

Arvid T. Youngquist

P O Box 37542

Honolulu, HI 96837

540-1910

thirr33@yahoo.com <<mailto:thirr33@yahoo.com>>

Arvid Tadao Youngquist

c/o The Mestizo Association

P. O. Box 37542 Honolulu, Hawaii 96837

Tel. (808) 540-1910 (unlisted voice mail)

"Ye shall know the Truth and the Truth shall set you free."

(A Scripture Quotation at the Foot of the U.T. Tower in Austin, Texas)

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hanabusa1

From: Arvid T. Youngquist [thirr33@yahoo.com]
Sent: Thursday, November 13, 2003 9:21 PM
To: Colleen Hanabusa
Subject: "Corrected Copy"Testimony for 11/24/2003 Hearing on Draft Report for S.R. No. 147

Lehua:

Hello. Thanks for sending me the cover letter with the draft report by the Committee Chair. This is a short corrected testimony. Corrections (2) are bracketed []:

"Arvid T. Youngquist" <thirr33@yahoo.com> wrote:

Date: Thu, 13 Nov 2003 22:20:52 +0000 (GMT)
From: "Arvid T. Youngquist"
Subject: Testimony for 11/24/2003 Hearing on Draft Report for S.R. No. 147
To: Colleen Hanabusa

Senate Committee on Judiciary & Hawaiian Affairs
& Senate Leadership Senators
Nov. 24, 2003
Hearing on Draft Report for S.R. No.147

Thank you for providing me this opportunity to submit written testimony on the draft report for S.R. 147 for the hearing held on 10/20/2003.

My name is Arvid T. Youngquist. I testify as a private citizen and as an individual.

In am [in **general support** for the] various options and alternatives suggested in the draft report. They are all improvements on the existing model. Although providing the Senate President carte blanche authority to promulgate any Senate Rules or Amendments gives me pause, as the Rules are the Standing Rules, if the majority, either of the Democratic Caucus or the majority of the **25** Senators voting in the affirmative in open session appears to me to be **equitable** and **fair**.

The reduced powers and influence of the Conference Chairs may be acceptable also even if it does so by increasing the powers of the money committee chairs.

The various references to how the Hawaii Constitution is silent on certain subjects relative to the Senate Rules, and that the Rules are not in violation of the Hawaii Constitution might either be remedied voluntarily by Amending the Senate Rules, or in an extreme circumstance, Amending the Hawaii Constitution, or calling for a Con-Con.

Although the draft report makes no direct recommendations, the final report should provide the Senators, a list of **acceptable alternatives** and options for change, if they are so inclined, amongst such list, the Senate President could choose a Senate Rule acceptable to the Democratic Caucus and the Senate Membership majority. This must be **considered** in the case the Caucus is divided evenly with only [1-5] margin of difference.

Thank you for this opportunity to supply written testimony about the draft report and I hope the January 2004 session will be the dawning of "a new age" of open government legislation and voluntary public scrutiny which will pass muster of "good government."

Mahalo.

Arvid T. Youngquist
P O Box 37542
Honolulu, HI 96837
540-1910
thirr33@yahoo.com <<mailto:thirr33@yahoo.com>>

Arvid Tadao Youngquist
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Tel. (808) 540-1910 (unlisted voice mail)
"Ye shall know the Truth and the Truth shall set you free."
(A Scripture Quotation at the Foot of the U.T. Tower in Austin, Texas)

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hanabusa1

From: Arvid T. Youngquist [thirr33@yahoo.com]
Sent: Thursday, November 13, 2003 12:21 PM
To: Colleen Hanabusa
Subject: Testimony for 11/24/2003 Hearing on Draft Report for S.R. No. 147

Senate Committee on Judiciary & Hawaiian Affairs
& Senate Leadership Senators
Nov. 24, 2003
Hearing on Draft Report for S.R. No.147

Thank you for providing me this opportunity to submit written testimony on the draft report for S.R. 147 for the hearing held on 10/20/2003.

My name is Arvid T. Youngquist. I testify as a private citizen and as an individual.

In am **general in support** the various options and alternatives suggested in the draft report. They are all improvements on the existing model. Although providing the Senate President carte blanche authority to promulgate any Senate Rules or Amendments gives me pause, as the Rules are the Standing Rules, if the majority, either of the Democratic Caucus or the majority of the **25** Senators voting in the affirmative in open session appears to me to be **equitable** and **fair**.

The reduced powers and influence of the Conference Chairs may be acceptable also even if it does so by increasing the powers of the money committee chairs.

The various references to how the Hawaii Constitution is silent on certain subjects relative to the Senate Rules, and that the Rules are not in violation of the Hawaii Constitution might either be remedied voluntarily by Amending the Senate Rules, or in an extreme circumstance, Amending the Hawaii Constituion, or calling for a Con-Con.

Although the draft report makes no direct recommendations, the final report should provide the Senators, a list of **acceptable alternatives** and options for change, if they are so inclined, amongst such list, the Senate President could choose a Senate Rule acceptable to the Democratic Caucus and the Senate Membership majority. This must be **considered** in the case the Caucus is divided evenly with only 1-3 margin of difference.

Thank you for this opportunity to supply written testimony about the draft report and I hope the January 2004 session will be the dawning of "a new age" of open government legislation and voluntary public scrutiny which will pass muster of "good government."

Mahalo.

Arvid T. Youngquist
P O Box 37542
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540-1910
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Arvid Tadao Youngquist

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"Ye shall know the Truth and the Truth shall set you free."
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HAWAII CLEAN ELECTIONS COALITION
49 s. Hotel Street, Suite 314, Honolulu, HI 96813

TO: Senate Judiciary Committee and Senate Leadership
FROM: Grace Furukawa, President, Hawaii Clean Elections Coalition
RE: Senate Resolution 147, Senate Rules
DATE: Monday, November 24, 2003, 2:30 PM in Room 229

My name is Grace Furukawa and I am President of the Hawaii Clean Elections Coalition. I wish to express my sincere Mahalo to this committee for considering the issue of the assignment of bills in the Senate, even though it was not in the original discussion

Your suggestion noted who is responsible for bill referrals and that bill referrals be "based upon the standing committee as described in Rule 17". For five years now it seems our bill has always been assigned in such a way as to insure its defeat. The Committee on Transportation, Military Affairs and Government Operations deals with those programs relating to air, water, and surface transportation; civil defense; military and veteran's affairs; state government operations policy including procurement and government efficiency; ethics; county, federal, and foreign relations; and matters of concern to the counties. The Judiciary Committee, among other things has specific jurisdiction over campaign spending and elections.

Also there is a question of deferring bills without a vote. We feel this should be subject to a vote of the committee. Without that vote the public cannot know where the various senators stand on an issue. They feel that this is only another avenue for one legislator to defeat a bill.

We hope this year, after the passage of our bill in the House; it will be given a chance in the Senate. When the public perceives that a system is manipulated anywhere along the route to assure passage or defeat of any measure, it withdraws from participating in the process and no longer feels their community concerns matter. It defeats the democratic process.

SR147 Relating to Senate Rules; Interim Study on Committee

Monday, November 24, 2003; Time: 2:30 PM; Place: Conference Room 229;
State Capitol 415 South Street;
From: Paulette A. Tam; P O Box 4787, Kaneohe HI 96744 or
PTam1861@yahoo.com

P Tam *PTam*
P O Box 4787
Kaneohe HI 96744

**Attn: Senator Colleen Hanabusa, Chairman and Members of the
Judiciary and Hawaiian Affairs Committee, Appointed Members of Senate
Leadership & interested Members of the Public:**

I support the Draft Report SR147, because to me the current decision-making conference procedures appears to hinder Senate or House Bills addressed at joint or standing committee meetings from reaching the "Legislature's Floor for a final vote" has given me the impression grass roots public participants' efforts isn't welcomed which results with a sensible belief that:

"It is a waste of the public's participation unpaid personal time and out of pocket expenses for 20 + written testimony (paper) copies, automobile gas, lunch, parking, lost employment wages when a person takes unpaid leave to testify, and taxes that pay the legislators wages."

Please pass the Draft Report SR147 Relating to Senate Rules; Interim Study on Committee.



THE LEAGUE OF WOMEN VOTERS OF HAWAII

49 SOUTH HOTEL STREET, ROOM 314 HONOLULU, HAWAII 96813 PH. (808) 531-7448

November 24, 2003

TESTIMONY ON S.R. NO. 147 REQUESTING THE SENATE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS and two members of senate leadership to conduct an interim STUDY of the senate rules regarding DECISION-MAKING by STANDING committees and conference procedures regarding DECISION-MAKING BY conference committees.

The League of Women Voters of Hawaii
Testifying: Jean Aoki, Legislative Chair

Chair Hanabusa, Senate Vice-President Kim, Majority Caucus Leader Tsutsui, and members of the Senate Committee on Judiciary and Hawaiian Affairs,

The League of Women Voters would first like to thank you for this opportunity to testify on the draft report and for your efforts which made these open meetings on parts of the Senate Rules possible. We also appreciate your allowing comments on other procedures not specified by Senate Resolution 147. As far as I know, the two open hearings held by this committee on a review of certain Senate rules are unprecedented.

The purpose of this study, as you proclaim in page two of your report under Background, is to consider whether the Senate rules and the conference procedures "need to be amended to ensure that Senators' voting rights are fairly apportioned and considered".

You also note that, in the opinion of the Attorney General, in the absence of a constitutional mandate, the Legislature has exclusive authority to determine the procedures necessary to conduct legislative affairs. We do concede that the State is all-powerful except as restrained by certain provisions in the constitution and provisions which serve to protect the rights of the people. But when the people see the unfairness of certain procedures or rules, it is not easy to amend the constitution to institute

protections for the people. For one thing, under the present system, the Legislature must approve any proposed amendments to the constitution before they are placed on the ballot. If this body were inclined to approve such a proposed amendment, you would amend your rules to reflect the objective(s) of such an amendment.

In the opinion of the Attorney General, the equal protection clause and the one person, one vote principle does not require a properly apportioned legislative body to distribute power and influence so that every legislator is as powerful and influential as every other member of the body. We can agree with that. We note that even if you were to operate with no committees except a committee of the whole, natural leaders will rise who will wield more power even if the power were not bestowed upon them by rules, by virtue of their leadership skills and the respect accorded them by the other members. A body needs some people in positions of different degrees of power to assure that the work of the body is accomplished and on time.

The Attorney General goes on to say that the U.S Supreme Court has held that changes which affect only the distribution of power among officials have no direct relation to, or impact on, voting; and that the only legally protectable interest of legislators is in not having their final vote on a legislative act completely nullified.

But, we contend, what is legal may not necessarily be fair. What the public is addressing at this time is mostly a fairness issue—that each senator's vote carry the same weight as another senator's, not only on the final vote on a bill but on all votes, which would result in all senators' constituents having equal representation. I hark back to the purpose of this study which is to see if certain decision-making procedures related to decision-making by conference committees **meet constitutional muster and are open and fair**. And we do applaud this committee for bringing up certain provisions for consideration and discussion despite the Attorney General's opinion of the right of the Senate to determine senators' "voting rights".

Consistent with our views on equal voting rights for all senators, in regard to decision-making by conference committees, we very much prefer version C. in which all senators appointed to the committee are members with only one chair appointed to perform ministerial duties, except that we would want that chair to serve as lead chair as well, to be the main spokesperson for the senate conference committee. To that, there could be the addition of the amendment found in version A. which has to do with the approval of the chair of the Ways and Means Committee.

Our contention is that by giving some senators' votes more weight than the vote of the other members of the conference committees, you are denying the residents of many districts equal representation in the Senate. In so doing, you are violating the spirit of one man, one vote. What good is there in guaranteeing that the districts are divided equally by population so that each Hawaii resident enjoys equal numerical representation in the Senate, when one senator's vote is not equal to that of another senator?

Under Scope of Amendments, beginning on page 8, the proposed amendment to . a. would be a welcome one. If adhered to, it would remove the source of many complaints. The practice of slipping in new material or parts of another bill never heard, happens not only in conference committees but in subject matter committees. Amendments are announced in the decision-making phase of the hearing, especially when the decision is deferred for a few days, and the audience has no opportunity to react to it except through letters to the editors, and in other ways going public.

The suggested language under Appointment of Conference Committee Chairs and Managers is very good. However, should the senate adopt :Option C under the conference committee decision-making procedure, you might have to make some slight changes in the wording of the rule.

If the Senate should adopt the proposed amendment to the conference procedure proposed under #5. Binding Votes, it would bring a measure of integrity and openness to the process. Again, as in the prior proposed amendment, should the senate opt for Option C, the wording for this proposed amendment would need to be changed.

We applaud the proposed amendment to Rule 46 (3) which is intended to assure that all bills are referred to the appropriate committees. Any person or group that has a bill introduced in the legislature has the right to expect that its bill be accorded the proper respect, beginning with a referral to the committee that has jurisdiction over that particular subject matter.

On number 8, Decision to Defer, I'm not entirely convinced by your arguments. Your claim that a deferred measure can be restored to the standing committee's hearing agenda at any time because it has not been held in committee is a defensible argument except that, as is pointed out in in various parts of your document, the internal and external deadlines of this house and the entire legislature places constraints on the time available for maybe preferred practices to be followed, and, I contend, probably places

barriers to the measure ever being restored. Also, in answer to another argument in defense of the practice, generally when a bill needs to be redrafted, or a complicated amendment made, the chair will defer the decision-making to some date certain, or announce that when the bill is ready, the notice for the decision-making will be posted. If this ruling is to be used, at the very least, it would help if the chairs were to announce the reasons for the deferment.

As far as 9. Standing Committee Decision-Making Rules, the present practice is far preferable to the practice by congressional standing committees, where, in a recent committee meeting where amendments were being considered, every second or third vote seemed to be "aye by proxy", or "no by proxy".

Again, the League of Women Voters wishes to extend our sincere appreciation for first, hearing all of the public's concerns, and then giving us this opportunity to comment on your draft report. We also appreciate the thorough discussion which precedes your proposals to amend or not to amend certain rules. Thank you.



GREEN PARTY of HAWAII

November 23, 2003

TO: COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
Senator Colleen Hanabusa, Chair

**TESTIMONY
COMMENTS ON INITIAL REPORT ON**

S.R. No. 147, "considering Senate rules regarding decision-making by standing committees and conference procedures regarding decision-making by conference committees."

Monday, November 24, 2003
Conference Room 229

Good Afternoon-

First, I would like to commend this special committee and its Chair for reviewing these questions about Senate rules. I note too that the public is watching, and supportive of the proposed changes to democratize the Senate procedures. Both the Honolulu Advertiser and Star Bulletin contained approving editorials last month-- "**Legislature needs shot of democracy**" (Oct 22)
<http://starbulletin.com/2003/10/22/editorial/editorials.html>

"Democracy means all lawmakers are equal" (Oct 22)
<http://the.honoluluadvertiser.com/article/2003/Oct/22/op/opo2a.html/>

Second, I want to endorse two vital principles, that others have spoken on in length and detail. Your final report should recommend essentially that:

- 1) Chairs should **not** have veto powers over Conference Committee decisions.
- 2) Bills should always be assigned to committees which have a **normal, direct, and logical** jurisdiction over the subject matter of the bill. Descriptions or interpretations of committee responsibilities should be not be gamed to allow a Chair to capture control over any bill he or she wants to hear, regardless of the normal purview of that committee.

Finally, I believe the Committee, which has examined these rules in considerable detail, should present a strong set of pro-democracy recommendations to the full senate.

Thank you,

Ira Rohter
Ira Rohter
State CoChair
732-5497

To: Senator Colleen Hanabusa, Chair
Senate Committee on Judiciary
State Capitol, Honolulu, HI 96813
Fax 586-7797

November 24, 2003

Re: Senate Resolution 147

Chair Hanabusa, Vice Chair Chun Oakland, and Members of the Committee

Thank you for convening this special committee in an open manner with citizen input. It is very timely that you are addressing some of the obstacles to fair and democratic law making. In the interest of justice and democracy something must be done to reduce the ability of a few to determine the fate of legislation even when the large majority of the legislators and the citizens are supportive. This situation is very demoralizing for citizens and may explain in part the relative low voting turnout.

I highly recommend two major corrections be made to our Senate Rules, which I believe have been abused.

1. Change the Senate's arbitrary any-committee-referral rule with assignment of bills to committees of relevant subject matter. The current rules are subject to blatant manipulation.
2. Eliminate the veto power of conference committee chairs. This is subject to outrageous special interests against fairness and equality of the majority of senators.

Ironically, the above practice, which I would characterize as "not very clean" political abuse, has been a major factor in derailing Clean Election reform in Hawaii.

Thank you for hearing our views.

Mahalo and Aloha,

Rev. Samuel L. Director
Christian Unity and Interreligious Concerns
Hawaii District, United Methodist Church
1216 Keolu Drive, Kailua, Hawaii 96734

Senator Colleen Hanabusa
Chair, Senate Committee on Judiciary

November 23, 2003

Re: S.R. 147

Aloha Chair Hanabusa, Vice Chair Chun Oakland and Members of the Committee.

Thank you for chairing this special committee in an open manner, making it possible for citizen input to be heard .

I strong support the intention of S. R. 147 which makes it mandatory that legislative bills be referred to standing committees based on the jurisdictions currently described in senate rules. I have in the past been aware of times when bills have been assigned to committees that do not have jurisdiction over the subject matter. This has not only made me distrustful of the good intentions of the senate, but it has caused many voters to withdraw from the process in distrust and disgust.

I also urge your committee to recommend deletion of the conference chair veto powers over committee reports. This veto power, as I have seen it used, as also included fiscal chair veto power. Voting in a democracy demands equality and a prohibition against special veto powers by committee chairs.

I ask that the Senate Judiciary committee make recommendations in its final report to the full senate in compliance with SR 147. Please remove from the draft report reference to decision-making in caucuses.

Thank you for considering my testimony.

Judy A. Rantala
21 Craigsid e Place 5A
Honolulu, HI 96817

Carolyn Martinez Golojuch, MSW

92-954 Makakilo Dr. #71

Makakilo, HI 96707

808 672-9050

Fax: 808 672-6347

Email: golojuhc@hawaii.rr.com

November 22, 2003

TO: SENATE JUDICIARY COMMITTEE

RE: S.R. 147

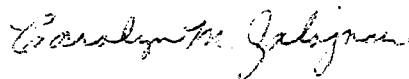
Aloha,

Senator Hanabusa, you are well known for your love of truth and justice. In fact, you have on more than one occasion put your political career on the line for the sake of these values. For this, the people of Hawaii can be grateful. This is the kind of leadership that is called for with S. R. 147.

In regards to S. R. 147:

- 1) Please be sure that conference committee chairs do not have the veto power as democracy is greatly harmed by this misplaced power. Each vote must retain its power to represent the people who elected them. I do not vote to create a throne for a despot but rather, I vote to elect a statesperson who will serve the needs of the community to the best of their ability. I expect elected officials to work for the good of the people not to line their pocketbooks, or to build empires protected by veto power. Please remove any veto power within the senate, including the removal of the fiscal veto power.
- 2) Please return the assignment of proposed Senate Bills back to the model as described in the Senate Rules which directs the bills to those committees with direct jurisdiction over the subject matter of the bill. This is only common sense. By returning to the prescribed format, democracy has an opportunity to succeed.
- 3) In compliance with S.R. 147, committees shall make recommendations in its final report to the full Senate. This will give the full Senate the benefit of the work of the committee and document the work for the information of the people of Hawaii. We have a need to know.
- 4) Please remove references to decision-making in caucuses from the draft report to assist with streamlining the reporting process.
- 5) Finally, to include and strengthen the participation of the committee members in the process within the committee, please require a vote on a chair's decision to defer a bill. This will further ensure that the committee has full participation within the committee process and will remove the appearance of a straw committee.

An interested voter and citizen,



Carolyn Martinez Golojuch, MSW

"If more people believed in justice, equality would be reality." cmg

Richard S. Miller
Professor of Law, Emeritus, University of Hawai'i at Manoa

Tel.: (808) 254-1796; Fax: (808) 254-1596
E-mail: rmiller@aya.yale.edu

TESTIMONY FOR HEARING BEFORE THE COMMITTEE ON JUDICIARY AND
HAWAIIAN AFFAIRS AND THE SENATE LEADERSHIP
Monday, November 24, 2003, 2:30 p.m., Conference Room 229

Chair Hanabusa, Vice Chair Chun Oakland, Vice-President Mercado Kim,
Caucus Leader Tsutsui and distinguished members of the Committee:

I read the report prepared in compliance with SR 147 and wish to thank you for undertaking this important project. I believe, however, that the positive effects of your efforts will only be achieved if the Senate adopts the recommendations of the Hawai'i Clean Elections Coalition. I share the Coalition's views and strongly urge their adoption.

More particularly, I believe (1) that conference committee chair veto powers, including the fiscal chair vetoes, should be deleted, and (2) that the Senate's arbitrary any-committee-referral practice should give way to rules that require assignment of bills only to those committees with clear and direct jurisdiction over the bills' subject matter.

I hope your final report will include specific recommendations consistent with these recommendations. Their adoption will go a long way to restore public confidence in our legislative practice.

Thank you very much for considering my testimony.

I regret that I cannot be present at today's hearing to testify personally.

Respectfully,



hanabusa1

From: Ruth Ellen Lindenberg [rlinden@lava.net]
Sent: Saturday, November 22, 2003 7:06 PM
To: senhanabusa@capitol.hawaii.gov
Subject: Testimony

I missed the hearing on change of Sewnate rulers. Late or not, you must know that the time is ripe to curb the power of Committee Chairs. They must not be able to override the wishes of their committees and vote their own personal wishes. I have seen too many good bills killed this way.

November 23, 2003

Thank you, Senator Hanabusa and Committee members, for again allowing me to testify. I am a neophyte at this so please bear with me.

Plato has been quoted as saying, "The penalty that good people pay for not being interested in politics is to be governed by people worse than themselves." The job of the governed is to see that our leaders are selected by those who are to be led and that they are limited in their power and held responsible for their action which must in the long run reflect the consent of those being governed—and all of this is democracy.

Those who insist that the U.S. is a republic, not a democracy, are defining democracy as mob rule. They assume that it means the people are ruling (much like what happened in California recently). What they ignore is the fact that in a representative democracy (which we do have), the people as a whole do not rule but rather they determine who will rule, and democracy is the process by which this determination is made. For all practical purposes, therefore, the Webster definitions of "republic" and "representative democracy" are interchangeable and both define the American system of government and what we mean by "democracy."

If the policies of our government are to reflect accurately the consent of the governed, much needs to be done to improve the legislative process in our state legislature. It must be realized that as long as the Legislature is controlled by a handful of Committee chairmen, the democratic process will not fulfill all that we have a right to expect of it.

If one person can kill a bill in the name of time efficiency, we submit it is still wrong to place time efficiency before the rights and hopes of people.

Nowhere is this problem better illustrated than what happened in 1962, when the second most powerful man in the United States was a man most people never heard of: Congressman Howard W. Smith of Virginia, Chairman of the then House Rules Committee. "In 1962 the members of the Congressional House were denied even the right to debate the youth-employment-opportunities bill after it had been duly reported by the House Education and Labor Committee. Why? Because the Chairman of the Rules Committee, Howard Smith, single-handedly refused to permit his own committee to vote on the bill after hearings had been held. Thus one stubborn man, one of the several all-powerful committee chairmen—prevailed over the entire U.S. Congress." (Saturday Evening Post, Columnist Roscoe Drummond). Congressman Smith had received less than 20,000 votes in the 1962 election to Congress.

In the meeting of this Committee on October 20, 2003, I was asked by a Senator, "Don't you want a Committee chair to vote his conscience?"

My answer to that is: Yes, I want him to vote his conscience; but I want all the members of the committee to vote their consciences also. The conscience of one person has the potential of being singularly arbitrary.

Then I want the winning majority of the Committee to remember that in a democratic republic the majority must remember they are to make sure that the legitimate rights of the minority are assiduously protected and guaranteed.

Thank you again for listening,
Jim and Yoshie Tanabe
94-1017 Waiolina Street
Waipahu, HI 96797 Tel. No. 677-4785

ADVOCATES FOR CONSUMER RIGHTS

C/O GEORGE FOX
802 PROSPECT STREET, APT. 308
HONOLULU, HAWAII 96813
(808) 524-6510
gfox@hawaii.rr.com

COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

Senator Colleen Hanabusa, Chair
Senator Suzanne Chun Oakland, Vice Chair

SENATE LEADERSHIP

Senator Donna Mercado Kim, Vice President
Senator Shan S. Tsutsui, Majority Caucus Leader

RE: S.R. No. 147
DATE: Monday, 11/24/03
TIME: 2:00 p.m.
PLACE: Conference Room 229
State Capitol
415 South Beretania Street
Honolulu, HI 96813

Honorable Chair, Vice Chair, Senate Leadership and members of the committee, Special thanks to Senator Colleen Hanabusa for chairing this special senate committee and presenting us a rare opportunity to recommend dramatic and positive changes in the way the Senate conducts the public's business. Advocates For Consumer Rights strongly believes that the Senate rules relating to decision-making by standing committees and conference committee procedures relating to decision-making by conference committees be revised. Specifically, we recommend:

1) Deletion of conference chair veto powers, including fiscal chair veto power over committee reports. The fundamental principle of voting in a democracy demands equality and a prohibition against special veto powers by committee chairs. Also, conference chair veto powers are not appropriate as "conference procedures." Because these veto rules apportion power among legislators, they are more appropriately placed in Senate and House Rules, which are adopted by vote of all legislators. The fiscal chair veto power over conference committee reports is unnecessary because "past practice" and Senate Rule 19 provides the chair with adequate control over fiscal bills. "Past practice" currently operates as a rule pursuant to Senate Rule 87. In the past, whenever there was a misunderstanding or disagreement between the fiscal chair and a conference chair on a fiscal bill, the bill in question was always recommitted whenever requested by the fiscal chair.

2) The Senate's arbitrary any-committee-referral practice be replaced with assignment of bills to committees of purview. Referrals to Senate standing committees should be as described in Senate Rules, to those committees with direct jurisdiction over the subject matter of the bill.

(These two corrections: (1) & (2) above will remove the veto power of conference committee chairs; and replacing the Senate's arbitrary any-committee-referral rule with assignment of bills to committees of purview; will greatly reduce the ability of the few to rule the many.)

3) Make recommendations in your final report to the full Senate, in compliance to SR 147.

4) References to decision-making in caucuses be removed from the draft report.

5) Allow a majority of standing committee members to require a vote on a chair's decision to defer a bill.

Adoption of the five (5) recommendations above will go a long way to fixing what many of us see as the main problem in the Senate, whereby one powerful Senate Committee Chair has numerous opportunities to kill any Bill he/she doesn't like by having that certain Bill assigned inappropriately to his/her committee for the sole purpose of killing the bill. If the companion Bill passes the house he/she may get a second shot at killing the Bill when it crosses over. If or when the Bill reaches conference committee this very same senator becomes a co-chair with the power to, once again, kill the Bill by refusing to allow it to be heard. This has actually happened even in cases where the House version passed unanimously. What we have is a one-person legislature whose vote carries more weight than the entire house. **This is not democracy!**

After every election there is much moaning and speculation over the steadily declining number of voters. Could it be that those who stay home do so because they believe their votes don't count are right? No matter whom they elect, there is a senator whose vote carries more weight! **This travesty cries out for change!**

Thank you for this opportunity to voice our concern on this important matter.

The Interfaith Alliance Hawai'i

20 South Vineyard Blvd

Honolulu, HI 96734

Celebrating Diversity Confronting Intolerance

November 24, 2003

Senator Colleen Hanabusa
Chair, Senate Committee on Judiciary

Re: S. R. 147

Aloha, Honorable Chair Hanabusa, Vice Chair Chun Oakland, and Members of the Committee:

I write representing The Interfaith Alliance Hawai'i, which was launched this past year. Our group is committed to providing a positive and healing role in Hawai'i with people of faith, good will and aloha, encouraging nonviolent civic participation, facilitating community activism, and confronting religious and political extremism. We represent members from more than 30 diverse faith traditions, have a 25 member Board of Directors, and a solid network of community advisors. We feel honored that the mantle of the former Hawai'i Council of Churches was formally passed to us this past month, especially regarding human concerns and legislative affairs.

As president of The Interfaith Alliance Hawai'i, I thank Senator Hanabusa for chairing this committee in a spirit of openness and of being citizen-friendly:

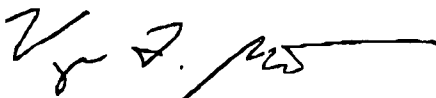
I write today to address a number of concerns which are important to our membership, and which we feel are important to our state, as we move forward:

1. We firmly believe that referral of bills to standing committees must be based upon the jurisdiction currently discribed in senate rules. To do otherwise raises public suspicion and further disengages a portion of our populace.
2. We urge the committee to recommend deletion of conference chair veto powers, including fiscal chair powers, over committee reports. Fundamental to stating we are a true democracy there is a requirement to the principle of fairness.
3. We ask that Senate Judiciary make recommendations in its final report to the full senate in compliance with SR 147.

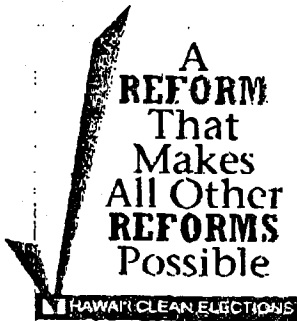
I thank you for allowing this time to share our concerns. Together, we can move forward to create the best environment possible for all people in this great land of aloha.

Blessings and peace to you.

Sincerely,



Rev. Vaughn F. Beckman, President



HAWAII CLEAN ELECTIONS COALITION

Phone 808-384-4202 / Fax 808-637-1236

<http://www.hiclean.org/>

November 24, 2003

Senator Colleen Hanabusa, Chair
Senator Suzanne Chun Oakland, Vice Chair
Senate Committee on Judiciary and Hawaiian Affairs

Re: SR 147 – In support

Aloha Chair Hanabusa, Vice Chair Chun Oakland, and Members of the Committee:

My name is Laure Dillon, and I am the executive director of the Hawaii Clean Elections Coalition. Thank you for the opportunity to offer comments on SR 147. We very much appreciate that you have held these hearings, and that you have so well addressed the concerns presented by us as citizens who endeavor to be part of the process. Thank you.

The suggestions in your draft report successfully address the concerns SR 147, as well as those brought to you by members of the community. The changes discussed by this report we respectfully urge you to adopt as your final report and to send the report to the full Senate, complying with SR 147. Please delete the reference to decision-making in caucus.

We strongly support the proposed Senate Rule amendment on bill referrals to assure assignment of bills to those committees with direct jurisdiction over the subject matter of the bill. And, if a bill is deferred, we support the ability of the standing committee members to require a vote on the chair's decision to defer the bill.

We further urge the committee to recommend deletion of veto powers of conference committee chairs, including that of the fiscal chair over committee reports. Such changes return equality to the voting process and strengthen the democratic process.

Again, we thank the chair and the committee for holding this hearing in such an inclusive manner, and to have produced a report that can greatly increase the public trust in a fair and open process in the Legislature.

Sincerely,

Laure Dillon
Executive Director

- League of Women Voters
-
- The Interfaith Alliance Hawaii
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- Hawaii Green Party
-
- Advocates for Consumer Rights
-
- Kokua Council
-
- Hawaii Independent Democrats
-
- Coalition for Good Government
-
- Life of the Land
-
- Graduate Students Organization of U.H.
-
- Hawaii Pro-Democracy Initiative
-
- Hawaii Institute for Human Rights

The Rev. Daniel L. Hatch
3358 Emekona Place
Honolulu, HI 96822

Senator Colleen Hanabusa, Senate Judiciary
415 South Beretania Street, Room 214
Honolulu, HI 96813

Dear Senator Hanabusa:

I greatly appreciate your leadership and efforts to pass a "Clean Elections" Bill for Hawaii. I think this bill is vital for the future of Hawaii, and strongly endorse your efforts.

Sincerely,



The Rev. Daniel L. Hatch

November 24, 2003

Senator Colleen Hanabusa
Chair, Senate Judiciary
Senator Suzanne Chun Oakland
Vice Chair, Senate Judiciary

Re: Senate Resolution 147

Chair Hanabusa, Vice Chair Chun Oakland, and Members of the Judiciary Committee:

My name is Jerry C.L. Chang. I regret I am not the Representative Jerry L. Chang from the Big Island. Allow me to introduce myself very briefly.

I was invited to become the Vice President of External Affairs of the East-West Center in 1974. In 1980, I decided to join the United Nations as its Representative to Paraguay with the rank of an Ambassador. Then in 1988 I became the Vice President at Large of the World Vision International, a relief and development organization with projects in more than a hundred countries. In between the two assignments, I founded Hawaii Habitat for Humanity and was its first President. Before coming to Hawaii, I held a number of assignments with the United States Agency for International Development of the Department of State. As a result, I have visited about 100 countries and lived in seven. Presently, I am the Founder and President of Humanity United Globally located in Hawaii. However, I am speaking as a private citizen.

Please excuse me for taking so much time to introduce myself. I did so to express why I am so grateful and proud to be a citizen of this country for the many opportunities given me. I am a first generation American, as I was born and raised in China.

My congratulations to Chair Hanabusa and the special committee for considering S.R. 147. From my perspective, I believe it is a most important resolution when we consider ourselves as a leading country of democracy and doing everything we can to convince other countries to follow our path. As I understand it, there are two principal elements in this resolution to correct two existing conditions in the Senate.

First, when a resolution comes up now at in the Senate, it is not automatically referred to the standing committee responsible for the subject matter concerned for review. If that is the case, then why does the Senate bother to set up standing committees at all. It indicates the Senate is really controlled by a few powerful Senators. I can appreciate there could be exceptions at times, but reasons must be clearly explained.

Second, the Conference Chair and Fiscal Chair have veto powers over committee reports. Under rules of democracy, the chair's responsibility is to moderate the meetings, make sure everyone who wants to speak has the opportunity to do so, and when important issues are involved a set of rules are followed, etc. Sometimes, the chair could withhold issues to be brought up for consideration. But generally there are definite ways for members of the committee to get around that. But for a chair to have the power to veto committee reports, then why should the committee members take the time and energy to prepare such committee reports at all?

I humbly request the Senate Judiciary recommend its final report to the full senate to comply with SR 147.

With all due respect,



Jerry C.L. Chang
4924 Waa St.
Honolulu, Hawaii 96821

LIFE OF THE LAND

Ua Mau Ke Ea O Ka `Aina I Ka Pono

The Life of the Land is Perpetuated in Righteousness

76 North King Street * Suite 203 * Honolulu, Hawai`i 96817

Phone: 533-3454 * Cell: 927-1214 * email: katbrady@hotmail.com

LATE

COMMITTEE: **JUDICIARY AND HAWAIIAN AFFAIRS**
Chair: Sen. Colleen Hanabusa
Vice Chair: Sen. Suzanne Chun-Oakland

SENATE LEADERSHIP
Sen. Donna Mercado Kim, Vice President
Sen. Shan Tsutsui, Majority Caucus Leader

DATE: Monday, November 24, 2003
TIME: 2:30 PM
PLACE: Room 229
BILL NO.: Comments on SCR 147 Report
COPIES: 20 copies, please

Aloha Chair Hanabusa, Vice Chair Chun-Oakland, Senator Kim, and Senator Tsutsui!

My name is Kat Brady and I am the Assistant Executive Director of Life of the Land, Hawai'i's own environmental and community action group advocating for the people and the `aina since 1970. Our mission is the preserve and protect the life of the land through sustainable land use and energy policies and to promote open government through research, education, advocacy, and litigation.

Mahalo for tackling the serious issues in the conference committee process, which we see as a serious flaw in our democratic process.

Open government has always been, and remains today, a major issue for Life of the Land and the people we represent. A vibrant democracy demands effective participation by its informed electorate. Our decades of work at the legislature have highlighted some things that we perceive as real barriers to democracy in the conference committee process.

The old adage, "Be careful what you wish for..." holds true for some of the problems we see.

- **The USE of Microphones in the Conference Committee:** This has been a big issue for community advocates who want to be present at the discussion of bills at the last stage of the session. Yes, the conference committee does have microphones now, but legislators rarely speak into them! So, we should have refined our wish to say, "We request that the members of the conference committee speak INTO the microphones so the public can hear the discussion taking place."
- **Copies of Proposed Drafts:** Since draft proposals are circulated for discussion, we request that copies of these proposed drafts be made available to interested members of the public.
- **Full Discussion of the Measurers at Hand:** We request that discussion on a proposed measure be done in the full light of public scrutiny. We have the distinct impression that proposed drafts are circulated to committee members before the next scheduled conference committee and discussion among members has already taken place. This leaves the impression that many decisions affecting the people of Hawai'i are done behind closed doors away the public.

- A Cost-Benefit Analysis Should Accompany all Fiscal Bills: Wouldn't it be helpful to conference committee members to have a cost-benefit analysis of all fiscal bills so they can individually assess the merits of proposed legislation? Life of the Land strongly suggests that this be considered.

We truly appreciate the spirit of the committee in addressing these most important issues to ensure an engaged and informed electorate.

Mahalo for this opportunity to testify.