

VETO

H.B. NO. 2421
H.D. 2
S.D. 2
C.D. 1

A BILL FOR AN ACT **VETO OVERRIDE**

RELATING TO GOVERNMENT.

Act No. 73
Approved: CSM J. F.
Dated: April 29, 2010

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 PART I

2 SECTION 1. Hawaii is at a crossroads. As the most
3 geographically isolated state in the country, we are dangerously
4 dependent on imports for basic food and energy. We import about
5 eighty-five per cent of our food and ninety-five per cent of our
6 energy. It has been estimated that Hawaii exported
7 \$8,600,000,000 for food and oil in 2008, and every dollar
8 exported is a lost opportunity to support and invest in local
9 businesses. Our dependence on imports also exposes residents
10 and businesses to volatile food and energy costs as oil prices
11 fluctuate.

12 In addition, the mass consumption of fossil fuels, driven
13 by our dependence on food and energy imports, contributes to
14 climate change and the deterioration of the environment,
15 including severe storm events, less rainfall, warmer
16 temperatures that favor invasive species, a rise in sea levels,
17 and ocean acidification that hampers coral growth. These
18 climate changes will likely impose major, but not fully



1 understood, costs and other impacts on Hawaii's people and the
2 natural capital we depend upon to support our lives in the
3 middle of the Pacific Ocean. Nowhere is it more obvious than in
4 remote island chains like Hawaii that our lives and the economy
5 are intertwined with the health and function of the natural
6 world around us.

7 Although Hawaii has available renewable resources like
8 solar, wind, ocean, and geothermal energy, we as a community
9 have not taken full advantage of alternative-energy and energy-
10 efficiency solutions to make the state more energy-independent.
11 As an example, despite year-round sunshine, only thirty per cent
12 of Hawaii's residents have solar water heaters.

13 Similarly, many acres of highly productive agricultural
14 lands are not being farmed. Currently, Hawaii has a fresh
15 supply of produce for no more than ten days. Ninety per cent of
16 the beef, sixty-seven per cent of fresh vegetables, sixty-five
17 per cent of fresh fruits, and seventy per cent of all milk
18 consumed in the state are imported. While Hawaii may never
19 produce one hundred per cent of its food, the risks and costs to
20 society for dependence on imported food cannot be ignored.

21 Like energy, producing local food would reduce Hawaii's
22 demand for fossil fuels, keep money in our community, and



1 decrease the State's vulnerability to food-supply disruptions
2 caused by natural disasters or worldwide economic events.

3 Now is the time for bold action to squarely address
4 Hawaii's energy and food requirements and plan for and address
5 the inevitable effects of climate change. It will require long-
6 term commitment, dedication, and the investment of capital and
7 human resources by government, the private sector, and Hawaii's
8 people to dramatically shift our present course of importing
9 food and energy toward a more energy-independent and
10 agriculturally sustainable society. As a state and as a people,
11 we must decide whether we will continue to be dependent on
12 external sources for our basic needs, or whether we will build,
13 invest in, and develop the capacity to become food- and energy-
14 independent.

15 The legislature finds that it is in the best interests of
16 Hawaii's people to build the capacity we need to become self-
17 sufficient in our energy and food needs and to protect the
18 health and function of our environment. As discussed in the
19 "Hawaii 2050 Sustainability Plan" and the "Hawaii Clean Energy
20 Initiative," Hawaii has all the necessary assets to
21 significantly improve the state's energy and food sustainability
22 and independence over the next twenty years if appropriate



1 personnel resources and funding are used wisely. To succeed,
2 the State must ensure that our long-term strategy is well-
3 resourced, coordinated, and focused.

4 The purpose of this Act is to:

- 5 (1) Promote economic development for local food and energy
6 businesses by providing necessary funding, guidance,
7 and infrastructure;
- 8 (2) Ensure Hawaii is energy and food self-sufficient and
9 sustainable to the maximum extent feasible;
- 10 (3) Help Hawaii's natural resources and population adapt
11 and be resilient to the inevitable challenges brought
12 on by climate change caused by carbon dioxide and
13 other greenhouse gas emissions from burning fossil
14 fuels;
- 15 (4) Create a Hawaii economic development task force to
16 accelerate and support public and private efforts to
17 make Hawaii energy- and food-self-sufficient,
18 consistent with the "Hawaii 2050 Sustainability Plan,"
19 the "Hawaii Clean Energy Initiative," and other
20 government and community planning efforts. The
21 legislature intends for the Hawaii economic
22 development task force to take an interdisciplinary



1 approach to seeking the most efficient and effective
2 pathways for interagency coordination, to ensure that
3 energy and food policy development will be integrated
4 within the overall economic, social, environmental,
5 and cultural aspects of society. With an
6 understanding of these overlapping goals and
7 resources, the State can maximize the opportunities to
8 ensure food and energy security for generations to
9 come;

- 10 (5) Establish an agricultural development and food
11 security special fund to fund activities intended to
12 increase agricultural production or processing that
13 may lead to reduced importation of food, fodder, or
14 feed from outside the state; and
- 15 (6) Establish a clean energy initiative to manage the
16 state's transition to a clean energy economy.

17 The legislature finds that undertaking the important task
18 of energy and food security requires a long-term commitment and
19 the investment of substantial financial resources. To that end,
20 this Act also increases the per-barrel tax on petroleum products
21 under the environmental response, energy, and food security tax,
22 formerly known as the environmental response tax.



1 PART II

2 ENVIRONMENTAL RESPONSE, ENERGY, AND FOOD SECURITY TAX

3 SECTION 2. Section 128D-2, Hawaii Revised Statutes, is
4 amended to read as follows:5 "**§128D-2 Environmental response revolving fund; uses.**

6 (a) There is created within the state treasury an environmental
7 response revolving fund, which shall consist of moneys
8 appropriated to the fund by the legislature, moneys paid to the
9 fund as a result of departmental compliance proceedings, moneys
10 paid to the fund pursuant to court-ordered awards, or judgments,
11 moneys paid to the fund in court-approved or out-of-court
12 settlements, all interest attributable to investment of money
13 deposited in the fund, moneys [~~generated by~~] deposited in the
14 fund from the environmental response, energy, and food security
15 tax [~~established in~~] pursuant to section 243-3.5, and moneys
16 allotted to the fund from other sources [~~; provided that when the~~
17 ~~total balance of the fund exceeds \$20,000,000, the department of~~
18 ~~health shall notify the department of taxation of this fact in~~
19 ~~writing within ten days. The department of taxation then shall~~
20 ~~notify all distributors liable for collecting the tax imposed by~~
21 ~~section 243-3.5 of this fact in writing, and the imposition of~~
22 ~~the tax shall be discontinued beginning the first day of the~~



1 ~~second month following the month in which notice is given to the~~
2 ~~department of taxation. If the total balance of the fund~~
3 ~~thereafter declines to less than \$3,000,000, the department of~~
4 ~~health shall notify the department of taxation which then shall~~
5 ~~notify all distributors liable for collecting the tax imposed by~~
6 ~~section 243-3.5 of this act in writing, and the imposition of~~
7 ~~the tax shall be reinstated beginning the first day of the~~
8 ~~second month following the month in which notice is given to the~~
9 ~~department of taxation].~~

10 (b) Moneys from the fund shall be expended by the
11 department for response actions and preparedness, including
12 removal and remedial actions, consistent with this chapter;
13 provided that the revenues generated by the [~~environmental~~
14 ~~response tax~~ and] environmental response, energy, and food
15 security tax deposited into the environmental response revolving
16 fund:

17 (1) Shall [~~also~~] be used:

18 (A) For oil spill planning, prevention, preparedness,
19 education, research, training, removal, and
20 remediation; and

21 (B) For direct support for county used oil recycling
22 programs; and



1 ~~[(C) For deposit into the energy security special~~
2 ~~fund, established under section 201-12.8, as may~~
3 ~~be appropriated by the legislature; and]~~

- 4 (2) May also be used to support environmental protection
5 and natural resource protection programs, including
6 ~~[but not limited to]~~ energy conservation and
7 alternative energy development, and to address
8 concerns related to air quality, global warming, clean
9 water, polluted runoff, solid and hazardous waste,
10 drinking water, and underground storage tanks,
11 including support for the underground storage tank
12 program of the department and funding for the
13 acquisition by the State of a soil remediation site
14 and facility."

15 SECTION 3. Section 201-12.8, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "~~[+]~~§201-12.8~~[+]~~ **Energy security special fund; uses.** (a)

18 There is created within the state treasury an energy security
19 special fund, which shall consist of:

- 20 (1) The portion of the environmental response, energy, and
21 food security tax specified under section 243-3.5;



- 1 ~~[(1)]~~ (2) Moneys appropriated to the fund by the
2 legislature;
- 3 ~~[(2)]~~ (3) All interest attributable to investment of money
4 deposited in the fund; and
- 5 ~~[(3)]~~ (4) Moneys allotted to the fund from other sources.
- 6 (b) ~~[Moneys]~~ Subject to legislative appropriation, moneys
7 from the fund ~~[shall]~~ may be expended by the department of
8 business, economic development, and tourism for the following
9 purposes and ~~[shall-be]~~ used for no other purposes, except for
10 those set forth in this section:
- 11 (1) To support ~~[its]~~ the Hawaii clean energy initiative
12 program, including its energy division, including
13 funding staff positions within the division, and
14 projects that ensure dependable, efficient, and
15 economical energy, promote energy self-sufficiency,
16 and provide greater energy security for the ~~[State,~~
17 ~~and]~~ state;
- 18 (2) To fund the renewable energy facilitator pursuant to
19 section 201-12.5 and any other positions necessary for
20 the purposes of paragraph (1) as determined by the
21 legislature~~[-]~~; and



1 (3) To fund, to the extent possible, the greenhouse gas
2 emissions reduction task force, climate change task
3 force, grants-in-aid to the economic development
4 boards of each county, and grants-in-aid to economic
5 development agencies of each county to meet the stated
6 objectives of the Hawaii clean energy initiative
7 program.

8 (c) The department of business, economic development, and
9 tourism shall submit a report to the legislature, no later than
10 twenty days prior to the convening of each regular session, on
11 the status and progress of existing programs and activities and
12 the status of new programs and activities funded by the energy
13 security special fund. The report shall also include:

14 (1) The spending plan of the energy security special fund;
15 (2) All expenditures of energy security special fund
16 moneys; and
17 (3) The targeted markets of the expenditures, including
18 the reason for selecting those markets; the persons to
19 be served; and the specific objectives of the
20 expenditures, including measurable outcomes."

21 SECTION 4. Section 243-3.5, Hawaii Revised Statutes, is
22 amended as follows:



1 1. By amending its title and subsection (a) to read:

2 "§243-3.5 Environmental response, energy, and food
3 security tax; uses. (a) In addition to any other taxes
4 provided by law, subject to the exemptions set forth in section
5 243-7, there is hereby imposed [~~at times provided in section~~
6 ~~128D-2~~] a state environmental response, energy, and food
7 security tax [~~of 5 cents~~] on each barrel or fractional part of a
8 barrel of petroleum product sold by a distributor to any retail
9 dealer or end user[~~of petroleum product,~~] of petroleum product, other than a
10 refiner[~~of petroleum product,~~]. The tax shall be \$1.05 on
11 each barrel or fractional part of a barrel of petroleum product
12 that is not aviation fuel; provided that of the tax collected
13 pursuant to this subsection:

14 (1) 5 cents of the tax on each barrel shall be [~~used~~
15 ~~pursuant to section 128D-2 to address concerns~~
16 ~~relating to drinking water.~~] deposited into the
17 environmental response revolving fund established
18 under section 128D-2;

19 (2) 15 cents of the tax on each barrel shall be deposited
20 into the energy security special fund established
21 under section 201-12.8;



1 (3) 10 cents of the tax on each barrel shall be deposited
2 into the energy systems development special fund
3 established under section 304A-2169; and

4 (4) 15 cents of the tax on each barrel shall be deposited
5 into the agricultural development and food security
6 special fund established under section 141- .

7 The tax imposed by this subsection shall be paid by the
8 distributor of the petroleum product."

9 2. By amending subsection (c) to read:

10 "(c) Notwithstanding section 248-8 to the contrary, the
11 environmental response, energy, and food security tax collected
12 under this section shall be paid over to the director of finance
13 for deposit [~~into the environmental response revolving fund~~
14 ~~established by section 128D-2.~~] as provided in subsection (a)."

15 SECTION 5. Section 304A-2169, Hawaii Revised Statutes, is
16 amended by amending subsection (b) to read as follows:

17 "(b) The special fund shall be funded by:

18 (1) Appropriations from the legislature; [~~and~~]

19 (2) The portion of the environmental response, energy, and
20 food security tax specified under section 243-3.5; and



1 ~~[-2-]~~ (3) Investment earnings, gifts, donations, or other
2 income received by the ~~[+]Hawaii natural energy[+]~~
3 institute."

4 PART III

5 HAWAII ECONOMIC DEVELOPMENT TASK FORCE

6 SECTION 6. (a) There is established the Hawaii economic
7 development task force within the department of business,
8 economic development, and tourism for administrative purposes.
9 The purpose of the Hawaii economic development task force shall
10 be to facilitate the accelerated adoption and completion of
11 renewable-energy projects, energy-efficiency programs,
12 agricultural infrastructure and development, and other measures
13 to meet the purposes of this Act. The Hawaii economic
14 development task force shall develop and maintain a broad
15 overview of energy and food security issues that apply an
16 interdisciplinary approach to ensure that Hawaii's energy and
17 food policy and program development is integrated within the
18 overall economic, social, environmental, and cultural aspects of
19 society. The Hawaii economic development task force shall, with
20 the assistance of the department of business, economic
21 development, and tourism:



- 1 (1) Identify and review each state and county agency's
2 policy objectives, mandates, organizational structure,
3 and resources to address energy and food security
4 issues;
- 5 (2) Identify all federal and private funds available to
6 the State and counties to address energy and food
7 security issues;
- 8 (3) Identify effective measures for interagency
9 cooperation, coordinate efforts with the counties, and
10 promote public- and private-sector partnerships to
11 achieve the objective of energy and food security;
- 12 (4) Identify existing programs and agreements addressing
13 energy and food security that may be enhanced through
14 legislation;
- 15 (5) Investigate alternative institutional mechanisms to
16 promote the efficient execution and implementation of
17 a multi-year strategy to achieve energy and food
18 security;
- 19 (6) Investigate the streamlining of administrative
20 processes to accelerate and achieve energy and food
21 security;



- 1 (7) Provide an appropriate forum for all affected or
2 interested parties to address energy and food security
3 issues;
- 4 (8) Recommend appropriate legislation resulting from its
5 findings to improve, accelerate, and achieve the
6 objective of energy and food security;
- 7 (9) Review whether:
- 8 (A) The apportionment of the environmental response,
9 energy, and food security tax among the funds
10 listed under section 243-3.5, Hawaii Revised
11 Statutes, is appropriate;
- 12 (B) The apportionment should be changed; and
- 13 (C) Any additional special, trust, or revolving fund
14 should receive a share of the tax;
- 15 and
- 16 (10) Perform any other function necessary to effectuate the
17 purposes of this part.
- 18 (b) The Hawaii economic development task force shall
19 consist of the following members:
- 20 (1) The director of business, economic development, and
21 tourism or the director's designee, who shall chair
22 the Hawaii economic development task force;



- 1 (2) The chairperson of the board of agriculture or the
2 chairperson's designee;
- 3 (3) The director of the office of planning or the
4 director's designee;
- 5 (4) The chairperson of the board of land and natural
6 resources or the chairperson's designee;
- 7 (5) The dean of the University of Hawaii college of
8 tropical agriculture and human resources or the dean's
9 designee;
- 10 (6) Three members to be designated by the speaker of the
11 house of representatives;
- 12 (7) Three members to be designated by the president of the
13 senate; and
- 14 (8) A representative from each county's private economic
15 development board.
- 16 (c) The Hawaii economic development task force's members
17 shall serve without compensation but shall be reimbursed for
18 expenses, including travel expenses, necessary for the
19 performance of their duties.
- 20 (d) In the performance of its duties, the Hawaii economic
21 development task force shall consult with appropriate private,
22 nonprofit, community, and government stakeholders.



1 (e) The department of business, economic development, and
2 tourism may contract with the University of Hawaii for any
3 services to support the work of the Hawaii economic development
4 task force.

5 (f) The Hawaii economic development task force shall
6 submit a report of its findings and recommendations, including
7 any proposed legislation, to the legislature no later than
8 twenty days prior to the convening of the regular session of
9 2011.

10 The task force shall also submit a follow-up report to the
11 legislature no later than twenty days prior to the convening of
12 the regular session of 2012. The report shall include a
13 description of the activities funded by the environmental
14 response, energy, and food security tax, progress made toward
15 energy and food self-sufficiency, and any additional action
16 necessary to achieve energy and food self-sufficiency.

17 (g) The Hawaii economic development task force shall cease
18 to exist on June 30, 2012.

19 PART IV

20 AGRICULTURAL DEVELOPMENT AND FOOD SECURITY



1 SECTION 7. Chapter 141, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§141- Agricultural development and food security
5 special fund; establishment. (a) There is established within
6 the state treasury the agricultural development and food
7 security special fund.

8 (b) The following moneys shall be deposited into the
9 special fund:

10 (1) The portion of the environmental response, energy, and
11 food security tax specified under section 243-3.5;

12 (2) Any appropriation by the legislature into the special
13 fund;

14 (3) Any grant or donation made to the special fund; and

15 (4) Any interest earned on the balance of the special
16 fund.

17 (c) Subject to legislative appropriation, moneys in the
18 special fund may be expended for the following purposes:

19 (1) The awarding of grants to farmers for agricultural
20 production or processing activity;

21 (2) The acquisition of real property for agricultural
22 production or processing activity;



- 1 (3) The improvement of real property, irrigation systems,
2 and transportation networks necessary to promote
3 agricultural production or processing activity;
- 4 (4) The purchase of equipment necessary for agricultural
5 production or processing activity;
- 6 (5) The conduct of research on and testing of agricultural
7 products and markets;
- 8 (6) The funding of agricultural inspector positions within
9 the department of agriculture;
- 10 (7) The promotion and marketing of agricultural products
11 grown or raised in the state; and
- 12 (8) Any other activity intended to increase agricultural
13 production or processing that may lead to reduced
14 importation of food, fodder, or feed from outside the
15 state.
- 16 (d) The department of agriculture shall submit a report to
17 the legislature no later than twenty days prior to the convening
18 of each regular session on the status and progress of existing
19 programs and activities and the status of new programs and
20 activities funded under the agricultural development and food
21 security special fund. The report shall also include:



- 1 (1) The spending plan of the agricultural development and
- 2 food security special fund;
- 3 (2) All expenditures of agricultural development and food
- 4 security special fund moneys;
- 5 (3) The targeted markets of the expenditures, including
- 6 the reason for selecting those markets;
- 7 (4) The persons to be served using the expenditures; and
- 8 (5) The specific objectives of the expenditures,
- 9 including measurable outcomes."

PART V

HAWAII CLEAN ENERGY INITIATIVE

12 SECTION 8. Chapter 196, Hawaii Revised Statutes, is
13 amended by adding a new section to be appropriately designated
14 and to read as follows:

15 "§196- Hawaii clean energy initiative program. (a)

16 There is established within the department of business, economic

17 development, and tourism, a Hawaii clean energy initiative

18 program to manage the state's transition to a clean energy

19 economy. The clean energy program shall design, implement, and

20 administer activities that include:



- 1 (1) Strategic partnerships for the research, development,
2 testing, deployment, and permitting of clean and
3 renewable technologies;
- 4 (2) Engineering and economic evaluations of Hawaii's
5 potential for near-term project opportunities for the
6 state's renewable energy resources;
- 7 (3) Electric grid reliability and security projects that
8 will enable the integration of a substantial increase
9 of electricity from renewable-energy resources;
- 10 (4) A statewide clean energy public education and outreach
11 plan to be developed in coordination with Hawaii's
12 institutions of public education;
- 13 (5) Promotion of Hawaii's clean and renewable resources to
14 potential partners and investors;
- 15 (6) A plan, to be implemented from 2011 to 2030, to
16 transition the state to a clean energy economy; and
- 17 (7) A plan, to be implemented from 2011 to 2030, to assist
18 each county in transitioning to a clean energy
19 economy.
- 20 (b) Prior to the initiation of any activities authorized
21 under subsection (a), the department of business, economic
22 development, and tourism shall develop a plan of action with the



1 intent of promoting effective prioritization and focusing of
2 efforts consistent with the State's energy programs and
3 objectives.

4 (c) The department of business, economic development, and
5 tourism shall submit a report to the legislature no later than
6 twenty days prior to the convening of each regular session on
7 the status and progress of new and existing clean energy
8 initiatives. The report shall also include:

- 9 (1) The spending plan of the Hawaii clean energy
10 initiative program;
11 (2) All expenditures of energy security special fund
12 moneys; and
13 (3) The targeted markets of the expenditures, including
14 reasons for selecting those markets, the persons to be
15 served, specific objectives of the program, and
16 program expenditures, including measurable outcomes."

17 PART VI

18 SECTION 9. Subject to the availability of federal funding
19 for energy programs provided by grants, and subject to the
20 constraints, oversight, and reporting requirements of those
21 federal programs, the governor is authorized to establish
22 positions necessary to accomplish the management of those energy



1 projects funded by federal grants; provided that the positions
2 shall be exempt from chapters 76 and 89, Hawaii Revised
3 Statutes; and provided further that the governor shall submit a
4 report to the legislature on all positions established as of
5 December 31 and June 30 of each fiscal year that the positions
6 exist and are occupied.

7 PART VII

8 SECTION 10. Any unexpended or unencumbered funds remaining
9 in the agricultural development and food security special fund
10 established by this Act, as of the close of business on June 30,
11 2015, shall lapse to the credit of the general fund.

12 PART VIII

13 SECTION 11. The department of business, economic
14 development, and tourism shall study and analyze the
15 environmental response, energy, and food security tax in section
16 4 of this Act, including its amount and allocation, and its
17 effectiveness in accomplishing the goals and objectives of this
18 Act. The department shall report its findings and
19 recommendations, including any proposed legislation, to the
20 legislature at least twenty days prior to the convening of each
21 regular session, ending with the regular session of 2015.

22 PART IX



1 SECTION 12. This Act does not affect rights and duties
2 that matured, penalties that were incurred, and proceedings that
3 were begun, before its effective date.

4 SECTION 13. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

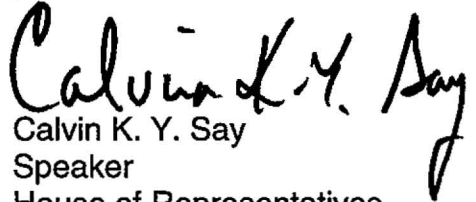
6 SECTION 14. This Act shall take effect on July 1, 2010;
7 provided that sections 2, 3, 4, and 7 of this Act shall be
8 repealed on June 30, 2015, and sections 128D-2, 201-12.8, and
9 243-3.5, Hawaii Revised Statutes, shall be reenacted in the form
10 in which they read on June 30, 2010.



THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 29, 2010
Honolulu, Hawaii

We hereby certify that, pursuant to Sections 16 and 17 of Article III of the Hawaii State Constitution, the House of Representatives of the State of Hawaii, on this date reconsidered House Bill No. 2421, HD 2, SD 2, CD 1, heretofore vetoed as contained in a Governor's Message dated April 25, 2010, and approved said bill by an affirmative vote of two-thirds of all members to which the House of Representatives of the Twenty-fifth Legislature of the State of Hawaii, Regular Session 2010, is entitled.


Calvin K. Y. Say
Speaker
House of Representatives

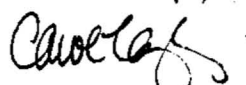

Patricia Mau-Shimizu
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAII

Date: April 29, 2010
Honolulu, Hawaii

We hereby certify that, pursuant to Sections 16 and 17 of Article III of the Hawaii State Constitution, the Senate of the State of Hawaii, on this date reconsidered House Bill No. 2421, HD 2, SD 2, CD 1, heretofore vetoed as contained in a Governor's Message dated April 25, 2010, and approved said bill by an affirmative vote of two-thirds of all members to which the Senate of the Twenty-fifth Legislature of the State of Hawaii, Regular Session 2010, is entitled.


Colleen Hanabusa
President of the Senate


Carol Taniguchi
Clerk of the Senate