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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI`I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE,

Plaintiffs,

vs.

STATE OF HAWAI`I,

Defendant.

CIVIL NO. 18-1-1376-09 GWBC
(Other Civil Action)

PLAINTIFFS' RESPONSE TO MEMORANDUM OF THE HAWAI`I STATE LEGISLATURE AS *AMICUS CURIAE*; DECLARATION OF R. BRIAN BLACK; EXHIBITS 29-34; and CERTIFICATE OF SERVICE

HEARING
JUDGE: Honorable Gary W. B. Chang
TRIAL DATE: NONE
HEARING DATE: January 24, 2019
HEARING TIME: 2 p.m.

PLAINTIFFS' RESPONSE TO MEMORANDUM OF HAWAI`I STATE LEGISLATURE AS *AMICUS CURIAE*

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Constitutional History

Realizing that century-old constitutional history and case precedent supports Plaintiffs' interpretation of the title and three readings requirements of the Hawai`i Constitution, the *Amicus Curiae* Hawai`i State Legislature attempts to craft arguments from the premise that constitutional history restarted with Statehood. Plaintiffs explain here why that is incorrect and outline the long constitutional tradition in Hawai`i to protect meaningful public notice and participation in the legislative process.

Plaintiffs also outline how some of the other constitutional provisions were intended to function. This Court asked the *Amicus Curiae* Legislature to share its experience—as the end user of the Hawai`i Constitution—in implementing the constitutional provisions that restrict the legislative process. Because *Amicus Curiae* focused more on repeating arguments made by the Defendant State of Hawai`i, Plaintiffs seek to provide the Court with some sense of the process that citizens have agreed in the constitution to be the minimum path that proposed legislation must follow to be deemed a valid law of the State of Hawai`i.

Lastly, to the extent that the Legislature identified different authority or variations of arguments made by the State, Plaintiffs address those issues as it concerns the title and three readings requirements. The Legislature's justiciability arguments merely repeat the State's prior briefing.

I. THE CONSTITUTIONAL HISTORY OF THE TITLE AND THREE READINGS PROVISIONS REFLECTS A CLEAR INTENT TO PROTECT INFORMED CIVIC ENGAGEMENT IN THE LEGISLATIVE PROCESS.

The title and three readings mandates in the Hawai`i Constitution are two foundational building blocks of an interdependent network of protections to ensure the public can understand, and be heard during, the process for enactment of laws in Hawai`i. For over a century, constitutional framers have consistently adhered to the principle that the legislative process functions best when it is open, transparent, and allows for informed public input.[1]

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[1] These and other constitutional protections reflect the democratic principle that a representative government derives its authority from the people. The first principle of the Bill of Rights is: "All political power of this State is inherent in the people; and the

A. Constitutional Intent Is Determined by Examining the History and Intent at the Time of Adoption.

If a constitutional provision is ambiguous, a court may look to "the history of the times and the state of being when the constitutional provision was adopted." *State v. Kahlbaun*, 64 Haw. 197, 202, 638 P.2d 309, 315 (1981); *accord Hanabusa v. Lingle*, 105 Hawai`i 28, 32, 93 P.3d 670, 674 (2004) ("[A] constitutional provision must be construed in connection with other provisions of the instrument, and also in the light of the circumstances under which it was adopted and the history which preceded it."); *Pray v. Judicial Selection Comm'n*, 75 Haw. 333, 343, 861 P.2d 723, 728 (1993) ("[T]he fundamental principle in construing a constitutional provision is to give effect to the intention of the framers and the people adopting it."). To understand that history, courts should "examine the debates, proceedings and committee reports of the [Constitutional Convention]". *Kahlbaun*, 64 Haw. at 204, 638 P.2d at 316. Additionally, courts may also "look to the object sought to be accomplished and the evils sought to be remedied by the amendment." *Pray*, 75 Haw. at 343, 861 P.2d at 728.

Technological advances do not impact a court's understanding of constitutional intent at the time of adoption. *E.g., F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 532 (2009) ("The original meaning of the Constitution cannot turn on modern necessity.").[2] And constitutional history for subsequent amendments does not change the meaning of unamended provisions. *See Peer News LLC v. City & County of Honolulu*, 138 Hawai`i 53, 73, 376 P.3d 1, 21 (2016) (legislative history for a subsequent statutory amendment

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responsibility for the exercise thereof rests with the people. All government is founded on this authority." Haw. Const. art. I, § 1. Thus, by outlining the bare minimum process for the enactment of laws, the Constitution defines what laws carry the authority of the people of Hawai`i. The Legislature has no independent authority to create enforceable law if it fails to abide by this agreed process.

[2] The Legislature rehashes the State's argument that the Internet makes the constitutional provisions obsolete. *Compare* Mem. on Behalf of the Hawai`i State Legislature as *Amicus Curiae* (Amicus Mem.) at 13 n. 11, *with* State Mem. at 9. The Internet does not change the Legislature's obligations to comply with the Hawai`i Constitution. Pls. Mem. at 10.

explains the intent of the amendment, but does not change the intent of the original statute).

To understand the meaning of the title and three readings requirements, this Court must look to the circumstances of their adoption into the Hawai`i Constitution. These provisions are not simply remnants from a bygone era. They have been consistently incorporated into Hawaii's constitutional history for over a century and maintain their relevancy and full effect today.

B. History and Purpose of the Title Mandate in Hawai`i.

A version of the title provision first appeared in the 1852 Constitution of the Kingdom of Hawai`i. It read: "To avoid improper influences which may result from intermixing in one and the same Act, such things as have no proper relation to each other, every law shall embrace but one object and that shall be expressed in the title." Haw. Const. art. 102 (Kingdom 1852); Haw. Const. art. 77 (Kingdom 1864); Haw. Const. art. 77 (Kingdom 1887); Decl. of R. Brian Black, dated January 11, 2019 [Black Decl.], Ex. 29.[3] In 1894, the opening clause was removed to read: "Each Law shall embrace but one Subject, which shall be expressed in its Title." Haw. Const. art. 63 (Rep. 1894); Organic Act § 45 (1900); Black Decl. Ex. 29. The 1950 Constitution kept the title requirement unmodified, and the language has remained unchanged. Haw. Const. art. III, § 15 (1950); Haw. Const. art. III, § 14; Stand. Comm. Rep. No. 92 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1950 at 252 ("This section further requires that each law shall embrace but one subject, which is required to be expressed in its title, as is provided by section 45 of the Organic Act."); Black Decl. Ex. 29-31.

The Hawai`i Supreme Court first interpreted the title provision in 1887. *Hyman Bros. v. Kapena*, 7 Haw. 76, 77–78 (Kingdom 1887). The Court relied on the constitutional treatise Cooley on Constitutional Limitations to explain the purpose of the title provision: "[F]irst, to prevent hodge-podge or log-rolling legislation; second, to prevent surprise or fraud upon the Legislature by means of provisions in bills of which

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[3] For the Court's convenience, Plaintiffs have provided exhibits with copies of the historical constitutional provisions and cited constitutional history.

the titles give no intimation; and third, to apprise the people of proposed matters of legislation." *Id.* at 77-78 (voiding legislation for violating the title requirement); *accord Schwab v. Ariyoshi*, 58 Haw. 25, 30-31, 564 P.2d 135, 139 (1977). Thus, as explained more fully in Plaintiffs' prior memoranda, the intent of the title requirement is to ensure public notice of the bill's contents. Pls. Mem. at 8; Pls. Reply Mem. at 6.

This constitutional notice provision, requiring that the subject of proposed legislation be fairly expressed in its title, has protected the people of Hawai`i continually since 1852.

C. History and Purpose of the Three Readings Mandate in Hawai`i.

A version of the three readings provision first appeared in the 1894 Constitution of the Republic of Hawai`i, reading: "A Bill, in order to become law, shall, except as herein provided, pass three readings in each House, the final passage of which in each House, shall be by a majority vote of all the elective members to which such House is entitled, taken by ayes and noes and entered upon its journal." Haw. Const. art. 64 (Rep. 1894); Black Decl. Ex. 29. In furtherance of the requirement's purpose, the Organic Act specified that the three readings must be "on separate days." Organic Act § 46 (1900); Black Decl. Ex. 29. The 1950 Constitution reworded the requirement—making clear that it was not intended to change the meaning—to the current language: "No bill shall become law unless it shall pass three readings in each house on separate days." Haw. Const. art. III, § 16 (1950); Haw. Const. art. III, § 15; Stand. Comm. Rep. No. 92 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1950 at 253 ("Section 17 sets forth the requirement of passage on three readings in each house on separate days for any bill to become law, as is provided in section 46 of the Organic Act."); Black Decl. Ex. 29-31.

As explained in Plaintiffs' prior memoranda, the three readings requirement is intended to: "protect[] the public interest"; "provide notice that a measure is progressing through the enacting process, enabling interested partied to prepare their positions"; "facilitate informed and meaningful deliberation on legislative proposals"; and "prevent hasty and improvident legislation." Pls. Mem. at 4-5; Pls. Reply Mem. at 2-3. The 1950 Constitutional Convention recognized the benefit of the three readings

mandate to ensure that "the purposes of the measures, and their meaning, scope, and probable effect, and the validity of the alleged facts and arguments given in their support can be fully examined, and if false or unsound, can be exposed, *before* any action of consequence is taken." Stand. Comm. Rep. No. 47 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1950 at 184; Black Decl. Ex. 31.

The 1950 Constitutional Convention even briefly discussed whether to modify the long-standing three readings requirement to provide more flexibility to the Legislature for emergencies.[4] 2 Proceedings of the Constitutional Convention of Hawai`i of 1950 at 153-54, 190-91; Black Decl. Ex. 31. Delegate Tavares raised the issue:

> There is a possibility of a need sometimes for faster action than one reading on each day. However, I am not going to labor the point. If the delegation still feels that as we have operated for 50 years we can safely operate in the future, why that's all right. There are some constitutions that allow by a two-thirds vote or some other special manner, the legislature or each house of the legislature can waive that separate reading on each day for emergency measures.

Id. at 190 (remarks of Delegate Tavares). Confirming the constitutional convention's understanding about the justiciability of three readings concerns, one delegate suggested: "If the legislature were to pass a bill by three readings in one day, the only objection could be on the grounds of unconstitutionality. While that was being labored in the courts they could repass the same law and take three days to do it." *Id.* at 190-91 (remarks of Delegate Bryan).

Responding to the delegate's invitation for a future legislature to violate the constitution, Delegate Roberts explained:

> I don't think that statement should be left in our record uncontested. I think the intention of this section is quite clear. *The purpose is to see to it*

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[4] In the aftermath of World War II and at the onset of the Cold War, the 1950 Constitutional Convention had a different conception of an emergency than contemplated by the Legislature now. 2 Proceedings of the Constitutional Convention of Hawai`i of 1950 at 154 (remarks of Delegate Tavares) ("I can imagine a case where, if we were at war and wanted to mobilize quickly, that there would be a little advantage in being able to pass a bill in one day to raise a national guard or state guard or something a little higher."); Black Decl. Ex. 31. Nevertheless, as discussed above, the delegates rejected a modification to the three readings mandate.

> *that no legislation is passed hurriedly and without due and careful consideration by the legislature.* The intention is to provide three separate readings. I for one would not suggest that we look aside at this thing and say make it a constitutional section and violate our Constitution. I think the language is clear and ought to stay that way.

Id. at 191 (remarks of Delegate Roberts) (emphasis added); *accord id.* at 154 (remarks of Chair of the Committee on Legislative Powers and Functions William Heen) (responding to concerns about enacting emergency legislation for significant matters, "It would seem to me that if you have a very important measure, that measure should at least require three days' deliberation and not less."). The delegates voted to adopt the three readings provision without amendment or further discussion. *Id.* at 191.

The three readings requirement provides for an orderly and informed legislative process that has protected the people of Hawai`i continually since 1894.

D. The 1968 Constitutional Convention Did Not Amend the Three Readings Mandate.

The Legislature seeks to muddy the intent of the three readings requirement by reference to debates about the 24-hour [now 48-hour] final printing mandate during the 1968 Constitutional Convention. Amicus Mem. at 7-13. The 1968 Constitutional Convention did not substantively amend the three readings mandate. Stand. Comm. Rep. No. 46 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1968 at 215-17 (only change to three readings requirement was removal of a comma with no explanation to indicate that the change was intended to be substantive); *accord* 2 Proceedings of the Constitutional Convention of Hawai`i of 1968 at 146 (remarks of Chair of the Committee on Legislative Powers and Functions Hung Wo Ching) ("The proposed amendment [to the first paragraph of now-Section 15, including the three readings requirement] will not change the manner in which a bill is handled as under the present Constitution and the present legislative procedures as far as the conference committee draft is concerned."); Black Decl. Ex. 32. First, as the Hawai`i Supreme Court has explained, the intent or understanding of these subsequent lawmakers does not change the meaning of the law where they do not make a relevant substantive amendment. *See Peer News*, 138 Hawai`i at 73, 376 P.3d at 21. The discussions of the

1968 Constitutional Convention about the 24-hour final printing mandate do not vary the well-established purpose and meaning of the three readings requirement.

Second, the Legislature misrepresents the nature of the discussion about three readings during the 1968 Constitutional Convention. As Plaintiffs have previously pointed out, the State and the Legislature incorrectly elide the distinction between germane and non-germane amendments when the difference is constitutionally significant. Pls. Mem. at 7-8; Pls. Reply Mem. at 4-6. During the debates, Delegate Kauhane expressed a concern about significant germane amendments on final reading that do not receive adequate consideration. *E.g.*, 2 Proceedings of the Constitutional Convention of Hawai`i of 1968 at 169 ("You may have intended to request consideration of the matter of caring of elephants. This bill comes out with the caring of the elephants, dogs, pigeons and what not and then we are voting on third reading for the passage of a completely new bill."); Black Decl. Ex. 32.[5] The dispute now before the Court, however, concerns non-germane amendments.

Third, the Constitutional Convention rejected Delegate Kauhane's concerns as unfounded. Delegate Kauhane noted that the application of three readings mandate was not settled and that he was concerned about a constitutional challenge to the practice he described. *Id.* at 171 (repeating advice of a convention attorney that "[t]here is a question, he says, that this legal question has never been raised yet"). Before the Constitutional Convention rejected Delegate Kauhane's proposal, Committee Chair Ching explained that the issue of late-session significant amendments to legislation was not the current practice in the Legislature and that the proposal would not cure the practice even if it existed. *Id.* at 170 ("[T]he practice that has been mentioned here has not prevailed in the legislature since the advent of Statehood. And secondly, that this

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[5] Consistent with the general expectation in constitutional treatises and legislative manuals that amendments are germane, *e.g.*, Pls. Mem. at 7; Pls. Reply Mem. at 4, Delegate Kauhane's hypothetical bill illustrates that his concern focused on significant *germane* amendments in which the legislature stayed true to the original subject of the bill—caring for elephants. His concerns did not contemplate the type of unrelated and clearly non-germane amendments that the Legislature made to S.B. 2858.

amendment, even if this practice were prevailing in the legislature at the present time, the amendment that is suggested here would not cure the practice."). Thus, contrary to the Legislature's argument, the 1968 Constitutional Convention did not broadly endorse gut-and-replace practices; rather, it took no action because such practices were not presently occurring. *Id.* at 145-46, 168-71.

II. DURING THE LEGISLATIVE PROCESS, OTHER CONSTITUTIONAL LIMITATIONS ADDED TO ARTICLE III ONLY FURTHER STRENGTHEN PUBLIC ACCESS TO AND OVERSIGHT OF THE LEGISLATURE.

Every constitutional convention has amended the Hawai`i Constitution with the express intent to add further protections for the public's role in the legislative process. The Legislature and the State argue here for virtually unfettered flexibility despite the constitutional restrictions, *e.g.*, focusing solely on compliance with the 48-hour final printing mandate. Amicus Mem. at 2, 11-13; State Mem. at 14-16; State Reply Mem. at 8-9. No constitutional authority supports those claims; rather constitutional framers often expressly *rejected* those arguments. These arguments only underscore the failure to understand the purpose and intent of the well-considered constitutional limitations on the Legislature that protect public access. The plain text of Article III, as well as the constitutional history for the adoption of each amendment, evidences an overarching purpose to protect public oversight of the Legislature.

Delegates to the 1968 and 1978 conventions did not supplant the three readings and title provisions by adding more restrictions on the legislative process. They chose to supplement and *bolster* the public's access, to help protect against deceptive closed-door tactics by the legislature that would frustrate the public's ability to participate. Because the Legislature failed to address how the Hawai`i Constitution impacts the legislative process—despite this Court's request—Plaintiffs outline below the procedure for enacting a law based on the bare minimum required by the constitution and how each of the constitutional limitations works as part of a comprehensive system to safeguard public participation and oversight.

A. Bill Introduction: Title and Single Subject Mandates and a Bill Introduction Deadline Help the Public Identify Bills of Interest.

Thousands of bills are introduced at the Legislature every year. Absent extensions or special sessions, the Legislature has 60 working days for its session each year. Haw. Const. art. III, § 10. The title requirement, as at issue here and thus discussed at length elsewhere, ensures that the public receives fair notice regarding the interests that may be affected by proposed legislation. *Id.* art. III, § 14. The related single-subject clause of that provision keeps each bill focused on one subject, serving the intent to avoid hodgepodge legislation and provide fair notice to the public. *Id.*

The 1978 constitution also required the Legislature by rule to limit the period for introducing bills.[6] *Id.* art. III, § 12 ("By rule of its proceedings, applicable to both houses, each house shall provide for the date by which all bills to be considered in a regular session shall be introduced."). The convention delegates explained that the intent of the deadline was to ensure that the public could "review every bill that will ever be introduced in that legislative session." Stand. Comm. Rep. No. 46 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 603; 2 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 278 (remarks of Delegate Nishimoto) ("[T]his amendment should further aid the public in its attempts to actively follow and participate in the legislative process."); Black Decl. Ex. 33. And in 1984 the deadline provision was amended further with the express intent to give the public more time to review bills.[7] The 1984 amendment allowed the Legislature to set an earlier

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[6] This constitutional limitation—like many others and in contrast with the title and three readings requirements—illustrates that constitutional framers knew well how to commit particular issues to legislative discretion. The bill introduction deadline expressly leaves the exact deadline to legislative rules. Haw. Const. art. III, § 12 ("By rule of its proceedings, applicable to both houses . . . .").

[7] The 1978 Constitution provided that new bills could be introduced for at least the first 20 days of the legislative session, but included a minimum 5-day recess after the cutoff date for public review of the proposed legislation. Haw. Const. art. III, §§ 10, 12 (1978); Stand. Comm. Rep. No. 46 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 603 ("This is to allow the public the use of the mandatory 5-day recess to review every bill that will ever be introduced in that legislative session."). But the minimum 20 days for bill introduction adversely limited the public's ability to timely

deadline for bill introduction and focus on prefiling bills before the session started. Stand. Comm. Rep. No. 417-84, in 1984 House Journal at 1031; Black Decl. Ex. 34. "This allows the public to familiarize itself with legislation, prepare testimony, and consult with legislators, before the legislators' time is taken up by committee meetings. It allows the public more time to research the issues and prepare more detailed and thoughtful testimony." *Id.* The amendment was expected "to allow for a more deliberative, open, and rational legislative process. The result should be better legislation." *Id.* at 1032.

As with the title and three readings mandates, the bill introduction deadline, however, does not serve its constitutional function if the bills do not remain germane to their original purpose as introduced. Citizens cannot "review every bill that will ever be introduced" if the Legislature radically amends bills to something that bears no reasonable relationship to the original content of the bill. Over the last century, the constitutional framers designed a bill introduction process with the title, single subject, and deadline provisions that makes it possible for the public to follow the process for enacting laws. When those constitutional limitations work as designed, any ordinary person would be able to identify and monitor all bills of interest as soon as the bill deadline passes. With such proper notice, no law would be enacted that surprises an interested person who reviewed every bill after introduction.

B. Deliberations: Three Readings, Public Decision-Making Meetings, and the Mandatory Recess Ensure an Orderly and Deliberate Process that Protects the Public's Role in the Legislative Process.

The three readings requirement, as at issue here and discussed at length by Plaintiffs elsewhere, ensures that the Legislature follows an orderly process that gives sufficient consideration to the consequences of proposed legislation and provides the public an opportunity to be heard in the legislative process. Haw. Const. art. III, § 15. The goal of this provision is to produce better crafted legislation through thoughtful deliberation and public participation.

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review all proposed legislation because the Legislature would start taking action on bills during the 20-day period while bills were still being introduced.

In 1978, the Constitutional Convention introduced several other constitutional limitations on the Legislature's deliberative process in furtherance of that goal. The Legislature must hold a five-day mandatory recess between the twentieth and fortieth days of the legislative session. *Id.* art. III, § 10 ("Each regular session shall be recessed for not less than five days at some period between the twentieth and fortieth days of the regular session. The legislature shall determine the dates of the mandatory recess by concurrent resolution."). The constitutional convention delegates intended the recess

> to provide both legislators and the public an opportunity to review during the recess all bills that have been introduced in both houses, and an opportunity for legislators and constituents to communicate on matters before the legislature at about the midpoint of the session. . . . [It] will also afford the public an opportunity to become acquainted with and follow the bills through the legislature more intelligently.

Stand. Comm. Rep. No. 46 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 603; *accord* 2 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 278 (remarks of Delegate Nishimoto) ("This recess will afford members of the legislature, as well as the public, a review period to study the bills submitted and to provide input."); Black Decl. Ex. 33.

The 1978 Constitutional Convention also added a requirement that all decision-making committee meetings at the Legislature "shall be open to the public." Haw. Const. art. III, § 12 ("Every meeting of a committee in either house or of a committee comprised of a member or members from both houses held for the purpose of making decision on matters referred to the committee shall be open to the public."). The constitutional convention delegates explained, "the public's right to know what their legislators are deciding is deserving of constitutional protection." Stand. Comm. Rep. No. 46 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 603; 2 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 278 (remarks of Delegate Nishimoto) ("It was felt that this right should be constitutionally protected rather than left to the discretion of the house or the senate."); Black Decl. Ex. 33. Delegates to the 1978 Constitutional Convention expected these changes to "make the legislature more deliberative, more cautious, more informed, and more accessible to the

public." 2 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 279 (remarks of Delegate Shon).

Replacing a bill with content not germane to its original intent disregards every effort by the public to participate in the legislative process before the amendment. Contrary to these constitutional limitations on the Legislature's deliberations, public participation is reduced to a meaningless formality and warnings against hasty and ill-conceived legislation become mere words. The Hawai`i Constitution recognizes—even if the Legislature does not—that the Legislature cannot give necessary consideration to the consequences of proposed legislation without informed public input.

C. Last Touch: The 48-Hour Printing Mandate Allows the Public a Final Opportunity to Review and Comment on Bills.

At the end of the legislative process, bills must be printed and made available in final form for 48 hours for public review. Haw. Const. art. III, § 15 ("No bill shall pass third or final reading in either house unless printed copies of the bill in the form to be passed shall have been made available to the members of that house for at least forty-eight hours."). This provision allows interested persons who have been following a bill to see all the amendments that have been made and raise concerns before the final vote.

This final printing mandate was first adopted by the 1968 Constitutional Convention as a 24-hour requirement. Aside from the debates with Delegate Kauhane discussed above, the intent of the mandate was straightforward because it "not only aids the legislator but also gives the public additional time and opportunity to inform itself of bills facing imminent passage." Stand. Comm. Rep. No. 46 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1968 at 216; Black Decl. Ex. 32. At the time, the constitutional convention delegates debated concerns about impeding the flexibility of the Legislature and increasing the possibility of constitutional challenges for procedural violations. *Id.* But the 1968 Constitutional Convention concluded that with the "complexity of modern legislation" on issues that are "highly technical in nature yet far-reaching in effect," the mandate gives legislators and the public the opportunity to understand the impact of last-minute amendments. *Id.* The report emphasized:

> The importance of interest groups and their representatives to the legislative process as sources of information and barometers of public support for proposed legislation is unquestioned. By giving notice that a measure is coming up for final reading and by providing an opportunity to study the measure in its final form, the twenty-four hour rule enhances the functions served by these groups. Moreover, the delay better enables those concerned to marshal their forces in favor or against the matter under consideration.
>
> In deliberating on the merits and demerits of the twenty-four hour rule, your Committee was guided by the belief that any change in procedure must be evaluated in terms of its contribution to the two principal legislative functions of representing people, groups and communities and of rendering decisions which can be accepted as carefully weighed and fairly made. It is our considered judgment that the substantial contribution which can be made by this rule through increasing awareness and understanding of proposed legislation decisively overrides the possible problems latent in its adoption.

Id.

Ten years later, the 1978 Constitutional Convention increased the delay to 48 hours.

> In view of the increasing numbers of bills being introduced in the legislature and the public concern expressed on the difficulty of following the many bills through the legislature in the closing days of the session, your Committee believes that enlargement of time from 24 hours to 48 hours, during which a legislator or a constituent could review a bill before third or final reading, would help both legislator and constituent to avoid hasty decisions and surprises regarding the bill.

Stand. Comm. Rep. No. 46 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 603; 2 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 278 (remarks of Delegate Nishimoto) ("It was felt that the additional time, especially at the closing days of the session, would afford the legislators and members of the public more time to review and therefore make better decisions on the bills."); Black Decl. Ex. 33.

The Legislature incorrectly implies that no other constitutional limitation is relevant because the public has 48 hours at the end of the legislative session to figure out whether any bills will impact interests. Amicus Mem. at 12-13. The history of the

48-hour final printing mandate is clear that it is an opportunity for people *already following a bill* to examine and be heard on last-minute, often highly technical amendments. No one expected the public to review every single bill in the last few days of the legislative session because a completely off-topic bill might now impact different specific interests after non-germane amendments. Nothing in the history of the final printing requirement reflects an intent to supplant, or cure any violations of, the other constitutional restrictions on the legislative process.

All of the constitutional limitations on the legislative process are an interdependent set of protections that benefit the public with greater oversight of and ability to participate at the Legislature. The final printing requirement is not the only limitation that serves that purpose. If constitutional framers considered the other requirements superfluous after adopting the 48-hour mandate, they could have eliminated the title, three readings, and other constitutional limitations. To the contrary, the 1978 Constitutional Convention, for example, not only kept those restrictions on the Legislature, but also added the mandatory recess and public decision-making requirements to further bolster the public's meaningful access and opportunity to be heard at the Legislature. The constitutional framers recognized that as proposed legislation has become increasingly technical and prolific, it was necessary to build on the title and three readings mandates that had protected the voice of the people of Hawai`i—the true political power—for over a century. All the new restrictions added since Statehood are empty formalism without the foundational protections of the title and three readings requirements to ensure that members of the public can readily ascertain what bills impact their particular interests and monitor the progress of those specific bills through the legislative process.

The Hawai`i Constitution plainly reflects an overarching design, rooted in title and three readings mandates, to protect rights of public participation in the legislative process and oversight of the Legislature. Regardless what degree of flexibility the Legislature believes appropriate, this covenant with the people of Hawai`i regarding how laws are enacted cannot be ignored.

III. THE TITLE ISSUE IS WHETHER "RELATING TO PUBLIC SAFETY" FAIRLY APPRISES THE PUBLIC THAT S.B. 2858 CONCERNED HURRICANE SHELTERS.

Neither the State nor the Legislature has attempted to explain how "Relating to Public Safety" fairly apprises the public that the bill concerns hurricane shelters. The Legislature only seeks to confuse the issues. First, without any authority, the Legislature invents a distinction between the words "law" and "bill" in the title provision—a distinction expressly rejected by constitutional treatise. Amicus Mem. at 5-6. Next, the Legislature attempts to divert the Court to arguments about other legislation and legislative titles not before the Court. *E.g., id.* at 7 n.5.

The title issue in dispute here concerns whether "Relating to Public Safety" fairly indicates to the ordinary mind—a standard uncontested by the Legislature and the State—that S.B. 2858 is about hurricane shelters. No Hawai`i court has approved of a title as broad and misleading as "Relating to Public Safety," and the Legislature does not add any analysis to support otherwise.

A. "Relating to Public Safety" Does Not Fairly Apprise the Public that S.B. 2858 Concerns Hurricane Shelters.

The Legislature, like the State, does not dispute the standards for sufficiency of title found in Hawai`i precedent and treatises.[8] Pls. Mem. at 8-11; Pls. Reply Mem. at 6-7. The only new case that the Legislature adds to the prior briefing is *Gallas v. Sanchez*, 48 Haw. 370, 405 P.2d 772 (1965). Amicus Mem. at 6. *Gallas* does not support the claim that a title as meaningless and generic as "public safety" is constitutional.

Gallas held that the title "Relating to Public Service" sufficiently identified civil service employment as the topic of proposed legislation. *Gallas*, 48 Haw. at 372, 405 P.2d at 774. The Hawai`i Supreme Court did not provide any analysis of the issue other

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[8] Contrary to the Legislature's arguments, Amicus Mem. at 5, the 1950 Constitutional Convention did not adopt the title requirement on a blank slate, making all prior Hawai`i precedent on the issue irrelevant. *Schwab v. Ariyoshi*, 58 Haw. 25, 30, 564 P.2d 135, 139 (1977) ("The language of [the title provision] is identical to that contained in Section 45 of the Organic Act. Therefore, we would ascribe to the former what this court has said to be the purposes of the latter as well as the legal effect we have given to that section.").

than to "adopt the statement of the lower court on this point: 'Although the title of Act 207 [relating to public service] does not refer with particularity to the amendments included herein, it clearly refers to the general subject matter of such amendments . . . .'" *Id.* at 376, 405 P.2d at 776. But the decision falls squarely within the constitutional tradition that "courts should not embarrass legislation by technical interpretations based upon mere form or phraseology." *Schwab*, 58 Haw. at 32, 564 P.2d at 140; *accord, e.g.*, 1A Norman J. Singer & J.D. Shambie Singer, Sutherland on Statutes and Statutory Construction § 18:2 at 45 (7th ed. 2010) ("The provision was not intended to exercise pedantic tyranny over the grammatical efforts of legislators . . . ."). "Public service" is sufficiently synonymous with civil service employment to pass constitutional muster. *E.g.*, Random House Unabridged Dictionary (2019), *available at* www.dictionary.com (defining "public service" as, among other things, "government employment; civil service").

In stark contrast, "public safety" is not synonymous with hurricane shelters. No reasonable person interested in hurricane shelters is on inquiry notice when a bill is titled only "public safety"; the title requires the public to play a guessing game about a virtually unlimited range of topics. Pls. Mem. at 10; Pls. Reply Mem. at 7. And, as demonstrated by the change in the bill's subject from inmate reporting requirements to hurricane shelters, the title was *calculated to mislead* so that the Legislature could substitute any content into the bill, no matter how unrelated it was to the original bill. *Gallas* thus does not support the constitutionality of Act 84's overly broad and misleading title.

B. No Distinction Exists Between "Law" vs. "Bill" in the Title Provision

The Legislature argues that the title requirement only matters once the "law" is enacted, not during the legislative process while the law is only a "bill". Amicus Mem. at 5-6; *see* Haw. Const. art. III, § 14 ("Each law shall embrace but one subject, which shall be expressed in its title."). In the end, the distinction is irrelevant to this case because "public safety"—as law or bill—is too broad and amorphous to fairly apprise interested members of the public that it concerns hurricane shelters. But more fundamentally, the Legislature's position ignores the well-established purpose of the title provision to

provide notice to the public concerning proposed legislation *before* it is enacted. Pls. Mem. at 8-9; Pls. Reply Mem. at 6; *Jensen v. Turner*, 40 Haw. 604, 608 (Terr. 1954) ("to apprise the people of *proposed* matters of legislation" (emphasis added)); *United Pub. Workers v. Yogi*, 101 Hawai`i 46, 53, 62 P.3d 189, 196 (2002) ("A constitutional provision must be construed 'to avoid an absurd result' and to recognize the mischief the framers intended to remedy.")

Again, the constitutional tradition expressly undermines the Legislature's position:

> Whether the constitutional provision uses the word "act" or "bill," it is generally understood that the requirement applies to a bill during the enacting process as well as to the enacted statute. [I]t would violate the letter and spirit of the constitutional safeguard against stealthy legislation to hold that the subject of a bill must be clearly expressed in its title during the progress of the measure through the legislature, but that any misleading or delusive title may be attached to it when it is presented to the governor for approval.

1A Sutherland on Statutes and Statutory Construction § 18:1 at 45.

The Legislature's purported distinction between "law" and "bill" in the title mandate is meritless.

C. Other Laws Are Not in Dispute.

The only dispute before this Court concerns the constitutionality of Act 84. Compl. at 8 ("Plaintiffs respectfully request that this court: . . . Enter an order declaring that (1) the process for adopting Act 84 was unconstitutional; and (2) Act 84 is void.").[9] Plaintiffs have no position on the constitutionality of any other legislation, especially bills with other titles. Amicus Mem. at 7 n.5. There is no basis for the Court to take judicial notice of such other bills enacted into law in 2018 because those laws are not adjudicative facts in dispute before the Court and will significantly expand the scope of

[9] Plaintiffs are not seeking a sweeping judicial order that would automatically invalidate other past legislation. Each law has unique circumstances, and there is an open question whether statutes may be retroactively voided on constitutional procedural grounds years after enactment. This case only concerns Plaintiffs' timely challenge to Act 84.

this case beyond the pleadings if Plaintiffs must take a position on and litigate whether those other bills are constitutional. *See* HRE 201; *Territory v. Furubayashi*, 20 Haw. 559, 561 (1911) ("[E]ach case must be decided according to its own peculiar facts."). This Court already emphasized at the December 19 hearing on the Legislature's motion for leave to file an amicus memorandum that if the Complaint is focused on Act 84—which it is—then the Court's attention will be focused on Act 84. The Legislature has not presented any basis for the Court to go beyond the claims asserted by the Plaintiffs.

IV. NON-GERMANE SUBSTITUTE BILLS RESET THE THREE READINGS.

By reference to the debates of the 1968 Constitutional Convention, the Legislature argues that it can make complete non-germane bill substitutions at any point during the legislative process. Amicus Mem. at 7-12. As already discussed above, it is improper to rely on the 1968 debates for authority concerning the three readings requirement because that constitutional convention did not substantively amend that mandate. But critically, as has been pointed out in earlier briefing, the Legislature's position ignores the clear intent of three readings provision in preventing hasty legislation. Construing the constitution to require only three readings of a bill *number* rather than the bill's *contents* would eviscerate the intent and purpose of three readings. Pls. Mem. at 4-5; Pls. Reply Mem. at 2-3; *United Pub. Workers*, 101 Haw. at 53, 62 P.3d at 196 ("A constitutional provision must be construed 'to avoid an absurd result' and to recognize the mischief the framers intended to remedy."); *accord State v. Kahlbaun*, 64 Haw. 197, 206, 638 P.2d 309, 317 (1981) ("A legislative construction implementing a constitutional amendment cannot produce an absurd result or be inconsistent with the purposes and policies of the amendment.") The Legislature cited no authority to support its interpretation that discussion of amendments would include non-germane amendments—even the Legislature's adopted rulebook expressly authorizes only germane amendments. Pls. Mem. at 7; Pls. Reply Mem. at 4-5.

V. JUSTICIABILITY HAS BEEN ADDRESSED.

The Legislature's justiciability arguments merely repeat the State's position. *Compare* Amicus Mem. at 13-16, *with* State Mem. at 9-14; State Reply Mem. at 6-8. Plaintiffs responded. Pls. Mem. at 12-13. Though the Legislature says separation of

powers is the "main issue", Amicus Mem. at 3, it provides no additional authorities not already addressed in prior briefing.[10]

CONCLUSION

Plaintiffs respectfully request that this Court grant summary judgment in favor of the League of Women Voters of Honolulu and Common Cause and declare that (1) the State violated the three readings and title requirements of article III, sections 14 and

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[10] While Hawai`i precedent is clear that the constitutional procedural protections of the title and three readings provisions are justiciable, a recent Kentucky Supreme Court decision addressed the precise question that the State and the Legislature raise here. *Bevin v. Commonwealth ex rel. Beshear*, No. 2018-SC-000419-TGE, 2018 WL 6575518 at *5-6 (Ky. Dec. 13, 2018). Appellants argued that the three-readings requirement was left to the determination of the General Assembly because the Kentucky Constitution also provided that each house "may determine the rules of its own proceedings." The court disagreed:

> [W]e acknowledge our obligation to refrain from interfering with the internal processes and internal rules by which the other branches perform their constitutional functions. However, in this instance we are not addressing whether the passage of SB 151 conformed to the internal rules and processes of the General Assembly. We are confronted, instead, with the question of what § 46 of the Kentucky Constitution means when it says that "every bill shall be read at length on three different days in each House"; and whether the enactment of SB 151 comports with that constitutional provision.
>
> We must reject the argument that this Court has no voice in that determination. The foundational principle described in *Marbury v. Madison* has been a cornerstone of the American republic for as long as the republic has endured: "It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. . . . This is of the very essence of judicial duty."
>
> Kentucky has not wavered in its allegiance to that principle. Section 46 is not a procedural rule or policy written and adopted by the legislature to perform its constitutional function; it is an explicit provision of the Kentucky Constitution.

Id. at *5. (citations omitted). The court recognized that its "power to determine the constitutional validity of a statute does not infringe upon the independence of the legislature." *Id.* at 6.

15 of the Hawai`i Constitution by enacting Act 84, and (2) Act 84 is void as unconstitutional.

DATED: Honolulu, Hawai`i, January 11, 2019

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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI`I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE Plaintiffs, vs. STATE OF HAWAI`I, Defendant.	CIVIL NO. 18-1-1376-09 GWBC (Other Civil Action) DECLARATION OF R. BRIAN BLACK; EXHIBITS 29-34

DECLARATION OF R. BRIAN BLACK

1. I am attorney for the Plaintiffs in this action. I make this declaration in support of Plaintiffs' response to the memorandum of *Amicus Curiae* Hawai`i State Legislature based on review of public records and ancient documents.

2. Attached as Exhibit 29 is a true and correct copy of excerpts from the 1852 Constitution of the Kingdom of Hawai`i, the 1864 Constitution of the Kingdom of Hawai`i, the 1887 Constitution of the Kingdom of Hawai`i, the 1894 Constitution of the Republic of Hawai`i, and the 1900 Organic Act, as reprinted in *The Fundamental Law of Hawaii* (ed. Lorrin A. Thurston 1904) and electronically scanned by Google.

3. Attached as Exhibit 30 is a true and correct copy of an excerpt from the 1950 Hawai`i Constitution, as reprinted in 1 Proceedings of the Constitutional Convention of Hawai`i of 1950 and electronically scanned by the Legislative Reference Bureau.

4. Attached as Exhibit 31 is a true and correct copy of excerpts from the Proceedings of the Constitutional Convention of Hawai`i of 1950 and electronically scanned by the Legislative Reference Bureau.

5. Attached as Exhibit 32 is a true and correct copy of excerpts from the Proceedings of the Constitutional Convention of Hawai`i of 1968 and electronically scanned by the Legislative Reference Bureau.

6. Attached as Exhibit 33 is a true and correct copy of excerpts from the Proceedings of the Constitutional Convention of Hawai`i of 1978 and electronically scanned by the Legislative Reference Bureau.

7. Attached as Exhibit 34 is a true and correct copy of Standing Committee Report No. 417-84 as published in the 1984 House Journal.

I, R. BRIAN BLACK, do declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawai`i, January 11, 2019

R. BRIAN BLACK

Acts and Laws, shall be:—"Be it enacted by the King, the Nobles and the Representatives of the Hawaiian Islands in Legislative Council assembled."

ART. 102. To avoid improper influences which may result from intermixing in one and the same Act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title.

ART. 103. All laws now in force in this Kingdom, shall continue and remain in full effect, until altered or repealed by the Legislature; such parts only excepted as are repugnant to this Constitution. All laws now enacted, or that may hereafter be enacted, contrary to this Constitution, shall be null and void.

ART. 104. This Constitution shall be in force from the first Monday of December in the year one thousand eight hundred and fifty-two; but that there may be no failure of justice, or danger to the Kingdom, from any change, all officers of this Kingdom, at the time this Constitution shall take effect, shall have, hold, and exercise all the powers to them granted, until other persons shall be appointed in their stead; and all courts of law shall proceed in the execution of the business of their respective departments; and all executive and legislative officers, bodies and powers, shall continue in full force, in the enjoyment and exercise of their trusts, employments and authority, until new appointments or elections shall take place under this Constitution.

MODE OF AMENDING THE CONSTITUTION.

ART. 105. Any amendment or amendments to this Constitution may be proposed in either branch of the Legislature, and if the same shall be agreed to by a majority of the members of each House, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and referred to the next Legislature; which proposed amendment or amendments shall be published for three months previous to the election of the next House of Representatives; and if, in the next Legislature, such proposed amendment or amendments, shall be agreed to by two-thirds of all the members of each house, and be approved by the King, such amendment or amendments shall become part of the Constitution of this Kingdom.

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of his pardon, declared to be appointable to offices of Trust, Honor, and Profit.

ARTICLE 74. No officer of this Government shall hold any office, or receive any salary from any other Government or Power whatever.

ARTICLE 75. The Legislature votes the Appropriations biennially, after due consideration of the revenue and expenditure for the two preceding years, and the estimates of the revenue and expenditure of the two succeeding years, which shall be submitted to them by the Minister of Finance.

ARTICLE 76. The enacting style in making and passing all Acts and Laws shall be, "Be it enacted by the King, and the Legislative Assembly of the Hawaiian Islands, in the Legislature of the Kingdom assembled."

ARTICLE 77. To avoid improper influences which may result from intermixing in one and the same Act, such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in its title.

ARTICLE 78. All laws now in force in this Kingdom, shall continue and remain in full effect, until altered or repealed by the Legislature; such parts only excepted as are repugnant to this Constitution. All laws heretofore enacted, or that may hereafter be enacted, which are contrary to this Constitution, shall be null and void.

ARTICLE 79. This Constitution shall be in force from the Twentieth day of August in the year One Thousand Eight Hundred and Sixty-Four, but that there may be no failure of justice, or inconvenience to the Kingdom, from any change, all officers of this Kingdom, at the time this Constitution shall take effect, shall have, hold, and exercise all the power to them granted, until other persons shall be appointed in their stead.

ARTICLE 80. Any amendment or amendments to this Constitution may be proposed in the Legislative Assembly, and if the same shall be agreed to by a majority of the members thereof, such proposed amendment or amendments shall be entered on its journal, with the yeas and nays taken thereon, and referred to the next Legislature; which proposed amendment or amendments shall be published for three months previous to the next election of Representatives; and if in the next Legislature such proposed amendment or amendments shall be agreed to by two-thirds of all the members of the Legislative Assembly, and be approved by the King, such amendment or amendments shall become part of the Constitution of this country.

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for the two preceding years, and the estimates of the revenue and expenditure of the two succeeding years, which shall be submitted to them by the Minister of Finance.

ARTICLE 76. The enacting style in making and passing all Acts and Laws shall be, "Be it enacted by the King, and the Legislature of the Hawaiian Kingdom."

ARTICLE 77. To avoid improper influences which may result from intermixing in one and the same Act, such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in its title.

ARTICLE 78. Wherever by this Constitution any Act is to be done or performed by the King or the Sovereign, it shall, unless otherwise expressed, mean that such Act shall be done and performed by the Sovereign by and with the advice and consent of the Cabinet.

ARTICLE 79. All laws now in force in this Kingdom, shall continue and remain in full effect, until altered or repealed by the Legislature; such parts only excepted as are repugnant to this Constitution. All laws heretofore enacted or that may hereafter be enacted, which are contrary to this Constitution, shall be null and void.

ARTICLE 80.—The Cabinet shall have power to make and publish all necessary rules and regulations for the holding of any election or elections under this Constitution, prior to the passage by the Legislature of appropriate laws for such purpose, and to provide for administering to officials, subjects and residents the oath to support this Constitution. The first election hereunder shall be held within ninety days after the promulgation of this Constitution, and the Legislature then elected may be convened at Honolulu upon the call of the Cabinet Council, in extraordinary session at such time as the Cabinet Council may deem necessary, thirty days notice thereof being previously given.

ARTICLE 81. This Constitution shall be in force from the 7th day of July, A. D. 1887, but that there may be no failure of justice, or inconvenience to the Kingdom, from any change, all officers of this Kingdom, at the time this Constitution shall take effect, shall have, hold, and exercise all the power to them granted. Such officers shall take an oath to support this Constitution, within sixty days after the promulgation thereof.

ARTICLE 82. Any amendment or amendments to this Constitution may be proposed in the Legislature, and if the same shall be agreed to by a majority of the members thereof, such proposed amendment or amendments shall be entered on its jour-

Article 63.—Title of Laws.

Each Law shall embrace but one Subject, which shall be expressed in its Title.

The Title of a Law amending or repealing another law shall refer to the section or chapter of the law amended or repealed, and to the subject-matter involved.

Article 64.—Readings of Bills.

A Bill, in order to become law, shall, except as herein provided, pass three readings in each House, the final passage of which in each House, shall be by a majority vote of all the elective members to which such House is entitled, taken by ayes and noes and entered upon its journal.

Article 65.—Certification of Bills from One House to the Other.

Every Bill when passed by the House in which it originated, or in which amendments thereto shall have originated, shall immediately be certified by the Chairman and Clerk and sent to the other House for consideration.

Article 66.—Signing Bills.

Except as herein provided, all Bills passed by the Legislature shall, in order to be valid, be signed by the President.

Article 67.—Veto of President.

Every Bill which shall have passed the Legislature shall be certified by the Chairman and Clerk of the House last considering it, and shall thereupon be presented to the President. If he approves it, he shall sign it and it shall become a law. If the President does not approve such bill, he may return it, with his objections, to the Legislature.

He may veto any specific item or items in any bill which appropriates money for specific purposes; but shall veto other bills, if at all, only as a whole.

ENACTING CLAUSE—ENGLISH LANGUAGE.

SEC. 44. That the enacting clause of all laws shall be, "Be it enacted by the legislature of the Territory of Hawaii."

All legislative proceedings shall be conducted in the English language.

TITLE OF LAWS.

SEC. 45. That each law shall embrace but one subject, which shall be expressed in its title.

READING OF BILLS.

SEC. 46. That a bill in order to become a law shall, except as herein provided, pass three readings in each house, on separate days, the final passage of which in each house shall be by a majority vote of all the members to which such house is entitled, taken by ayes and noes and entered upon its journal.

CERTIFICATION OF BILLS FROM ONE HOUSE TO THE OTHER.

SEC. 47. That every bill when passed by the house in which it originated, or in which amendments thereto shall have originated, shall immediately be certified by the presiding officer and clerk and sent to the other house for consideration.

SIGNING BILLS.

SEC. 48. That, except as herein provided, all bills passed by the legislature shall, in order to be valid, be signed by the governor.

VETO OF GOVERNOR.

SEC. 49. That every bill which shall have passed the legislature shall be certified by the presiding officers and clerks of both houses, and shall thereupon be presented to the governor. If he approves it, he shall sign it, and it shall become a law. If the governor does not approve such bill, he may return it, with his objections, to the legislature.

He may veto any specific item or items in any bill which appropriates money for specific purposes; but shall veto other bills, if at all, only as a whole.

the senate unless he shall have attained the age of thirty years, have been a resident of the State for not less than three years and be a qualified voter of the senatorial district from which he seeks to be elected. No person shall be eligible to serve as a member of the house of representatives unless he shall have attained the age of twenty-five years, have been a resident of the State for not less than three years and be a qualified voter of the representative district from which he seeks to be elected.

Privileges of Members

Section 8. No member of the legislature shall be held to answer before any other tribunal for any statement made or action taken in the exercise of his legislative functions; and members of the legislature shall, in all cases except felony or breach of the peace, be privileged from arrest during their attendance at the sessions of their respective houses, and in going to and returning from the same.

Disqualifications of Members

Section 9. No member of the legislature shall hold any other public office under the State, nor shall he, during the term for which he is elected or appointed, be elected or appointed to any public office or employment which shall have been created, or the emoluments whereof shall have been increased, by legislative act during such term. The term "public office", for the purposes of this section, shall not include notaries public, reserve police officers or officers of emergency organizations for civilian defense or disaster relief. The legislature may prescribe further disqualifications.

Salary and Allowances

Section 10. The members of the legislature shall receive such salary and allowances as may be prescribed by law, but any increase or decrease in the amount thereof shall not apply to the legislature which enacted the same. No salary shall be payable when the senate alone is convened in special session, or when the legislature convenes in special session pursuant to Section 17 of this article.

Sessions

Section 11. Regular sessions of the legislature shall be held annually. The governor may convene the legislature, or the senate alone, in special session. All sessions shall be held at the capital of the State. In case the capital shall be unsafe, the governor may direct that any session shall be held at some other place. Regular sessions in odd numbered years shall be known as "general sessions" and regular sessions in even numbered years shall be known as "budget sessions".

Budget Sessions

At budget sessions the legislature shall be limited to the consideration and enactment of the general appropriations bill for the succeeding fiscal year and bills to authorize proposed capital expenditures, revenue bills necessary therefor, urgency measures deemed necessary in the public interest, bills calling elections, proposed constitutional amendments and bills to provide for the expenses of such session and the special session to be convened thereafter in accordance with the provisions of Section 17 of this article.

The legislature may also consider and act upon matters relating to the impeachment or removal of officers. No urgency measure shall be considered unless a statement of facts constituting such urgency shall be set forth in one section thereof and until such section shall have been first approved by each house.

The approval of such section and the final passage of such measure in each house shall require a two-thirds vote of all the members to which such house is entitled, taken by ayes and noes and entered upon its journal.

Sessions; Commencement; Duration

Regular sessions shall commence at 10:00 o'clock a. m., on the third Wednesday in February. General sessions shall be limited to a period of sixty days and budget sessions and special sessions to a period of thirty days, but the governor may extend any session for not more than thirty days. Sundays and holidays shall be excluded in computing the number of days of any session.

Adjournment

Section 12. Neither house shall adjourn during any session of the legislature for more than three days, or sine die, without the consent of the other.

Organization; Discipline; Rules; Procedure

Section 13. Each house shall be the judge of the elections, returns and qualifications of its own members and shall have, for misconduct, disorderly behavior or neglect of duty of any member, power to punish such member by censure or, upon a two-thirds vote of all the members to which such house is entitled, by suspension or expulsion of such member. Each house shall choose its own officers, determine the rules of its proceedings and keep a journal. The ayes and noes of the members on any question shall, at the desire of one-fifth of the members present, be entered upon the journal.

Twenty days after a bill has been referred to a committee in either house, the same may be recalled from such committee by the affirmative vote of one-third of the members to which such house is entitled.

Quorum; Compulsory Attendance

Section 14. 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, taken by ayes and noes and entered upon its journal. A smaller number than a quorum may adjourn from day to day and may compel the attendance of absent members in such manner and under such penalties as each house may provide.

Bills; Enactment

Section 15. No law shall be passed except by bill. Each law shall embrace but one subject, which shall be expressed in its title. The enacting clause of each law shall be, "Be it enacted by the legislature of the State of Hawaii".

Passage of Bills

Section 16. No bill shall become law unless it shall pass three readings in each house, on separate days. Every bill when passed by the house in which it originated, or in which amendments thereto shall have originated, shall immediately be certified by the presiding officer and clerk and sent to the other house for consideration.

Approval or Veto

Section 17. Every bill which shall have passed the legislature shall be certified by the presiding officers and clerks of both houses and shall thereupon be presented to the governor.

If he approves it, he shall sign it and it shall become law. If the governor does not approve such bill, he may return it, with his objections, to the legislature.

He may veto any specific item or items in any bill which appropriates money for specific purposes by striking out or reducing the same; but he shall veto other bills, if at all, only as a whole.

The governor shall have ten days to consider bills presented to him ten or more days before the adjournment of the legislature sine die, and if any such bill is neither signed nor returned by the governor within that time, it shall become law in like manner as if he had signed it.

Reconsideration After Adjournment

The governor shall have forty-five days, after the adjournment of the legislature sine die, to consider bills presented to him less than ten days before such adjournment, or presented after adjournment, and any such bill shall become law on the forty-fifth day unless the governor by proclama-

other trials and tribulations that must be suffered by citizens and taxpayers, is caused for sincere concern.

5. The use of the initiative eliminates the mature deliberation, amendment and compromise usually necessary to produce sound and lasting legislation. The people must vote "yes" or "no" on a proposal once submitted to the electorate. In the legislature, a bill may be amended any number of times after debate discloses its weaknesses, or opposition forces compromise to meet objections raised to its form or substance. After the initiative measure is submitted to the people, no matter how many weaknesses, evils or faults are discovered during the course of the campaign for or against its adoption, it can not be amended—the people must take it or leave it "as is."

Realizing this basic weakness, the proponents of the initiative have hit upon the "indirect initiative" as an alleged means of overcoming this defect. However, even this does not fully meet the situation. If an initiative measure appears to the legislature, to which it is submitted under the indirect initiative system, to be so improvident, impracticable or otherwise undesirable as to warrant its being entirely rejected, it is asking too much of human nature to expect them to spend days, perhaps weeks, of study, debate and redrafting, just to put the measure in as nearly perfect form as possible. The result will be a submission of the original, or some poorly redrafted substitute, to the electorate, to be voted on, without any further opportunity for amendment.

6. The initiative is expensive. The State must pay for printing the petitions, the ballots, the information pamphlets, the cost of mailing such information to voters, other advertising costs, the checking of the petitions to see that they have been signed by the requisite number of voters, and the election expenses.

An additional, and much greater expense falls on the sponsors and opponents of the measure. They must bear the cost of securing signers to the petition and underwrite an extensive campaign to inform and influence the voters on the issue. Your Committee was given figures indicating that the cost to defeat the Townsend pension plan in Oregon was $44,000. Recently in California, because the taxpayers did not make available substantial private funds to oppose Proposal 4, which provided abnormally high payments to the aged, leaving insufficient funds for other government purposes, it was necessary to spend $900,000 to bring the matter again before the electorate and defeat it.

The initiative has, according to some authorities, even produced professional publicists who, for stated fees of so much per head, or other considerations, undertake to secure the required number of signers to any petition, and to sway the election.

7. The small size of the proposed State of Hawaii (having a population less than that of many large cities) with its less complex problems than those of most of the states which has a very large number of counties, make it possible for our legislators, because of personal knowledge and contact, to consider adequately and with reasonable promptness all of the local and general problems which are likely to arise. The majority of your Committee believes that an unbiased examination of the history of Hawaii and the laws passed since the inception of the Territorial government will disclose that with but one notable exception — reapportionment (which will be much better remedied by automatic reapportionment than by initiative) our legislature has been fully responsive to the real needs of the Territory and the counties and to popular opinion when convinced that such opinion is sustained and not transient. Considering the small size of the Territory, and the aids to more efficient legislation and government in general contemplated by the constitution, some of which are mentioned in this report, that tradition of legislative responsiveness can fully be expected to continue.

8. Assuming, as the majority of your Committee does, that this convention will approve the principle of full representation according to population in the House of Representatives of the State Legislature, and geographic representation in the Senate, thereby giving control of the House to the City and County of Honolulu and of the Senate to the other counties, the adoption of a statutory initiative provision in the constitution would destroy the balance of legislative representation, since, unlike the situation in any other state, one county here contains much more than one-half of the entire population of the state — about sixty-five percent. If the principle of such balance between popular and geographic representation in the Legislature is sound, as the majority of your Committee believes it to be, in view of the special conditions prevailing in these Islands, then to give to the people of one city and county alone the power to enact legislation regardless of the needs or desires of those of the other counties would be to contradict that principle, unless so many restrictions should be written around the exercise of the initiative as to render it either unworkable or unrecognizable as compared to that of any other state system.

9. One of the necessary features of laws adopted by the legislature is the necessity for three readings and the opportunity for full debate in the open before committees and in each House, during the course of which the purposes of the measures, and their meaning, scope and probable effect, and the validity of the alleged facts and arguments given in their support can be fully examined and, if false or unsound, can be exposed, *before* any action of consequence is taken thereon. To be sure, bills can be introduced in the legislature with the same kinds of defects, improvident or impractical provisions, and selfish or improper motives, as might exist in initiative measures. But the expenses attendant upon the introduction of such a bill in the legislature and its decease by action or inaction of the members and the consequences of such introduction and defeat of the measure, are quite likely to be infinitesimal as compared to those attendant upon the initiation of a measure through the popular initiative. On the other hand, once an initiative petition is signed by the requisite number of electors, an irrevocable chain of circumstances is set up under which, even under the indirect initiative, the measure in some form or other *must* be submitted to the voters, (if it does not become law by overawing the legislature into its enactment) regardless of how unsound or improvident the whole scheme may be, and with all the large expenses, direct and indirect, attendant thereon. And how is this chain of circumstances so irrevocably forged? By the circulation of a petition by persons, often selfishly interested in a special group, either secretly or in such manner as to make it impossible for any opponents of the scheme to hear or know the representations of fact or arguments presented to the signers. The proponents are not interested in giving both sides of the controversy or, in many cases, even in truthfully stating the facts and arguments in favor of their proposal. They are interested only in making such representations and using such arguments and blandishments, possibly even threats, as will yield the requisite number of signatures.

The general public is unable to evaluate the representations made at the time signatures are obtained. This is be-

ployment from being elected to or from taking or holding a seat in the legislature, the difference being that the proposed section applies to persons holding public positions or employment as well as public offices. It is not to be construed, however, to prevent a member of the legislature from being re-elected or to prevent a member of either house from being elected to the other.

Section 9. Privileges of members. Section 9 sets forth the privileges of members of the legislature. The immunity from liability of members of the legislature has been enlarged to include "any statement made or action taken" in the exercise of legislative functions, as compared to section 28 of the Organic Act, which limits the immunity to "words uttered." The proposed section is intended to cover written as well as oral statements and any action taken in the exercise of legislative functions, in the broadest sense. The provision for exemption from arrest is the same as contained in section 29 of the Organic Act, except that the ten-day limitation on going to and returning from sessions has been omitted.

Section 10. Disqualification of members. Section 10 disqualifies members of the legislature (1) from holding any other public office, position or employment of profit while holding their legislative office and (2) during the term for which they are elected or appointed, from being elected or appointed to any public office, position or employment of profit which is created, or the emoluments whereof are increased, by legislative act during such term. The first disqualification corresponds to a similar disqualification in the judiciary article. The second disqualification is derived from section 16 of the Organic Act but the Organic Act disqualification applies only to "any office of the Territory." The provision under consideration is different in that (1) the disqualification of a member applies to a position or employment, as well as an office, of profit of the State or any local government or any agency thereof, but (2) on the other hand, it will apply only to an office, position or employment of profit that has been created, or the emoluments whereof increased, by the legislature during the term for which such member was elected or appointed.

Section 11. Salary of members. Section 11 fixes the salary of members of the legislature as follows: $1,500 for each general session, $1,000 for each budget session and $750 for each special session of the legislature. No salary is to be payable when the senate alone is convened in special session. The salaries are to be payable in such installments as may be prescribed by law. The term "salary" has been used advisedly. While the legislature will have no authority to change the amount of the salaries fixed in this section, it is not intended to preclude the legislature from providing for the payment of per diem allowances and allowances for or reimbursement of travel and other expenses.

Section 12. Sessions of legislature. Section 12 provides for regular sessions to be held annually, as well as special sessions of the legislature or of the senate alone. As briefly stated above, the annual sessions are to be "general sessions" and "budget sessions" in alternate years. The budget sessions are to be limited to the consideration and enactment of the general appropriations bill for the succeeding fiscal year and bills to authorize proposed capital expenditures, revenue bills necessary therefor, urgency measures deemed necessary in the public interest, bills calling elections, proposed constitutional amendments and bills to provide for the expenses of such session. Special limitations are imposed with respect to urgency measures, first, that each urgency measure must contain in a separate section a statement of the facts constituting the urgency, and, second, that no such measure may be considered by either house until such section is first approved by each house. Furthermore, in the approval of such section and upon the final passage of the measure in each house, a two-thirds vote of all the members to which such house is entitled is required. The term "approval," as used in this respect, is not intended to require anything more than a single reading and vote, as distinguished from the passage of the measure itself, which will require three readings. The time for the commencement of regular sessions has been fixed at 10:00 o'clock a.m., on the third Wednesday in February, the date being the same as provided in section 41 of the Organic Act. General sessions are limited to 60 days, while budget sessions and special sessions are limited to 30 days, but the governor is authorized to extend any session for not more than 30 days. Sunday; and holidays do not count in computing the number of days in any session.

Section 13. Adjournments. Section 13, which is substantially the same as section 42 of the Organic Act, simply provides that neither house may adjourn for more than three days, or sine die, without the consent of the other.

Section 14. Organization; seating and punishment of members; officers; rules; journal; record of vote. Section 14 includes a number of provisions contained in several sections of the Organic Act. The provision that each house shall be the judge of the elections, returns and qualifications of its own members is the same as section 15 of the Organic Act. The provision that each house shall have power to punish any member for misconduct, disorderly behavior, or neglect of duty is derived from section 27 of the Organic Act. The grounds for punishment have been enlarged to include misconduct, which term is to be taken in its broadest sense. Punishment may be by censure or by suspension or expulsion, but a two-thirds vote of all the members to which the house is entitled is required for suspension or expulsion. The provision that each house shall choose its own officers, determine the rules of its proceedings and keep a journal is substantially the same as section 20 of the Organic Act. The provision that the vote on any question shall be entered upon the journal at the request of one-fifth of the members present is the same as section 21 of the Organic Act.

Section 15. Quorum; number required to act; compulsory attendance. Section 15 is also taken from several sections of the Organic Act. The requirement of a majority of the number of members to which each house is entitled for a quorum for the conduct of ordinary business, that of a majority of such quorum for action on ordinary business, and the requirement of a majority vote of all the members to which each house is entitled for the final passage of a bill are the same as in section 22 of the Organic Act. The provision for the taking of the vote by ayes and noes and the entry thereof in the journal upon the final passage of a bill is taken from section 46 of the Organic Act. The provision that a smaller number than a quorum may adjourn from day to day and may compel the attendance of absent members is the same as section 23 of the Organic Act.

Section 16. Bills; enactment by bill; subject and title; enacting clause. Section 16 contains one new provision, to wit, that no law shall be passed except by bill. This provision would eliminate the practice of legislating by joint resolutions. This section further requires that each law shall embrace but one subject, which is required to be expressed in its title, as is provided by section 45 of the Organic Act. The description of the enacting clause of laws

is substantially the same as that specified in section 44 of the Organic Act.

Section 17. Passage of bills. Section 17 sets forth the requirement of passage on three readings in each house on separate days for any bill to become law, as is provided in section 46 of the Organic Act. The provision for certification of bills from one house to the other upon passage is the same as in section 47 of the Organic Act.

Section 18. Action by governor; approval; veto; failure to approve or veto. Section 18 is derived from sections 49 and 51 of the Organic Act, both of which relate to action on a bill by the governor after passage by the legislature and certification and presentation thereof to him. A bill becomes law upon approval by the governor, which is indicated by his signing the same. A bill is vetoed by the governor if he returns it, with his objections, to the legislature. The veto power, in the case of any bill appropriating money for specific purposes, is applicable to any specific item or items and may be exercised by striking out or reducing the same, but as to other bills the veto must be of the bill as a whole. Such provisions are the same as the provisions of the Organic Act, except the provision for reduction of specific items as stated above. If any bill is neither signed nor returned by the governor within ten days, Sundays and holidays excepted, after it has been presented to him, it becomes law unless the legislature by adjournment prevents its return, in which case it does not become law. This provision is in substance the same as the second paragraph of section 51 of the Organic Act, except that holidays as well as Sundays are to be excluded in computing the ten day period.

Section 19. Procedure upon veto. Section 19 sets forth the procedure upon veto and is substantially the same as section 50 of the Organic Act. The requirement of a two-thirds vote of all the members to which each house is entitled for the over-riding of the governor's veto is retained.

Section 20. Punishment of persons not members. Section 20 provides for the summary punishment of persons not members of the legislature for contempt of either house or any committee thereof, the punishment therefor being limited to a fine of not more than $100 or imprisonment for not more than 30 days. The parallel section in the Organic Act is section 25, but there are substantial differences. The proposed section is intended as a declaration of the inherent power of the legislature to punish for contempt, but is not intended to prevent the legislature from enacting legislation to provide for judicial proceedings as an alternative method of vindicating the authority of the legislature, with such penalties as may be provided by such law.

Section 21. Impeachment of elective executive officers. Section 21 provides for the impeachment of the governor and other elective officers of the executive department of the State, as distinguished from the judicial and the legislative branches. Grounds for impeachment are limited to treason, bribery and other high crimes and misdemeanors. The power to impeach is vested in the house of representatives but the power to try all impeachments is vested in the senate. The chief justice presides in case the governor is being tried. Conviction requires concurrence of two-thirds of the members present and judgments upon conviction are limited to removal from office and disqualification from holding office. Conviction upon impeachment, however, does not preclude further prosecution and punishment according to law. The foregoing provisions are patterned after the provisions of the Federal Constitution on this subject.

Section 22. Legislative council; duties; salary. Section 22 establishes a legislative council, to be composed of such members of the legislature as may be provided by law. The duties of the council are to collect information concerning the government and general welfare of the State and to report thereon to the legislature, to study and report on such measures for proposed legislation as may be submitted to it and such other duties as may be assigned by law. The council is authorized to recommend such legislation as in its opinion the welfare of the State may require. Members of the council may receive, in addition to their salary as legislators, such salary as may be provided by law.

In conclusion, your Committee believes that this proposal provides a suitable structure for the legislative branch of the State government that has been, in the main, proved by our experience under the Organic Act. Your Committee therefore recommends that this Committee proposal pass on second reading, subject, however to such amendments as may be made thereto.—*June 23, 1950*

Wm. H. Heen,
Chairman
E. B. Holroyde,
Vice-Chairman
Edward C. Bryan
Randolph Crossley
Hiram L. Fong
Flora K. Hayes
Frederick Ohrt
Thos. T. Sakakihara
Arthur D. Woolaway

Herbert K. H. Lee and Wm. H. Heen—We do not concur as to those portions of Sections 2 and 3 of the proposal which fix the total membership of the senate and house of representatives, and, unless such membership is reduced, we do not concur in the provision for annual sessions contained in Section 12.

Elizabeth R. Kellerman and Cable A. Wirtz—We do not concur with sections 2 and 3.

Toshio Serizawa—I do not concur with section 2.

Peter Kawahara—I do not concur with sections 2 and 3.

COMMITTEE PROPOSAL NO. 29

RELATING TO LEGISLATIVE POWERS AND FUNCTIONS.

RESOLVED, that the following be agreed upon as part of the State Constitution:

ARTICLE____.

SECTION 1. Legislative power. The legislative power of the State shall be vested in a legislature, which shall consist of two houses, a senate and a house of representatives. Such power shall extend to all rightful subjects of legislation not inconsistent with this constitution or the constitution of the United States.

SECTION 2. Senate; senatorial districts; number of members. The senate shall be composed of 25 members, who shall be elected by the qualified voters of the respective senatorial districts. The districts, and the number of senators to be elected from each, shall be as follows:

First senatorial district: the island of Hawaii, seven.

Second senatorial district: the islands of Maui, Molokai, Lanai and Kahoolawe, five;

Third senatorial district: that portion of the island of Oahu, lying east and south of Nuuanu Street and Pali Road and the upper ridge of the Koolau range from the Nuuanu Pali to Makapuu Point, five;

Fourth senatorial district: that portion of the island of Oahu, lying west and north of the third senatorial district, five; and

Fifth senatorial district: the islands of Kauai and Niihau, three.

HEEN: It came out of the Model Constitution that - -

TAVARES: Which?

HEEN: The first sentence, "No laws shall be passed except by bill."

TAVARES: That answers my question. On the other side, I should like to point out that although we have used joint resolutions in this territory, we have always held that they had to be passed three times, the same way as a bill, and that they have to have a title, the same way as a bill, so that I guess in general effect, they were probably the same except we used joint resolutions more for temporary purposes, as a rule.

HEEN: I might state it's been used usually for the purpose of requesting Congress to enact certain legislation by way of amending the Organic Act. That's always been done by joint resolution. As I recall it, there is no language in the Organic Act about any joint resolution at all, but joint resolutions have been enacted to become law and it has to have the enacting clause, "Be it enacted by the legislature," and also it required three readings, the same as a bill.

PORTEUS: I think the senator and delegate is quite correct, and one of the reasons that a joint resolution was used in respect to Congress or any other body was that, not only did it have a deliberative process accorded a bill for three separate readings and on three separate days in one house and the same procedure in the other, but it also required the consent of the governor, and consequently it seemed to carry very much more weight than a joint resolution - - I mean a resolution of both houses, or a House resolution or a Senate resolution alone. It also let the executive authority have a say so in the matter and it had, I thought, been a useful device and possibly one we would want to preserve. As I understand the committee report you would eliminate the use of a joint resolution.

CHAIRMAN: Committee report says "legislating" by that device. I don't know whether that's any different or not. Is it, Delegate Porteus?

HEEN: Those joint resolutions directed to Congress which required the approval of the governor required three readings. It can very well be passed by a bill. Call it a bill.

PORTEUS: I suppose that procedure could be followed. As a matter of fact we've also used the joint resolution to deal with other matters of a temporary nature. If I'm not mistaken, Keehi Lagoon, the authorization of the proceedings in respect to the acquisition of that property came through in part at least on a joint resolution.

HEEN: I might state, Mr. Chairman, that all these joint resolutions which have been passed after three readings and approved by the governor have been written into the session laws, and when they become functus, of course, they don't get into the Revised Laws. So I see no problem there, Mr. Chairman. Instead of calling them joint resolutions, call them bills.

CHAIRMAN: Ready for the question?

SAKAKIHARA: I beg to differ with the chairman of the committee that no appropriation has been made by joint resolution. When we made an enactment, a certain act by joint resolution, such as the Statehood Commission to go to Washington, the joint resolution also appropriated funds for the commission and it was held by the Attorney General's Department that the legislature was authorized to appropriate funds by means of joint resolution.

HEEN: After all it's just a matter of style, whether you are going to term one legislative act a joint resolution and another one a bill. They're all bills; they become law any way. You can call them all joint resolutions, and if you go through the procedure of three readings and the approval of the governor, they become legislative acts.

SAKAKIHARA: I don't, therefore, see why we should set off enactment by joint resolution and confine it simply to a bill.

CHAIRMAN: Will the chairman of the committee give us the language under which legislation is now being enacted under the Organic Act? What is the language?

HEEN: There is no language with reference to joint resolutions.

CHAIRMAN: Doesn't that answer your question, Delegate Sakakihara? In other words you can still pass them, I suppose.

SAKAKIHARA: But under Section 16, as proposed by the committee proposal, they were outlawed, they were prohibiting legislation by joint resolution.

SHIMAMURA: Although the Organic Act is silent as to resolutions - - joint resolutions, it also does not have any mandatory provisions that the enactment shall be by bill. Therefore, under the present system, under the Organic Act, a law might well be passed by resolution or joint resolution.

CROSSLEY: It appears to be controversial, I move we defer it.

SAKAKIHARA: Second.

CHAIRMAN: All in favor signify by saying "aye." Contrary. Carried. Till Wednesday, the understanding is the deferment is until Wednesday.

CROSSLEY: Yes. I move the adoption of Section 17, passage of bills.

WOOLAWAY: I'll second that motion.

TAVARES: I hate to appear an obstructionist. I really am not trying to obstruct, but it is my recollection, my understanding, that Congress is not bound by any three-day requirement and that many states are not bound, that under certain types of emergencies they can act without acting on separate days, and I wonder if the chairman would give us how many states require absolutely this three-day provision.

CHAIRMAN: Delegate Heen.

HEEN: The committee didn't go into that phase of the problem, simply adopted what appears now in the Organic Act.

TAVARES: Well, I'm just wondering if we are going to become a state, whether there may not be some cases where it will be to the urgent benefit of the state to act in less than five days or in less than three days. As I understand it, even under this provision, by passing a bill in both houses simultaneously and then switching one for the other in one of the houses you can still pass legislation in three days; but I have some feeling that as a state, which is a rather permanent status, there might be a situation where we might want to pass it sooner. As I recall it some states do have a provision that under certain emergency conditions and by

certain large majorities, bills can be passed more than once on the same day.

CHAIRMAN: Did you have an amendment, Delegate Tavares?

HEEN: It would seem to me that if you have a very important measure, that measure should at least require three days' deliberation and not less.

TAVARES: I am in sympathy with that for general legislation, but I can imagine a case where, if we were at war and wanted to mobilize quickly, that there would be a little advantage in being able to pass a bill in one day to raise a national guard or state guard or something a little higher.

CHAIRMAN: Are you ready for the question?

SAKAKIHARA: I believe this Section 17 deserves further study, according with the remarks of Delegate Tavares. I have had some experience of ten sessions in the legislature. We have found some difficulty under the present system of requiring bills to - -

CHAIRMAN: Your move is to defer it?

SAKAKIHARA: Defer, yes.

CHAIRMAN: Is there a second?

SAKAKIHARA: Till Wednesday.

ST. SURE: I second the motion.

CHAIRMAN: It has been moved and seconded that we defer action until Wednesday on this section. All in favor signify by saying "aye." Contrary. I think the motion is lost. The Chair will call for a show of hands on the motion. All in favor of deferring this section until Wednesday. Against. Motion is carried. Deferred until Wednesday.

WOOLAWAY: I move for the adoption of Section 18.

CROSSLEY: Second the motion.

FUKUSHIMA: I have a very long amendment on Section 18 concerning the pocket veto, and I believe after I had put it in it will be very controversial, so I move at this time that this section here and Section 19 be deferred until Wednesday.

CROSSLEY: Second the motion.

CHAIRMAN: Section 18 and 19 both be deferred until Wednesday?

FUKUSHIMA: That is correct.

CHAIRMAN: Is that seconded?

CROSSLEY: I seconded the motion.

CHAIRMAN: All in favor signify by saying "aye." Contrary. Carried. Sections 18 and 19 are deferred until Wednesday.

WOOLAWAY: I now move for the adoption of Section 20.

CROSSLEY: Second the motion.

ROBERTS: I have an amendment to Section 20. It may not be controversial. I would like to offer it.

CHAIRMAN: Has it been printed?

ROBERTS: No, it has not. It's a simple amendment I'd like to offer. In the fourth line, the words "who shall be guilty of contempt," I'd like to change that to "who have been convicted of contempt." We had previous discussion on the floor on the question of "who shall be guilty" and I think we adopted the language "who have been convicted," "found to have been guilty." I'd like to move that as an amendment, Mr. Chairman.

SAKAKIHARA: Only guilty persons are convicted of contempt, you don't convict innocent persons.

CHAIRMAN: I didn't get the question. Is there a second to this?

DELEGATE: I second the motion.

CHAIRMAN: It has been moved and seconded.

SAKAKIHARA: I rise to a point, Mr. Chairman. I beg to differ with the delegate from the fourth district. I see no harm in the language as used by the committee, only guilty persons are convicted.

HEEN: The use of the term "convicted" might imply conviction by court and this is a summary action on the part of the legislature itself. The legislature, a body of that kind, has power to punish for contempt on the part of any person who might interfere with the functions of the legislature.

ROBERTS: Do I understand that answer to mean that he may not be guilty and therefore can still be kept out?

CHAIRMAN: The question is that your amendment would imply, as it does to the mind of the Chair, that conviction means conviction not before the body but means in a court. Of course it doesn't mean that. The legislature has got the power of punishment for contempt without regards to what the courts may do.

HEEN: And as pointed out in the report, this will not prevent the legislature from enacting legislation for punishment of these persons in the criminal courts. That's being done now by the Congress where they have contempt of Congress or any committee of Congress. Then they have legislation whereby these persons who are - - may be proceeded against in the courts of law and punished there.

ROBERTS: I gather this is controversial.

CHAIRMAN: I don't think so.

TAVARES: Frankly, I think that the fears of the delegate who made the motion are not well founded. Before each house can punish they'll have to find the man guilty and I don't think the word "conviction" adds anything to it. But I do feel this, that there may be a more substantial defect from my point of view in this. I don't know why each house shouldn't be able to put one of its own members in jail if his action is contemptuous enough. Why should it be just an outside member? Under another section just deferred, they can suspend or remove him, but maybe they don't want to do either or it might be easier to slap him with a little fine and if it gets bad enough it might be proper to punish him like you would anybody else, as long as the house does it itself.

CHAIRMAN: Maybe the Republicans can put all the Democrats in the clink then under your amendment.

PORTEUS: Did I understand the chairman of the committee to advocate that as a desirable piece of legislation in the future?

SHIMAMURA: Section 20 in my humble opinion is very broad. It's a very substantial enlargement of the powers of the legislature contained in our present Organic Act. In the first place, it provides for summary punishment, and although the learned gentleman from the fourth district said that certainly there'll be a hearing, when you have summary punishment it's a question of whether or not you'll have a

WIRTZ: I understood the motion to defer went to the entire section, not only the amendment.

CHAIRMAN: That wasn't the Chair's understanding.

KING: Mr. Rice made the motion to defer action on the section.

PORTEUS: Section 11.

CHAIRMAN: The Chair will reverse itself then.

WOOLAWAY: I believe Section 13 has been adopted, so I now move for the adoption of Section 14.

NODA: I second the motion.

HEEN: I don't know what the status of Section 13 is?

CHAIRMAN: Has been adopted, on July 1, 1950.

ASHFORD: May I ask a question of the chairman of the committee in regard to Section 14? Inasmuch as there is a provision in another section for the judging of elections, would the chairman of the committee feel that this is desirable to say, "Not withstanding any other provision of the Constitution"?

HEEN: I believe what the delegate just stated refers to some provision in the article on suffrage and elections which provides for contested elections by a court of competent jurisdiction. Mr. Chairman, I must state that that provision there gave the Committee on Style some concern and maybe that provision should be eliminated altogether. But, if it is going to be there, remain there, then the suggestion made by Delegate Ashford I think is in order. "Notwithstanding any other provision in this Constitution, each house shall be the judge of elections and returns and qualifications of its own members."

CHAIRMAN: With the understanding that the Style Committee will reconcile any difference, will that be satisfactory to Delegate Ashford?

ASHFORD: Yes. In my opinion perhaps the exception -- two exceptions should be written into the article on suffrage and elections, that is, with the exception of any constitutional convention or the legislature.

BRYAN: The last time that this question came up, I pointed out that it may not have been exactly pertinent. This covers cases where there is no contest. Judges of elections in the other case, covered under the article on suffrage and elections, there would have to be a contest before it could be determined.

CHAIRMAN: This only applies to the legislature; it does not apply to the executive officers of government that may be elected. Any further discussion? If not, the Chair will put the question.

ROBERTS: I'm not quite clear as to the disposition you are making of this. In Committee Proposal No. 8 on suffrage and elections, there is a sentence which reads, "Contested elections shall be determined by a court of competent jurisdiction in such manner as shall be provided by law." Unless you are going to make some exception in the case of constitutional convention elections and elections involving members of the legislature, those two sections are in conflict. I think that the Committee on Style should be directed by this committee to resolve the conflict in some specific way, either change the article on suffrage and elections or make some provision in the present article with regard to that.

CHAIRMAN: This language is a common provision, that each house shall be the judge of the election returns and qualifications of its members. The section to which you have reference has to do with the contested election, which is a very different problem.

ROBERTS: Well, there may be a contest of election in connection with the legislature.

CHAIRMAN: Then the legislature is the sole judge.

ROBERTS: Well, unless you construe Section 5 to apply only to those areas other than the legislature and the constitutional convention elections, otherwise there is a conflict.

CORBETT: I don't see how you can make the legislature judge in a contested election of its own members. It seems to me that the point in putting that section in suffrage and elections was to have a body entirely objective in its approach to the problem. You have a group of people sitting in judgment on each other, and it is going to make a very difficult situation. In a contested election where there are facts to go on, it is quite a different story.

CHAIRMAN: That's a provision contained in our constitutional history from its very beginning. Whether or not a person is qualified to sit in the legislature each house determines; it's a political question with which the courts cannot interfere.

Are you ready for the question? All those in favor signify by saying "aye." Contrary. Carried.

TAVARES: I now move that it is the sense of this Convention that any conflict in the article on suffrage and elections should be controlled insofar as inconsistent with the sections just adopted by this section.

CHAIRMAN: Is there a second?

C. RICE: I second the motion.

CHAIRMAN: You heard the motion. All those in favor signify by saying "aye." Contrary. Carried.

WOOLAWAY: Section 15 having been adopted, I now move for the adoption of Section 16.

NODA: I second the motion.

CHAIRMAN: Any discussion? If not, the Chair will put the question. All in favor signify by saying "aye." Contrary. It's adopted.

WOOLAWAY: I now move for the adoption of Section 17.

NODA: I second the motion.

CHAIRMAN: It has been moved and seconded that Section 17 be adopted. Any discussion? Chair will put the question, all those in favor --

TAVARES: I just wanted to refresh the memories of those present. I am not going to argue too much one way or the other. There is a possibility of a need sometimes for faster action than one reading on each day. However, I am not going to labor the point. If the delegation still feels that as we have operated for 50 years we can safely operate in the future, why that's all right. There are some constitutions that allow by a two-thirds vote or some other special manner, the legislature or each house of the legislature can waive that separate reading on each day for emergency measures.

CHAIRMAN: Chair will put the question? All those in favor --

BRYAN: I'd like to put Delegate Tavares at ease. If the legislature were to pass a bill [by] three readings in one day, the only objection could be on the grounds of unconsti-

tutionality. While that was being labored in the courts they could repass the same law and take three days to do it.

CHAIRMAN: That doesn't make him too happy.

ROBERTS: I don't think that statement should be left in our record uncontested. I think the intention of this section is quite clear. The purpose is to see to it that no legislation is passed hurriedly and without due and careful consideration by the legislature. The intention is to provide three separate readings. I for one would not suggest that we look aside at this thing and say make it a constitutional section and violate our Constitution. I think the language is clear and ought to stay that way.

CHAIRMAN: The language is perfectly clear. Are you ready for the question? All those in favor signify by saying "aye." Contrary. Carried.

WOOLAWAY: I now move for the adoption of Section 18.

NODA: I second the motion.

CHAIRMAN: It has been moved and seconded that Section 18 be adopted.

FUKUSHIMA: I have an amendment to offer to the second paragraph of Section 18. The amendment has been distributed to the delegates. At this time I would like to move the adoption of this amendment. Amend the second paragraph of Section 18 to read as follows:

> If any bill is neither signed nor returned by the governor within ten days, Sundays and holidays excepted, after having been presented to him, it shall become a law in like manner as if he had signed it, unless the legislature by its adjournment prevents its return. If on the tenth day the legislature is in adjournment sine die, the bill shall become a law if the governor shall sign it within twenty days, Sundays and holidays excepted, after such adjournment. On the said twentieth day the bill shall become a law, notwithstanding the failure of the governor to sign it within the period last stated, unless at or before noon of that day he shall return it with his objections to the house of origin at a special session of the legislature which shall convene on that day, without petition or call, for the sole purpose of acting pursuant to this paragraph upon bills returned by the governor. A bill reconsidered at such special session, if approved upon reconsideration by two-thirds of all the members of each house, shall become a law.
>
> No salary shall be payable when the legislature is convened for this purpose.

CHAIRMAN: Does this relate to the second paragraph only?

FUKUSHIMA: Yes, it does.

J. TRASK: I second the motion.

FUKUSHIMA: This amendment has to do with the subject matter of the pocket veto. We have in this Convention set up an executive with very strong powers. Here, as proposed in Committee Proposal No. 29, the governor has the power to veto bills when the legislature adjourns sine die, without signing the bill certified to the governor. My amendment permits the legislature to reconvene for the purpose of reconsidering bills that are not passed by the governor. If he should fail to sign a bill within 20 days from the date of adjournment the bill automatically becomes law, unless he shall return the bill to the legislature for reconsideration. This will take away some of the powers which the governor now has. I feel that the governor's power to pocket veto a bill is a very strong power. He possesses legislative powers as well as executive powers. Many a time we have a bill passed after much deliberation in both houses, passed unanimously; and then the bill is certified to the governor, the legislature adjourns sine die, the governor doesn't do a thing within ten days and the bill is killed. This will prevent that and I think much of that power we have given to the governor may now be taken away from him as far as legislative matters are concerned.

CHAIRMAN: How would the legislature reconvene under your amendment, Delegate Fukushima, just automatically or by proclamation?

FUKUSHIMA: Automatically, Mr. Chairman.

CHAIRMAN: I don't think you've said enough in here to do that.

FUKUSHIMA: This follows the New Jersey Constitution and I believe that is done automatically in New Jersey. It says without petition or call, 20 days from the date of adjournment sine die.

CROSSLEY: I would like to speak in favor of the amendment. I think it is a good amendment and serves a very useful purpose. There has been a lot said here about giving the governor too much power and I think this is one way in which we can take what would very well be a legislative power away from him. It accomplishes one more thing in that it makes everyone take a position on every piece of legislation that has been passed by the legislature, and I think that is worthwhile and I would be in favor of this amendment.

TAVARES: Mr. Chairman, may I ask a question of the experienced legislators here? This sets an absolute time of 20 days after adjournment within which the governor must consider all bills. At the present time, the requirement is that the governor has ten working days or ten days exclusive of certain days, like Sundays and so forth, in which to consider a bill after he receives it. Experience has shown that sometimes at the end of a session the legislature passes say 100 or 150 bills or more and some of them are very long and it takes them quite a number of days to even write those up and engross them, so that the time of ten days doesn't start running until the governor receives them. This will require that your clerks engross all of those bills and get them up to the governor in that 20 day period. The query in my mind is, will that 20 days be sufficient to give the typists and so forth in the houses of the legislature time to engross the bills and at the same time give the governor adequate time to consider them? From my recollection those bills come dribbling into the Secretary's office now at the rate of a few a day, and it sometimes goes on for ten or 15 days before the last bill is received by the Secretary's office and transmitted to the governor.

FUKUSHIMA: The Constitution of New Jersey provides 45 days. I thought perhaps 45 days was a little too long. Therefore, after consultation with some of the delegates, we changed it to 20 days.

CHAIRMAN: Delegate Fukushima, are you referring to the executive article on page 14 of the New Jersey Constitution?

FUKUSHIMA: That is correct.

CHAIRMAN: The delegates have that before them.

FUKUSHIMA: If the period of 20 days is too short, I feel that the New Jersey language of 45 days could be sub-

in computing the number of days of any session. All sessions shall be held at the capital of the State. In case the capital shall be unsafe, the governor may direct that any session be held at some other place."

The amendment proposes annual general sessions, thus eliminating alternating budget sessions. The present scheme of alternating a 60-day general session with a 30-day budget session was meant to serve several purposes. Generally speaking, restricting alternate sessions to budgetary and fiscal matters evolved out of the problems encountered in the regular biennial session arrangement where appropriation bills often necessitated the call for a special session or were the key log in the end-of-session "logjam." It provided a satisfactory solution to the growing realization on the part of those directly involved in the legislative process that the fiscal operations of government and effective financial planning required annual attention, whereas general legislation could be adequately dealt with on a biennial basis. Such circumstances then, contributed to the establishment of alternating budget sessions.

Your Committee is of the opinion that the State of Hawaii has arrived at that point in its social, economic, and political development, where the need for annual general sessions now exists. The action of other states indicates a trend toward eliminating alternating budget sessions. Since 1964, three states (Maryland, California and Kansas) have dropped restrictions limiting alternating sessions to fiscal matters, bringing the total number of states with annual general legislative sessions to fourteen. Your Committee feels that although the line between fiscal and nonfiscal matters may have been easily discernible in the past, such a distinction is extremely difficult to make today. In fact, much time is wasted during a budget session in debating what is fiscal and what is not, or when a measure is "urgent," i.e., necessary to the public interest, and when it is not. Moreover the spirit of the Constitution requiring a measure to be urgent for budget session consideration has been honored more in the breach than in the observance simply by marshalling sufficient votes to label any measure "urgent." Further, your Committee feels that the growth of the State is reflected in the growing volume of general problems presented to the legislature, and these deserve legislative attention annually rather than biennially.

In addition to maximizing legislative sensitivity to the needs of the community and keeping the legislature in pace with social change, your Committee also accepts and supports the view that the legislature should play a positive and definitive role in state government. Such a role requires that the policy-review, planning and revision process of the legislature be on-going rather than interrupted in alternate years by a budget session. The conclusions achieved through oversight of the administrative process can then be more rapidly incorporated in revised legislation.

In order to strengthen and maximize legislative flexibility and to permit wider legislative accommodation of the changing demands of our growing State, your Committee recommends that the present alternating 30-day budget session be eliminated and annual 60-day general sessions be incorporated.

Your Committee also recognizes the need for strengthening the legislative branch *vis-a-vis* the executive branch. To this end your Committee recommends that the legislature be granted the power to extend any session for fifteen days by a two-thirds vote of each house of the legislature and, commensurately, that the governor's power to extend for thirty days be adjusted to fifteen days, it being the intent of your Committee that the aggregate number of days that a session may be extended by the governor and/or the legislature is fifteen days. Thus the governor cannot, for example, extend a session an additional fifteen days after the legislature had extended it for fifteen days. The legislature is also granted the power to convene itself into special session by a two-thirds vote of each house of the legislature. Presently only the governor has the power to extend any legislative session, and the legislature may convene itself only at or before noon on the forty-fifth day in special session without call, for the sole purpose of acting on any bill returned by the governor.

In accordance with all of the above-stated legislative objectives, it is further recommended that the legislature may, by a majority vote of each house, recess at will without the days of recess being computed into the number of days of any session; that Saturdays, as well as Sundays and holidays, be excluded in computing the number of days of any session to allow legislators more time to do their homework and reflect upon their activities; and that the legislature convene on the third Wednesday of January rather than the third Wednesday in February to allow the session, expanded by the adjustments proposed, to end in sufficient time before the commencement of the next fiscal year.

Sections 12, 13, 14 and 15 relating to adjournment, organization, quorum, and title and subject of laws passed by bill, respectively, have been retained without amendment. No proposal sought to amend these sections. Your Committee, after review, is satisfied that these sections need no amendment.

Section 16 of Article III has been amended to read as follows:

"Section 16. No bill shall become law unless it shall pass three readings in each house [,] on separate days. No bill shall pass final reading in each house unless in the form to be passed it shall have been printed and made available to the members of that house for at least twenty-four hours. Every bill when passed by the house in which it originated, or in which amendments thereto shall have originated, shall immediately be certified by the presiding officer and clerk and sent to the other house for consideration.

"Any bill pending at the final adjournment of a regular session in an odd-numbered year shall carry over with the same status to the next regular

session and, at the latter session, shall pass at least one reading in the house in which the bill originated."

Your Committee has included the twenty-four hour rule as a requirement for the passage of bills. The purpose of this rule is to assure members of the legislature an opportunity to take informed action on the final contents of proposed legislation. This is accomplished by requiring the printing and availability of each bill in the "form to be passed" to the members of a house and a twenty-four hour delay between such printing and availability before final reading in each house. "Form to be passed" means the form in which a bill is passed on third reading in each house, concurrence of one house to amendments made by the other, and the form in which a bill is passed by both houses after conference on a bill. The twenty-four hour rule not only aids the legislator but also gives the public additional time and opportunity to inform itself of bills facing imminent passage.

In the course of hearings held on this matter, a respectable case was made in opposition to establishing the twenty-four hour rule in the Constitution. The possibility of litigation which might result in striking down sound and necessary legislation on merely technical grounds is certainly increased. The costs in terms of the rigidity and delay in handling legislative business, particularly in light of the fact that a majority of the bills which pass in most states, pass without recorded opposition, may outweigh the benefits derived under this rule. The twenty-four hour delay can, on the one hand, retard legislative progress by encouraging amendments or, during rush periods, stifle necessary changes in order to meet deadlines. The rule suffers from the same enforcement deficiencies as other procedural safeguards. Since the courts usually will not look beyond the legislative journal for procedural violations, the practical effect is that the rule can be suspended simply by failing to record procedural shortcomings. Hence, the rule will have effect only when supported by a strong legislative conviction of its wisdom and necessity. Finally, whether the rule will significantly promote informed action by the general citizenry or merely increase the influence of already strong and skillful lobbies is open to question.

The arguments raised in favor of the twenty-four hour rule were made with equal force. The complexity of modern legislation, particularly with the development of omnibus bills in such broad fields as the budget, tax reform, administrative organization, workmen's compensation and others, frequently causes amendments to such bills to be highly technical in nature yet far-reaching in effect. Without the specific language before him, these circumstances may compel the legislator to vote on numerous bills whose purposes seem unclear and whose details seem beyond comprehension. Under the twenty-four hour rule the legislator is provided with the basic information he requires, and if the subject matter proves too technical to be understood just by reading, time is available for consulting colleagues, the bill's sponsors or legislative staff services. The importance of interest groups and their representatives to the legislative process as sources of information and barometers of public support for proposed legislation is unquestioned. By giving notice that a measure is coming up for final reading and by providing an opportunity to study the measure in its final form, the twenty-four hour rule enhances the functions served by these groups. Moreover, the delay better enables those concerned to marshal their forces in favor or against the matter under consideration.

In deliberating on the merits and demerits of the twenty-four hour rule, your Committee was guided by the belief that any change in procedure must be evaluated in terms of its contribution to the two principal legislative functions of representing people, groups and communities and of rendering decisions which can be accepted as carefully weighed and fairly made. It is our considered judgment that the substantial contribution which can be made by this rule through increasing awareness and understanding of proposed legislation decisively overrides the possible problems latent in its adoption.

The carry-over of bills permits those measures introduced in regular sessions held in odd-numbered years, but neither rejected nor adopted at such session to have life through the following regular session until finally acted upon. This provision is directed at improving the efficiency of the legislative process. Under present procedures, a large proportion of the bills introduced which fail to become law are reintroduced at the following session. The legislative machinery is considerably slowed down by the necessity of disposing of the same bills over and over again. Bills with a two-year life span would result in savings of time and the costs of reprinting reintroduced measures. A New Jersey study reports savings of about $60,000 in reprinting costs for that state. Moreover, the carry-over of bills blunts the restrictive effects of limited sessions by preserving legislative progress which did not reach the bill-passing stage in the prior session. The major weakness of the bill carry-over procedure is its vulnerability to abuse when measures are carried over to the following session on third reading. In this instance, bills might be abruptly passed before the members of a house had time to review the contents of the bill and determine the course of action to be taken upon it. However, your Committee is of the opinion that adequate safeguard has been made against this possibility by the proviso which requires that a carry-over bill shall receive at least one reading in the house in which the bill originated. Two situations readily come to mind with respect to this requirement. First, a bill originating in the senate passes the senate and passes two readings in the house before adjournment of the session in an odd-numbered year. With the carry-over status, the bill, at the next session, passes third reading in the house which must return it to the senate for the one reading pursuant to the requirement. In the second situation, a bill originating in the senate passes two readings in the senate before adjournment in an odd-numbered year. At the next session, the bill carried over receives the third reading and is transmitted to the house which then proceeds to pass the bill on three readings. The house is not required thereafter to return it to the senate for

another reading because the senate had already met the one reading requirement by its passage of the bill on third reading in the second session. To keep the above illustrations simple, it was assumed in both situations that the bill went through each house without amendment.

Sections 17 and 18 relating to approval, veto and procedures upon veto, Section 19 relating to punishment of non-members and Section 20 relating to impeachment were considered and having received no testimony thereon, your Committee does not recommend any amendments.

Section 17 of Article XVI relates to the salary of the members of the legislature. Your Committee considered this matter in connection with Section 10 of Article III hereinbefore mentioned. Section 17 was amended to read as follows:

> "Section 17. Until otherwise provided by law in accordance with Section 10 of Article III, the salary of members of the legislature shall be [as follows: the sum of two thousand five hundred dollars for each general session, the sum of one thousand five hundred dollars for each budget session and the sum of seven hundred and fifty dollars for each special session.] twelve thousand dollars per annum."

An annual salary of $12,000 is not only reasonable but readily justifiable. No witness denied that the existing salary for a general session of $2,500 is too low and that a salary increase is in order. The existing salary was established for conditions prevailing in 1950—eighteen years ago. Not only were salary scales and cost of living lower then, but also the problems of the State were less complex and demanding of a legislator's ability and time. The qualified candidate, which the public deserves, must be attracted to serve as legislator. The Citizens Committee to Advise the Senate on Legislative Processes recommended an annual salary of $12,000 for a year-round legislator which your Committee has supported. The Citizens Committee's recommendation was made in contemplation of a ninety *calendar* day general session beginning in mid-February and ending in mid-May. Your Committee proposed a sixty *working* day session, legislature's power to extend for an additional fifteen working days, and the excluding of Saturdays from computation of the working days. All this would be substantial equivalence of or longer than ninety *calendar* days. Indeed, the existing sixty working day general session alone lasts from mid-February to end of April. It is also common knowledge that extensive pre-session work is done at every legislative session. Although the legislator is not restricted from another job, your Committee assumes that the legislator is available for service whenever required throughout the year. Your Committee firmly believes that this increased salary will attract and produce the kind of legislator who will spend more time in educating and informing his community and constituents of the legislative processes and issues.

It is assumed by your Committee that the proposed actual annual compensation of $12,000 would make unnecessary the use of a "deemed" salary for the purpose of determining the legislator's average final compensation under section 6-38 of the Revised Laws of Hawaii 1955. It is your Committee's intent that the annual compensation of a legislator not be deemed to be multiples of $12,000 in computing his retirement, and it is expected that the legislature shall effect the necessary amendments to the retirement statute consistent with the intent herein expressed.

Your Committee recommends (1) that the above-numbered proposals referred to your Committee be filed; (2) that Sections 1, 5, 6, 7, 8, 9, 12, 13, 14, 15, 17, 18, 19 and 20 of Article III be retained without amendment; and (3) that Committee Proposal No. 7 pass first reading in the form attached hereto.

Signed by all members of the Committee. Delegates Fasi and Larson did not concur in part.

COMMITTEE PROPOSAL NO. 7

RELATING TO THE LEGISLATURE.

Resolved, That the following be agreed upon as amending Sections 10, 11 and 16 of Article III of the State Constitution:

Section 10. The members of the legislature shall receive allowances reasonably related to expenses and a salary, as prescribed by law. Any change in salary shall not apply to the legislature which enacted the same.

There shall be a commission on legislative salary, the members of which shall be appointed by the governor on or before June 1, 1971 and every four years thereafter. Within sixty days after its appointment, the commission shall submit to the legislature recommendations for a salary plan for members of the legislature, and then dissolve.

Section 11. The legislature shall convene annually in regular session at 10:00 o'clock a.m. on the third Wednesday in January and shall be convened at other times in special session, at the written request of a two-thirds majority of the members in each house, by the presiding officers of both houses. The governor may convene both houses or the senate alone in special session. Regular sessions shall be limited to a period of sixty days, and special sessions shall be limited to a period of thirty days. Any session shall be extended not more than fifteen days by the presiding officers of both houses at the written request of a two-thirds majority of the members in each house or by the governor. Any session shall be recessed by the presiding officers of both houses at the written request of a majority of the members in each house. Sundays, Saturdays, holidays and any days in recess shall be excluded in computing the number of days of any session. All sessions shall be held at the capital of the State. In case the capital shall be unsafe, the governor may direct that any session be held at some other place.

Section 16. No bill shall become law unless it shall

CHAIRMAN: Delegate Kauhane, would you like to answer the question?

DELEGATE KAUHANE: My question involves the entire section, but I would take it piecemeal.

CHAIRMAN: Delegate Ching, the question addressed to you refers to paragraph one as clarified by Delegate Kauhane.

DELEGATE KAUHANE: Mr. Chairman, will we get back to the proper section we're dealing on, Section 16?

CHAIRMAN: The question before you is Section 16 of Committee Proposal No. 7, the first paragraph dealing with the 24-hour rule only.

DELEGATE HUNG WO CHING: Yes, I'm coming to that, Mr. Chairman.

May I read the rest of my statement because it refers to—

CHAIRMAN: Delegate Ching, proceed.

DELEGATE HUNG WO CHING: All right. The original intent of a bill having passed one house can be substantially changed in legislative conferences. A bill in final form can then pass third reading in both houses without a reasonable opportunity for members of the legislature and the public for review in its final form. To correct this situation, our proposal will require that a bill be printed in its final form and be made available to the legislators and to the public for at least 24 hours before final passage. It is the committee's considered judgment that the substantial contribution which can be made by this rule through increasing awareness and understanding of the proposed legislation decisively overrides the possible problems in its adoption, might create.

CHAIRMAN: Is there any discussion?

DELEGATE KAUHANE: Mr. Chairman, my question is—

CHAIRMAN: Delegate Kauhane is recognized.

DELEGATE KAUHANE: My question is directed to the chairman of the committee.

I understand that the bill must pass three readings before the bill can actually become law, or have the semblance of becoming law with the signature of the governor. My concern here on the passage of the bill on three readings—one, is this, Mr. Chairman, does the reading of the bill by title on the third day constitute the bill having been read completely throughout?

DELEGATE HUNG WO CHING: May I yield to Delegate Miyake?

CHAIRMAN: Delegate Miyake is recognized.

DELEGATE MIYAKE: The constitutional provision as proposed by the committee on Section 16 does not state that the bill has to be read throughout. Therefore, it would be permissive for the legislative bodies provide the requirements as to how final reading will be interpreted in its own house or senate rules.

DELEGATE GEORGE LOO: Mr. Chairman.

CHAIRMAN: Delegate Loo is recognized.

DELEGATE GEORGE LOO: Will the chairman of the Legislative Powers Committee yield to a question?

DELEGATE HUNG WO CHING: I will.

CHAIRMAN: Delegate Ching. State your question to the Chair.

DELEGATE GEORGE LOO: Does this mean that there can be no amendment of the final bill? For example, let's—assuming there is a 24-hour delay for printing and that it's on the floor of the house or senate, that there can be no amendment of that bill?

DELEGATE HUNG WO CHING: If an amendment is made, it still has to go back to the original house for final passage, which is equivalent to a fourth reading.

DELEGATE DONALD CHING: Mr. Chairman.

CHAIRMAN: Delegate Donald Ching is recognized.

DELEGATE DONALD CHING: May I attempt to answer the question? In relation to the last question, the committee did discuss this procedure at length and what would happen if the passage of this amendment to the Constitution would mean to legislative processes would be that the bulk of the amendments would come at the time of the second reading. In fact, all of the amendments should come at the time of the second reading on the bill. Then after the bill has been fully discussed on second reading by either house, it shall then be printed up in the final amended form; be printed, be distributed to the members of that house and to the public, and then 24 hours shall elapse before final reading shall be taken. However, if the house or any member thereof should propose another amendment, it can be done on third reading. But upon the adoption of that amendment it will mean that the bill will lay over for another 24 hours before it can be acted upon on third and final reading. Now, if it comes back from conference we have no problem there. This is only on third reading in either house.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane is recognized.

DELEGATE KAUHANE: I just heard the statement when we go to conference, well, we'll have no problem there. This is where the problem exists, when we go to conference.

My next question, Mr. Chairman, where a bill has

been substituted for the original bill, the original bill having been read once, have passed first and second reading, and possibly third reading, and the bill is referred to conference because of a disagreement, it becomes a conference-substituted bill for the original bill in some instances; will the substituted bill be required to pass three readings because of a complete change of the substance of the bill?

CHAIRMAN: Delegate Donald Ching is recognized.

DELEGATE DONALD CHING: Mr. Chairman, the chairman of the committee will yield the question to me.

This proposed amendment will not change the present procedure as far as conference committees are concerned.

DELEGATE KAUHANE: I rise to a point of order, Mr. Chairman. This does not give a true answer to the question I raised.

DELEGATE DONALD CHING: Mr. Chairman, if the questioner will allow me to finish my answer perhaps he will get his full answer.

CHAIRMAN: Proceed.

DELEGATE DONALD CHING: I think the proponent of the question knows the answer to this without my having to answer. But since the question has been raised, I will answer it this way. The proposed amendment will not change the manner in which a bill is handled as under the present Constitution and the present legislative procedures as far as the conference committee draft is concerned. What it will mean is that the only change that will be brought about is—that after the conference committee has deliberated and come up with its conference draft, that draft will have to be printed and lay on the table for 24 hours or be made available to the members and the public for 24 hours before either house can act on it. That's the only change. As to what is substituted or what will happen in there, there will be no change as from the present procedure.

DELEGATE BEPPU: Mr. Chairman.

CHAIRMAN: Delegate Beppu is recognized.

DELEGATE BEPPU: Will the delegate from the 10th District yield to a question?

CHAIRMAN: State your question to the Chair.

DELEGATE BEPPU: Mr. Delegate, what if in the first paragraph, second sentence, if he had deleted, "in the form to be passed."

DELEGATE DONALD CHING: Mr. Chairman.

CHAIRMAN: Delegate Donald Ching is recognized.

DELEGATE DONALD CHING: Mr. Chairman, this is a matter of style. The committee spent many minutes, perhaps hours, on the language we finally arrived at. Now, if the Committee on Style decides to change the language, I don't think the committee or the body should have any objections to it just as long as we carry the intent of the committee. Now, we've had about at least half a dozen proposals as to how the intent of the committee should be worded. It's a difficult passage. I realize that the language itself is very cumbersome, but this is in the consensus of all of the "experts" who worked on this language. This is the consensus that was arrived at finally.

DELEGATE BEPPU: Mr. Chairman.

CHAIRMAN: Delegate Beppu is recognized.

DELEGATE BEPPU: I request a short recess.

CHAIRMAN: A short recess is granted.

At 10:10 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 10:30 o'clock a.m.

CHAIRMAN: The Committee of the Whole will please come back to order.

Delegate Kauhane, did you wish to have the floor?

DELEGATE KAUHANE: Yes, Mr. Chairman.

Mr. Chairman, I respectfully recommend and move that action on the consideration of Section 16 be temporarily suspended until the amendments are prepared and distributed by the sergeant-at-arms and prepared by the attorneys.

CHAIRMAN: Delegate Kauhane, would you be willing to amend that to say the first paragraph of Section 16?

DELEGATE KAUHANE: I will do that, sir.

I will accept the instructions of the Chairman. The amendment will refer to the section of the paragraph that was mentioned by the Chairman.

CHAIRMAN: Without the necessity of going to vote, I think if there are no objections, we will permit the amendment to be drafted up and we will proceed to the second paragraph—

DELEGATE KAGEYAMA: Mr. Chairman.

CHAIRMAN: Delegate Kageyama is recognized.

DELEGATE KAGEYAMA: Your suggestion is welcomed but I think we should continue this discussion and before you go to part two of that Section 16, I would like to come back to part one of that Section 16.

be lost by the defeat of Section 17.

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga is recognized.

DELEGATE YOSHINAGA: I regret that Delegate Mizuha has not had some more time to review the history of the salary increases by the legislature of the State of Hawaii, or the Territory of Hawaii. If he can point out to me one instance where raises were granted, I shall shut up for the rest of the Convention.

Now, it's great to think what fine people there are down at the legislature, but there are people who are opposed to pay raises who are legislators and somehow people seem to assume that all people, all legislators are for pay raises. But it is my very frank opinion that there are legislators who are vigorously and violently opposed to pay raises so that the pay will remain low as it has been all through history. And so that the best talent available in Hawaii, who don't run merely because they cannot become financially secure or at least financially provide for their families, are prevented from seeking public office, especially the legislature.

DELEGATE GOEMANS: Mr. Chairman.

CHAIRMAN: Delegate Goemans is recognized.

DELEGATE GOEMANS: In response to the statement of the robust delegate from Kauai, I must say that the effect of the defeat of Section 17 by the voters would not be to allow the legislature to set salary levels for the 1969 session or for the 1970 session, because we would then have as applicable Section 17 of the original Constitution which reads, "Until otherwise provided by law in accordance with Section 10 of Article III. . ."; so that Section 10 of Article III as amended here, which would be in the new Constitution, the commission procedures would be followed and would become effective as the commission was appointed, and as the commission recommended, and as the legislature acted, in no case earlier than the session of 1971.

CHAIRMAN: Ready for the question? We are voting on the main motion for Section 10, Committee Proposal No. 7.

All those in favor, signify by saying "aye." All those opposed, "nay." The motion is carried.

The Chair will declare about a five-minute recess and then we will proceed to Section 16.

At 3:03 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 3:15 o'clock p.m.

CHAIRMAN: The Committee of the Whole will please come to order.

The Chair will now ask the committee to return to paragraph 1 of Section 16 of Committee Proposal No. 7 which we were discussing this morning when an amendment was being printed by Delegate Kauhane.

Delegate Kauhane, do you wish to make a motion? Delegate Kauhane is recognized.

DELEGATE KAUHANE: I was looking around first, Mr. Chairman, if all members are here because I need someone to second this. Mr. Chairman, the Amendment III (8) which reads:

> "Section 16 of Article III as it appears in Committee Proposal No. 7 is hereby amended by deleting the words 'twenty-four' from the second sentence and substituting 'forty-eight' therefor"

has been printed and distributed and I am certain all members have a copy. I therefore move for the adoption of the amendment.

CHAIRMAN: Delegate Shiigi is recognized.

DELEGATE SHIIGI: Mr. Chairman, for the purpose of discussion I second the motion.

CHAIRMAN: Delegate Kauhane is recognized.

DELEGATE KAUHANE: Mr. Chairman, I'm happy to have someone in my class get up and second the motion for the purpose of discussion. Mr. Chairman, and member delegates, in offering the amendment, I am not trying to waste a lot of your time. But I feel that the amendment has some merit and should be given serious consideration by all of you. I'm talking about bills that require three readings. I'm for the principle of a bill having been reported out of the committee on third reading lay on the table for 24 hours. I am in full agreement of that, but beyond that agreement to lay it on the table for 24 hours, I am concerned with this factor—and those of you who have not served in the legislature should—I do hope you can lend me your ears and pay some strict attention to this procedure that I am about to illustrate for the reasons why I am offering this amendment.

As a compromise to all the objections that I would raise on the matter of third reading of bills, what I am about to say is familiar to all members that served in the legislature. In the first instance, a bill having been introduced by a sponsor, it is the practice on first reading that the bill be read by title, be ordered to print so it conforms with the first act of passing on first reading. Later, after the bill having been printed, lay before all of the legislators. Next, on second reading it would be referred to committee. The bill is still in its original form as when introduced. It has been the practice in the past and my experience in having served with the predominant legislature of one political party and then by another political party—it has been the practice that the chairman of a committee would report out the bill in its original form on the floor, requesting that the bill be voted upon with the recommendation that the bill pass second reading when no committee

meetings have been held, no amendments made to the bill and that the same bill be recommitted back to the same committee. The committee handling the action having been approved to pass the bill on second reading goes to the committee for its consideration and any amendments that they can make to the particular bill.

Now in the first instance, the bill complies with the rule that the bill having had to be read on three separate days, first and second reading. The most important thing comes to third reading of the bill. When the bill comes out of the committee, we send an elephant into the committee in the first instance. The committee reports the bill entirely new in concept, not the changing of one figure when appropriation of dollars are needed, but a whole complete change with the contents in which the bill was originally introduced may contain one page. That bill comes out either 14 or 10 pages, different than the original. The committee recommends that the bill pass third reading in its amended form. You may have intended to request consideration of the matter of the caring of elephants. This bill comes out with the caring of the elephants, dogs, pigeons and what not and then we are voting on third reading for the passage of a completely new bill. I dare ask whether this has passed the required procedures of the bill having passed three readings on three separate days.

In past practices where the committee has recommended that the bill, as amended, pass third reading in the amended form, I have experienced the practice where in voting for the adoption of the committee report with its recommendations, no one has the opportunity to amend the bill. Some of the legislators who have served in those sessions say to me, "Well, we had an opportunity." But once the recommendation to the committee has been adopted you had no opportunity. I am trying to prevent this type of thing from happening. I am trying to prevent any citizen from going into court to test the constitutionality of the legality of the passage of this bill on third reading in this disguised form.

I know that the learned representatives or senators, whatever the case may be, may come out with the famous terminology "notwithstanding"—"notwithstanding" the bill shall pass third reading. But then did the bill really pass third reading? Did the bill really pass and meet the criteria that the bill has been read in three different days? And because of this consultation that I had during—early in the recess amongst those that I have the highest esteem for on the knowledge of legislative proceedings, we entered into an agreement that extended—extended the 24-hour waiting period to 48 hours. There has been before the committee other jurisdiction which carries over to 72 hours. So they came up with a happy compromise of all to extend to 24. I asked one of the attorneys of the Constitutional Convention during the lunch hour recess whether or not this legally constituted passing the bill on three separate readings. There is a question, he says, that this legal question has never been raised yet. I am concerned about the future attempt of the possibility of the legal question being raised. Not necessarily by any citizen, but it may be by one of the legislators, that in order to plug that loophole and to make sure that all of these actions undertaken by the legislature are legal and beyond any question of doubt have met the conditions under which those are to be considered, first, second and third reading.

Mr. Chairman, because of that reason and for your indulgence I thank you very much for permitting me the opportunity to seek out a compromise. As I said to you I have other areas to question the bill on the three readings from other jurisdictions. I have not as yet completed but I am willing to end the pursuit of further questioning on the procedure and ask that this delegation after I had consulted with the chairman of the committee on the agreement of the extension from 24 to 48-hour layover. This will take care of some of the problems that I am very much concerned with and I do hope as expressed by some of the legislators of their concern of this matter. Again, thank you very much for your kind courtesy, Mr. Chairman. I ask the members of this Convention to vote for the approval of this amendment.

DELEGATE BEPPU: Mr. Chairman.

CHAIRMAN: Delegate Beppu is recognized.

DELEGATE BEPPU: I speak against the amendment. I think our experience in this session here in the Constitutional Convention of 1968 proves that some of the provisions that we have in the rules are archaic, are not workable. About the middle of the session we found some concern about the delaying tactics employed during the floor action here. In fact, it went so far as to change the rules to drop four days to two days. I think this kind of provision of 24 hours is adequate to any legislative operation. To increase this to 48 hours is going to be a little hindrance to legislative operations and to have something in the Constitution which is very inflexible is going to work at a disadvantage to the legislators. For these reasons, Mr. Chairman, I ask for a "no" vote.

CHAIRMAN: Delegate Donald Ching is recognized.

DELEGATE DONALD CHING: Mr. Chairman, I, too, rise to speak against the amendment. First of all, I would like to point out that the practice that the proponent of this amendment speaks of has not prevailed in the legislature—well, I can safely say since the coming of statehood. And secondly, that—

DELEGATE KAUHANE: Mr. Chairman, I rise on a point of order.

CHAIRMAN: State your point of order, delegate.

DELEGATE KAUHANE: —and I know that in some area, unwillingly and unintentionally, this continued practice is still going on.

DELEGATE DONALD CHING: May I have a ruling on the point of order so I might continue with my discussion of the subject. If he wants to rebut he can

rebut.

CHAIRMAN: You may proceed.

DELEGATE DONALD CHING: Mr. Chairman, I would like to reiterate again that in my experience, I would like to state that the practice that has been mentioned here has not prevailed in the legislature since the advent of Statehood. And secondly, that this amendment, even if this practice were prevailing in the legislature at the present time, the amendment that is suggested here would not cure that practice.

CHAIRMAN: Are you ready for the question?

The motion before us appears on the yellow sheet of paper designated Number III (8). The motion is to amend Section 16 of Article III of Committee Proposal No. 7, the first paragraph by deleting the word "twenty-four" from the second sentence and substituting "forty-eight" therefor.

DELEGATE KAGEYAMA: Mr. Chairman, I would like to raise one question before you put the question to a vote.

CHAIRMAN: State your question.

DELEGATE KAGEYAMA: The question before the house is to amend the "twenty-four" to "forty-eight." What the point of question here is at what stage this twenty-four hours take place or forty-eight hours, as amended, before the bill becomes law whether it's—let's say the bill originates in the house, passes three readings, goes to the senate and passes as you might say, the fifth reading of the total of the six. At that stage, would that "twenty-four" hours apply, or before the house acts on the final reading and go before the senate or vice versa?

CHAIRMAN: Delegate Donald Ching.

DELEGATE DONALD CHING: Mr. Chairman, if I might try to clarify the point. And I think in the discussion earlier this morning, it was already pointed out that the 24-hour provision or the 48-hour provision would take place before the final reading in either of the two houses, whatever the final reading is. This might be on third reading in the case of a bill which in the house in which it originates or if it comes back amended, this would be on the final reading after it's come back from the second house amended. So I think this was already discussed in the discussion this morning and it is also very well discussed in the committee report. I think the examples are very clear and very self-explanatory.

DELEGATE KAGEYAMA: If that's what it is, Mr. Chairman, I couldn't understand the committee report probably in my study of that wording by the committee is far beyond my education.

CHAIRMAN: Are you ready for the question? All those in favor signify by saying "aye"; all those who are opposed, signify by saying "nay." The noes have it.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: On the section before the body, Mr. Chairman, I pose a question and you can direct the question to the chairman, that the reading of a bill by title conforms with the bill having been read on third reading.

CHAIRMAN: Delegate, are you referring to the first or second paragraph of Section 16?

DELEGATE KAUHANE: On the section before the body, Mr. Chairman, I pose a question and you can direct the question to the chairman, that the reading of a bill by title conforms with the bill having been read on third reading.

CHAIRMAN: Delegate, are you referring to the first or second paragraph of Section 16?

DELEGATE KAUHANE: I started out this morning on the first, on the matter on which the bills to be reported out. Then in the interim, during the recess, Mr. Chairman, through your direction and my meeting with you personally, I arrived at the media in which no further questions can be submitted by me that I asked if we can get into some agreement and which agreement was entered into so that the chairman of the committee asked that I go into—that he was willing to accept the change from "twenty-four" to "forty-eight." I went along with this agreement. Now that the agreement has been voted down, I'm back to the first paragraph of Section 16 where we originally started from.

CHAIRMAN: At this point, that is correct. At this point, we have a motion before us to vote for Section 16, the first paragraph as presented in Committee Proposal No. 7. Are you ready for the question? All those—

DELEGATE KAUHANE: Is this the time, Mr. Chairman, that I can ask a question?

CHAIRMAN: Delegate Kauhane is recognized.

DELEGATE KAUHANE: Mr. Chairman, my question to you which will be directed to the chairman of the committee or any expert that the committee chairman may have to answer—does the reading of a bill by title after it has come out from the committee recommending passage on third reading, does this constitute that the bill has had three readings?

DELEGATE HUNG WO CHING: Mr. Chairman, I yield to Delegate Miyake.

CHAIRMAN: Delegate Miyake is recognized.

DELEGATE MIYAKE: Mr. Chairman, it has been the procedure in the legislature that the motion for the passage on third reading includes the words "bill having been read throughout pass third reading." Now the words, or the phrase "having been read throughout" is

used since we have now the modern technique of photostating our bills unlike in the past when we did not have the time to have the bills retyped and copies made for every member of the house or the senate. Because of modern technical machinery, each bill on final reading, on third reading is on the desk of each legislator. Therefore, we go through the form of using the words "the bill having been read throughout pass third reading" or "pass final reading." And according to the interpretation by the Attorney General in the past, the inclusion of these words, "having been read throughout" is sufficient to meet the requirement of having the bill read.

CHAIRMAN: Delegate Kauhane is recognized.

DELEGATE KAUHANE: Mr. Chairman, this is what I started to say in the support of the amendment that I offered: The famous terminology "notwithstanding" or the famous usage of the words "the bill having been read throughout"; it's documented. The bill having been read throughout passes third reading and yet the bill having been read throughout at the command, having been read throughout pass third reading is not the bill that was originally introduced and then came back on the floor on second reading, on second reading and asked that it be recommitted to the committee having been voted upon on passage on second reading. These are the type of bills that I am trying to prevent so that these bills will be legal when it's amended, whether it is in its entirety. I am concerned about the bills so that the words—

DELEGATE UEOKA: Mr. Chairman.

CHAIRMAN: Delegate Ueoka is recognized.

DELEGATE UEOKA: Point of order.

CHAIRMAN: State your point of order.

DELEGATE UEOKA: I believe that the committee has reported our stating that there shall be three readings, and I don't believe that it's for this body at this time to determine as to how the legislature will comply with the mandates of the Constitution, assuming that it's adopted. I think it's clear that it calls for three readings. And I don't think we should at this point argue about what the legislature will do.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane, are you speaking for or against the amendment or merely raising questions?

DELEGATE KAUHANE: I am raising questions. I recognize the practice. I recognize that the practice is an erroneous one. I recognize that because it is erroneous, it is illegal to begin with—

CHAIRMAN: Delegate, would you—

DELEGATE KAUHANE: —that should we continue to have an illegal practice or should we have a constitutional provision to protect this.

CHAIRMAN: Would you phrase this in a question if you wish to raise a question to one of the committee members?

DELEGATE KAUHANE: I have already raised the question.

DELEGATE DOI: Mr. Chairman.

CHAIRMAN: Delegate Doi.

DELEGATE DOI: May I attempt to add to the answer given to Delegate Kauhane here?

CHAIRMAN: Delegate Doi is recognized.

DELEGATE DOI: In actuality, from my experience, whenever even a very small minority demands a reading of a bill on third reading throughout, it is read word for word, comma, every period in the bill. And therefore, there is an actual and real protection and a safeguard.

DELEGATE KAUHANE: That still doesn't answer—

CHAIRMAN: Delegate Kauhane is recognized.

DELEGATE KAUHANE: —the way the bill has gone through the procedure, Mr. Chairman. After the bill has come out in a disguised form from the original intent and purposes that this bill has met the requirements of the amended bill in the disguised form has passed three readings from three separate days. There is a legal question, I think, involved in here, but I am willing to accept the practices today that have been continuing as the format. Lo and behold, that in the event this is questioned later, I can safely say that I had an opportunity to provide the loophole through a constitutional provision as provided before by other jurisdiction that face the same kind of problem that I am raising. But if the learned members of this delegation—

CHAIRMAN: Delegate—

DELEGATE KAUHANE: —those who have served are willing to accept the practices, I am willing to go along.

CHAIRMAN: Are you ready for the question? The motion before us is the adoption of the first paragraph of Section 16, Committee Proposal No. 7; and all those in favor signify by saying "aye." All those that oppose by saying "nay." The motion is carried.

Delegate Hung Wo Ching is recognized.

DELEGATE HUNG WO CHING: Mr. Chairman, I move for the adoption of the second paragraph of Section 16 relating to the carry-over of bills.

CHAIRMAN: Delegate Miyake is recognized.

of the public treasure. Your Committee is well aware that the salary is only part of the total compensation to which a legislator is entitled. In this respect, your Committee urges and expects the legislative salary commission to hold public hearings in its deliberation on the salary plan and to consider the other benefits, direct or indirect, made to legislators by way of allowance, per diem, reimbursement, health benefits and retirement benefits in the evaluation of a legislator's basic salary.

Section 11 of Article III, relating to legislative sessions, has been amended to provide for a mandatory recess of not less than 5 days at some period between the 20th and 40th days of the regular session. Both houses shall agree on the dates of recess, which shall be excluded in computing the number of days in any session.

The purpose of this amendment is to provide both legislators and the public an opportunity to review during the recess all bills that have been introduced in both houses, and an opportunity for legislators and constituents to communicate on matters before the legislature at about the midpoint of the session. The practice of the legislature has been to impose a bill-introduction deadline at or about the 20th session day. Your Committee believes that the recess will also afford the public an opportunity to become acquainted with and follow the bills through the legislature more intelligently.

Section 13 of Article III has been amended by adding thereto the following:

"Every meeting of a committee in either house or of a committee comprised of member or members from both houses held for the purpose of making decision on matters referred to the committee shall be open to the public.

"Each house shall provide by rule of its proceedings for a date, applicable to both houses but no sooner than the twentieth day of the session, by which date all bills to be considered in a regular session shall be introduced; provided that such date shall precede the commencement of the mandatory recess of not less than five days under Section ."

The amendment to Section 13 requires that all decision-making meetings of a legislative committee shall be open to the public. While your Committee is informed that such is the current practice of both houses of the state legislature by their respective rules, it finds that the public's right to know what their legislators are deciding is deserving of constitutional protection. This amendment, however, is not intended to require that certain kinds of meetings, including organizational meetings, partisan caucuses and certain hearings involving the invasion of a person's right to privacy if made public, shall be open to the public.

The amendment to Section 13 also requires both houses of the legislature to establish by rules a cutoff date for introduction of bills, which shall precede the commencement of the mandatory recess by not less than 5 days. This is to allow the public the use of the mandatory 5-day recess to review every bill that will ever be introduced in that legislative session.

Section 16 of Article III relating to passage of bills has been amended in only one respect. The sentence containing the twenty-four hour rule has been amended to read:

"No bill shall pass third or final reading in either house unless printed copies of the bill in the form to be passed shall have been made available to the members of that house for at least [twenty-four] forty-eight hours."

In view of the increasing numbers of bills being introduced in the legislature and the public concern expressed on the difficulty of following the many bills through the legislature in the closing days of the session, your Committee believes that the enlargement of time from 24 hours to 48 hours, during which a legislator or a constituent could review a bill before third or final reading, would help both legislator and constituent to avoid hasty decisions and surprises regarding the bill.

Because of the removal of Section 4 from Article III, the sections numbered 5 to 20, inclusive, of Article III are renumbered to read sections 4 to 19 inclusive, respectively.

As stated earlier, your Committee has removed Section 4 of Article III relating to

This is contrary to the opinion that a less costly, more efficient system of legislature is better. It must be reasonably argued that expediency and efficiency are not necessarily the measures of effectual and beneficial legislation. Any political system is a system of people. It must therefore be accepted that one's particular preference among systems may be only as worthy as those persons who participate within it.

Your Committee could not substantively accept the unicameral concept. Hawaii has experienced its share of legislative problems; however, such a drastic change appears unwarranted at this time in view of the relatively successful track record our present legislative system has attained.

Amendments to sections 2 and 3 of Article III relate to utilization of the reapportionment commission plan in determining state senatorial and representative districting. This amendment deletes the language referring to the Schedule found in Section 1 of Article XVI, which has been rendered obsolete since the reapportionment of 1973. Also relating to reapportionment, Section 4 has been placed within a new article. This action was necessitated by the provision empowering the reapportionment commission to redraw congressional districts as well as reapportioning the state legislative districts.

The committee chose to amend Section 10 of Article III by adding specific language dealing with the salary of legislators. The amendment provides for a salary plan by the legislative salary commission, to be submitted to both houses of the legislature and to the governor no later than the 40th day of the legislative session. The plan is to become effective unless disapproved by either the legislature or the governor. Any change in salary does not affect the legislature that reviews the plan.

It was felt by the committee that legislators should not be placed in the dilemma of having to vote on their own salary increase. Governor's disapproval authority was decided upon as a further scrutiny of the process. Furthermore, the salary review by the commission will take place every 8 years instead of the present 4-year interval. Your Committee wishes to express its expectation that the salary commission hold public hearings and consider other applicable legislative benefits in its deliberation.

The amendment to Section 11 of Article III calls for a mandatory recess in the legislative session of not less than five days, to fall anytime between the 20th and 40th days of the session. This recess will afford members of the legislature, as well as the public, a review period to study the bills submitted and to provide input.

Two substantial amendments have been offered to Section 13 of Article III. The first relates to a form of "sunshine" protection of the public's right to know what takes place at decision-making meetings of the legislature. It was felt that this right should be constitutionally protected rather than left to the discretion of the house or the senate.

The second amendment to Section 13 involves an attempt to control bill-introduction procedures through the device of a bill-introduction cutoff date, no sooner than the 20th day of the legislative session. This basically provides for a limitation, not necessarily in number but in time, of the bills to be introduced. In conjunction with the recess, this amendment should further aid the public in its attempts to actively follow and participate in the legislative process.

Section 16 of Article III adds a full day to the bill-review period prior to final reading. The increase is from 24 to 48 hours. It was felt that the additional time, especially at the closing days of the session, would afford the legislators and members of the public more time to review and therefore make better decisions on the bills.

Section 2 of Article XVI has been amended to provide for the staggering of terms in the senate commencing with the coming election. Under the proposed system, senators would continue to serve a 4-year term, with half of the membership up for reelection every 2 years. In order to establish the cycle, initially 13 of the 25 senators would serve 2-year terms while the remaining 12 would serve full 4-year terms. The method of selection to determine which class a senator will hold, whether the 4- or 2-year term, will be based on the number of votes received in the district. Support of the staggered term concept is based upon having a more accountable and perhaps a more responsive senate.

Mr. Chairman, these are the major issues which have been raised before the Committee

on Legislature, and the results of your Committee's deliberations are reflected in Committee Proposal No. 8. I would like to thank the members of my committee for their hard work and earnest efforts in putting this proposal together. I'd like to conclude by recommending that standing Committee Proposal No. 8 be seriously considered and voted on favorably by this Committee of the Whole. Thank you.

CHAIRMAN: Thank you, Delegate Nishimoto. Now we have three minority reports, two offered by Delegate Cabral, and if the delegate would care to speak on either or both at this time--

DELEGATE CABRAL: Yes, thank you, Mr. Chairman. Minority Report No. 6 on Committee Proposal No. 8 and Minority Report No. 7, also on Committee Proposal No. 8, were submitted by a minority of the Committee on Legislature which does not concur with parts of Standing Committee Report No. 46 and Committee Proposal No. 8, which recommend retention of the bicameral system and rejection of the unicameral. In the committee report, the majority committee states that it was not convinced that a unicameral system would be more effective than the bicameral and that proponents of unicameralism failed in their burden of proof to present favorable arguments.

The minority committee also disagrees with the part of Standing Committee Report No. 46 which recommends certain changes in the setting of legislative salaries and retention of the annual legislative session. In this regard, the minority committee has submitted amendments to Committee Proposal No. 8 addressing these topics. I would at this time ask that these two minority reports be submitted to the chief clerk for inclusion in the journal. I will address in depth the arguments that will be submitted on the proposed amendments when I introduce the amendments. Thank you.

CHAIRMAN: Thank you, Delegate Cabral. Delegate Barr is the prime signer of Minority Report No. 8--so, Delegate Barr.

DELEGATE BARR: Mr. Chairman, your delegate from up-country Maui, who is grateful to God that he saw home and family yesterday, begs leave to discuss this minority report at the time the amendment comes up.

CHAIRMAN: Thank you, Delegate Barr.

DELEGATE SHON: Mr. Chairman.

CHAIRMAN: Delegate Shon.

DELEGATE SHON: Yes, just very briefly I would like to speak generally in favor of the committee's work. First of all I'd like to say that I was one of those who did express reservations about the effect of the resolution on future work of the committee and other committees. I'd like to say now that was unfounded.

Secondly, I'd like to say that I found that the chairman and the leadership were open, cooperative and willing to work with all members of the committee, and I think this was excellent decision-making. And third I think that there are several features of this which really go a long way in improving the legislative process and they have been outlined by the chairman. They include the 5-day recess, which I think is a big plus, not only for legislators but for the public to review the various bills that have been introduced; the open meeting provision, which I think reaffirms our commitment to open government; and the change in the 24-hour rule to 48 hours, which is a significant doubling of the time in which legislators and the public can review final drafts. This particularly addresses one of the problems dealing with the conference committee. Now there would be twice as much time to review what the conference committee comes out with, and this was really one of the key problems in the past--that there wasn't enough time.

So in summary, Mr. Chairman, I think that the work of the committee will make the legislature more deliberative, more cautious, more informed, and more accessible to the public.

CHAIRMAN: Thank you, Delegate Shon. I think that was--well, perhaps a slight bending of the rules, but I'm sure the committee chairman and all the members appreciate that very much.

Your Committee also notes the decision of the Hawaii State Supreme Court in State v. Lo, Sup. Ct. Haw. (No. 8741,1983) in addressing the area of consensual monitoring. The court stated that the language of section 803-42(b)(3) plainly outlaws the "bugging" of any private place unless the parties entitled to privacy therein have consented. This Committee affirms the court's statutory construction of the provision.

Your Committee has further amended the bill by deleting the sunset provision terminating the wiretap law in recognition of the indispensable and invaluable tool the law is for our State's law enforcement agencies.

Your Committee on Judiciary is in accord with the intent and purpose of H.B. No. 1980-84, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1980-84, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

SCRep. 417-84 Judiciary on H.B. No. 1947-84

The purpose of this bill is to bring before the electorate of this State a proposed amendment to Article III, Section 12, of the Constitution of the State of Hawaii to allow the Legislature to establish the deadline for introducing bills to be considered in the regular session prior to the twentieth day of the session.

Currently, Article III, Section 12, of the Constitution of the State of Hawaii provides that the deadline for introducing bills to be considered in the regular session shall be after the nineteenth day of the session and shall precede the commencement of the mandatory recess.

The amendment proposed by this bill, if ratified by the electorate, will allow the Legislature to provide for an earlier cut-off date for the introduction of bills and would be combined with a greater reliance on "prefiling" of bills, prior to the convening of the Legislature.

The combined effect of prefiling of bills and an earlier cut-off for bill introduction would be a substantial improvement in legislative operations. To illustrate some of the potential benefits of this approach, your Committee offers the following hypothetical scenario for the 1985 legislative session:

(1) Bill introduction begins on the first Wednesday in January, two weeks before the Legislature convenes.

(2) Bills are printed, numbered, and made available to the general public beginning on the second Wednesday in January, one week before the Legislature convenes. This allows the public to familiarize itself with legislation, prepare testimony, and consult with legislators, before the legislators' time is taken up by committee meetings. It allows the public more time to research the issues and prepare more detailed and thoughtful testimony. The Speaker will be able to review the bills before the Legislature convenes and decide on referrals.

(3) The Legislature convenes on the third Wednesday in January. Non-essential legislative business is deferred, according to custom and tradition, to allow for the opening day festivities.

(4) The first week of the session would see the Legislature in full-swing. Committee Chairmen would be holding hearings. This would be in contrast to the current "slow period" at the beginning of each session which results from the relative dearth of legislation.

(5) Bill introductions would be cut-off sometime after the first week, but before the end of the second week of session. The result of this approach is to spread the workload more evenly over the 60-day session. The principal benefits of this would be:

(a) More time would be available for hearings by the Committees. Thus, shorter agendas would be possible. Shorter agendas would result in more deliberative hearings, shorter waiting periods for persons wishing to testify, and

would allow Legislators to stay for the entire hearing without having to leave periodically to take care of other matters.

(b) Committee Chairmen could more easily group bills which deal with the same or related subject matters onto a single agenda. This would be a great convenience to people who wish to testify; including members of the public, lobbyists, and department personnel.

(c) There would be less pressure to hold hearings during the legislative recess or during late evening hours which are inconvenient to the general public.

(d) It would be possible to provide more timely notice of hearings to the general public.

(e) The second committee, when there is a double referral, would have more time in which to work on bills.

While there are many significant advantages to an earlier cut-off date for bill introductions, it will require adjustments that will increase the workload of legislators and their staff. A part of the printshop staff will need to begin working approximately two weeks earlier. The Speaker will need to begin working on bill referrals two weeks earlier. Members will need to begin working with their constituents and staffs somewhat earlier.

While this will require the staff and legislators to begin working earlier, it should not result in any significant cost increase in the operations of the Legislature. The Legislature will find that there are partially offsetting savings. The workload will be more evenly apportioned and the "peak load", to which staffing is geared, will have been reduced.

The consequences of the ratification of this proposed constitutional amendment will be to allow for a more deliberative, open, and rational legislative process. The result should be better legislation.

Your Committee on Judiciary is in accord with the intent and purpose of H.B. No. 1947-84 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

SCRep. 418-84 Judiciary on H.B. No. 1629-84

The purpose of this bill is to amend Part VII of Chapter 286, Hawaii Revised Statutes, by adding two new sections which authorize and set minimum standards for the establishment of intoxication control roadblock programs.

The bill provides that:

(1) Police departments of each county are authorized to establish intoxication control roadblock programs;

(2) Any county establishing an intoxication control roadblock program shall specify by rule procedures to be followed, subject to minimum standards set by statute;

(3) Either all motor vehicles approaching a roadblock shall be stopped, or vehicles shall be stopped in a specified random numerical sequence;

(4) Raodblocks shall be scheduled only between set hours when expected traffic is light;

(5) Roadblocks shall be located at fixed points, rather than be roving in nature;

(6) Minimum safety precautions shall be provided at every roadblock;

(7) The length of time of any delay shall be limited; and

(8) Speedy compliance with purpose of the roadblock and a minimum of inconvenience shall be assured.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI`I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE Plaintiffs, vs. STATE OF HAWAI`I, Defendant.	CIVIL NO. 18-1-1376-09 GWBC (Other Civil Action) CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I, R. Brian Black, certify that on January 11, 2019, I will serve a copy of the foregoing Plaintiffs' Response to Memorandum of the Hawai`i State Legislature as *Amicus Curiae*; Declaration of R. Brian Black; and Exhibits 29-34 on the following parties by U.S. mail, postage prepaid:

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