

Political Offices: State Legislature: Subject Files: Maui Irrigation: Use of state funds

Thomas P. Gill Papers

Political Offices, State Legislature, Subject Files, Box PO18, Folder 1

<https://hdl.handle.net/10524/79335>

Items in eVols are protected by copyright, with all rights reserved, unless otherwise indicated.

UHM Library Digital Collections Disclaimer and Copyright Information

Maui Investigator

3

20

December 6, 1961

To : All Democratic Members, House of Representatives
From: Elmer F. Cravalho, Speaker

Enclosed are copies of letters for your information, which are self-explanatory:

1. Letter dated November 20th from Republican members of Maui Select Committee of the House to Speaker.
2. Letter dated December 4th from the Speaker in reply to aforesaid letter. (According to the Speaker, this letter has already appeared in the "Maui News" on his release.)
3. "Budgeted Expenditures" and "Statement of Estimated Financial Condition to Period Ending February 20, 1962".

These materials are being distributed at the request of the Speaker of the House through the good offices of the Sergeant at Arms, House of Representatives.

HYM

ju

November 20, 1961

Hon. Elmer F. Cravalho
Speaker of the House of Representatives
Kula, Maui

Re: Maui Select Committee Investigation

Dear Mr. Speaker:

We, the undersigned members of the above referenced Committee have become increasingly disturbed over the apparent lack of desire by the House leadership to continue the Maui Select Committee's investigation as originally planned and as outlined in H. R. No. 45 H. D. 2.

As you are aware, this resolution calls for a full and complete report on various irregularities in the use of State funds and possible misintepretation of State laws by the government of Maui County. The committee is further charged with recommending legislation to correct any deficiencies in intent or interpretation of laws applicable to irregularities turned up in the investigation.

To date, the committee has covered but one area of its investigation - that relating to the Wailuku Memorial Gym fiasco. It has made only a preliminary report to the House. It was our understanding that the Committee would become active in the early fall following some preliminary investigative work by the staff. It is now the end of November and no action has been taken although we understand Rep. Heen is desirous of proceeding.

The committee's report (Sel. Comm. Rep. No. 17) adopted by the House concludes with these statements:

"Time and staff limitations, as well as the pressure of legislative duties, have not allowed your Committee to continue this investigation at this time. However, your Committee will continue its work in the immediate future.

At the conclusion of its further investigations, your Committee will render a full and complete report on the administration of the affairs of Maui County and the expenditure of public funds therein."

Hon. Elmer F. Cravalho
11/20/60
Re: Maui Sel. Comm. Inv.

-Page 2-

It was the committee's understanding and we believe that of the House, that funds were available to carry out the duties of the committee on Maui. We are now informed by the Chairman that somehow the lack of action is based on a paucity of funds. We find this rather incredible.

The committee at no time to date has engaged in partisan squabbles and has attempted to do an objective job, but if for any reason the job itself is frustrated, we will have no choice but to inform the public of the decision of the Democratic leadership.

It is therefore respectfully requested that immediate action be taken by yourself and the House leadership to carry out the duties set forth in HR 45 HD 2.

May we hear from you at your earliest convenience.

Respectfully,

Fred W. Rohlfing, Representative
17th District

Joseph L. Dwight, Jr.
Representative, 8th District

Dorothy Devereux, Representative
15th District

he general us
veral unFoun
ars o them
isions. For
a stalled re
ider the fact t
incredible", I am o
of the use of Repres
1961, the latest mentaly
I shall make reference to
the way. As you know
session was increased
through the extensions
now there are certain
no control, the most outstanc
allowances. A recent
report will indicate
over thirty per cent
due to the
ing allowances made to House
the House at a
there is
areas where direct controls
economies were achieved. An
the
sion services
personal services
approximately
co-
mino
the



by me
to the Demo

I now wish to
I believe that
that its work
tic Leadership.
leadership to see
tended, and though
nally, were great,
care was exercised
this foresight on
by the careful ob
project. All of
gone into making
paying off.

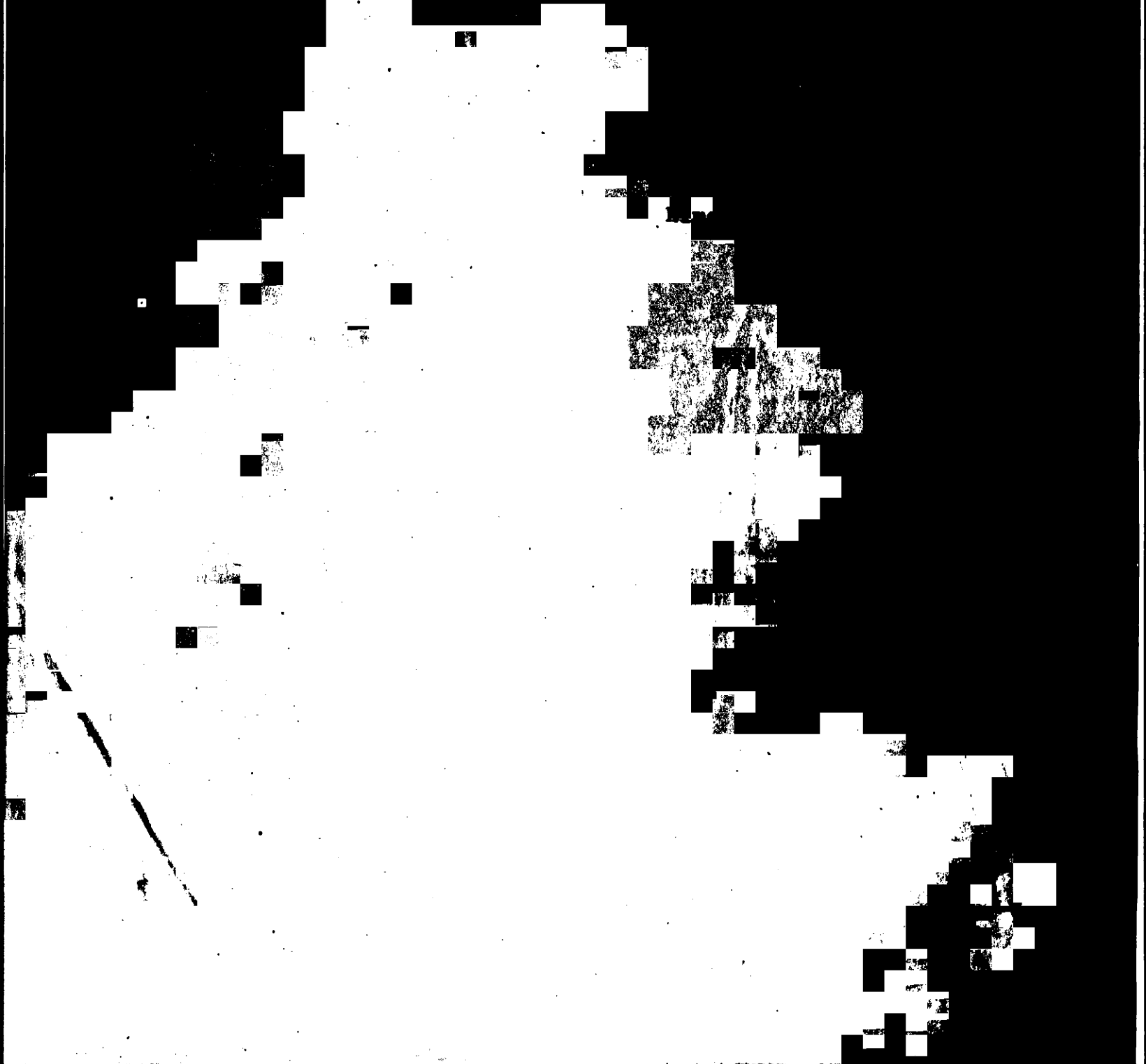
But all of
the ill-considered
death blow.
positions into the
the Democratic Lead
the facts are partic
your statements relat
decision of the Demo
low form of political blackmail

I am greatly disappointed that
to participate in this
the important work of the
you have, in my considered judgement,
selves from participating in any
mittee, you have, a
cipal, bipartisan part
have discredited the faith
in you by the entire House of
rendered a grave injustice
of the Select Committee in their
important of all, you have sown
politics in this matter, which can
thoughtful, deliberative cont
tees work. And though, you more
to shift the responsibility for this
ment, as your letter indicated you
bility is yours and yours alone.

As you know, I have always been
possible lack of morality and
I have been profoundly grateful for



241 21100
200-100



BUDGETED EXPENDITURES

		<u>Actual</u>	+(savings) -(over)
Length of Session	84 days (calendar)	109	
Pay of office employees	\$422,744.28	\$457,708.66	-35,964.38
Other Personal Services		1,100.00	- 1,100.00
Per diem	154,980.00	206,955.00	- 51,975.00
Travel	15,980.40	7,514.59	+ 8,465.81
Stationery & Supplies	50,000.00	35,417.29	+ 14,582.71
Custodial Supplies	2,108.32	574.13	+ 1,534.19
Communications	18,000.00	15,037.89	+ 2,962.11
Mileage		139.00	- 139.00
Transportation (things shipped)		12.51	- 12.51
Rentals	15,000.00	13,486.62	+ 1,513.38
Repairs - equip & bldgs.	10,000.00	1,023.19	+ 8,976.81
Special & Miscellaneous	20,000.00	7,282.17	+ 12,717.83
Equipment & furniture	15,000.00	5,302.05	+ 9,697.95
Printing & Binding	1,200.00	60.03	+ 1,139.97
Journal	<u>25,000.00</u>		
TOTAL	\$790,000.00		\$751,872.34
CASH BALANCE			38,127.66
LESS JOURNAL			<u>25,000.00</u>
			\$ 13,127.66

FIRE LEGISLATURE
 STATE OF HAWAII
 HONOLULU, HAWAII

HOUSE OF REPRESENTATIVES

February 6, 1962

STATEMENT OF ESTIMATED FINANCIAL CONDITION
 TO PERIOD ENDING FEBRUARY 20, 1962

for the House of Representatives

CASH BALANCE - October 31, 1961

\$38,127.66

LESS RESERVES, ENCUMBRANCES & ESTIMATED ENCUMBRANCES

RESERVES

Reserve for House Journal

\$25,000.00

ENCUMBRANCES

Telephones

Plane fares

Other Invoices

352.05
 109.00
 865.97

ESTIMATED ENCUMBRANCES

Salaries (3 employees)

Travel-Conferences

Telephones

Supplies

Contingencies

3,412.50
 1,277.00
 875.00
 500.00
 2,000.00

TOTAL RESERVES, ENCUMBRANCES &
 ESTIMATED ENCUMBRANCES

7,965.10

BALANCE AFTER DEDUCTION OF RESERVES, ENCUMBRANCES &
 ESTIMATED ENCUMBRANCES TO FEB. 20, 1962

\$ 615.10

*Maui
work
file*

THE
FIRST LEGISLATURE
STATE OF HAWAII
HONOLULU, HAWAII

HOUSE OF REPRESENTATIVES

December 6, 1961

Honorable Elmer F. Cravalho
Speaker of the House of Representatives
Kula, Maui, Hawaii

Dear Mr. Speaker:

We have received your reply to our letter of November 27 relating to the continuation of the work of the Maui Select Committee.

We were disappointed by your reaction to our request for such continuation. We had every expectation and hope that your reply would indicate that you also are concerned over the inability of the Committee to carry out its responsibilities and that you would provide information as to when proceedings of the committee would resume.

When you chose us to serve on the committee, you impressed upon us the gravity and importance of our task; that it would take time and that it must be continued without interference until the objective had been accomplished. You informed us that we were requested to serve because you believed each of us had the ability to be completely objective. The record will show that we have fulfilled our responsibility.

The interim report indicated that our task had not been completed and the chairman stated that the committee would continue its work shortly after the close of the 1961 session. In adopting that report, the House membership recognized funds would need to be allocated for the necessary committee expenses.

When we heard unofficially that the committee could not act due to a lack of House funds, we did then and do now find it "incredible"; not that funds are lacking immediately prior to the beginning of a new session, but that funds were not specifically allocated for the work of this committee before the decision to spend moneys for the expenses of a number of members to attend mainland conferences.

Honorable Elmer F. Cravalho - 2 -

December 6, 1961

We have at all times worked harmoniously with the Committee chairman, whose leadership we respect. However, we (and presumably the chairman and other committee members) have been queried repeatedly by citizens of Maui, particularly, and others throughout the state, as to why the committee has failed to continue its investigation. In every instance we have tried to give assurance of your continued interest; that facts are being accumulated; and that we expect to continue at the earliest possible date. In recent weeks we have found it increasingly embarrassing to attempt to answer questions without a statement from you or other House leaders regarding your expectations from the committee.

It is difficult for us to understand how you can make the charges against us outlined on page 3 of your letter merely because we have requested action or an explanation for the inactivity of the committee. We cannot agree that there is any foundation for these charges, and hope that with receipt of this letter you will reconsider your statements. We have not, nor do we wish to inject partisan political considerations into this matter, for we believe the work of the committee to be of such a serious nature, and of such importance to the state, that there is no place for partisanship in its deliberations.

We, too, have been gravely concerned over the possible lack of morality and idealism in government, and we, too, have been profoundly grateful for the standards which we have thus far had in the House of Representatives, which you have so ably stated in your letter. It was for this reason, particularly, that we addressed our letter to you, and we regret that obviously our intent was not clear to you.

We assure you of our desire for the continued cooperation and understanding which we have enjoyed in the past, and our willingness to continue as objective members of the Maui Select Committee. Our major interest at this time is to determine if and when the Committee will continue toward completing its task.

Very sincerely,

/s/ Dorothy Devereux
Dorothy Devereux, Representative
15th District

Honorable Elmer F. Cravalho

- 3 -

December 6, 1961

/s/ Fred W. Rohlfin
Fred W. Rohlfin, Representative
17th District

/s/ Joseph L. Dwight, Jr.
Joseph L. Dwight, Jr.
Representative, 8th District

A BILL FOR AN ACT

AMENDING CHAPTER 9, PART 2, REVISED LAWS OF HAWAII 1955, AS AMENDED, RELATING TO PUBLIC WORKS AND CONTRACTS.

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

1 Section 1. Amend Section 9-21 by changing the amount "\$4,000" to
2 \$2,000".

3 Section 2. Amend Section 9-22 by changing the amount "\$15,000"
4 to "\$5,000".

5 Section 3. Amend Section 9-23 to read:

6 "Section 9-23. Preference for American products. All
7 expenditures of public money for any public works or in the
8 purchase of materials or supplies, preference shall be given
9 to American products, materials and supplies provided that,
10 non-American products, materials and supplies of cheaper and
11 suitable quality may be purchased".

12 Section 4. Amend the last sentence of Section 9-26 to read:

13 "The officer calling for bids may reject any or all
14 bids and waive any defects, when in his opinion such
15 rejection or waiver will be for the best interest of the
16 public provided that, if there is no rejection or waiver
17 within five days after such bids are opened, the bid shall
18 be awarded to the lowest, responsible bidder within ten
calendar days from the day such bids were opened".

1 Section 5. Amend the last sentence of Section 9-31 to read:

2 "Such bond shall also by its terms inure to the benefit
3 of any and all persons entitled to file claims for labor
4 performed, whether directly from the bidder or indirectly
5 from sub-contractors performing work for the bidder, or
6 materials furnished in the work so as to give them a right
7 of action as contemplated by section 193-20."

8 Section 6. Amend Section 9-44 to read:

9 "Section 9-44. Penalty. Any person of the state,
10 including officers of the state or county governments, who
11 attempts to violate any provision of Sections 9-37 to 9-43
12 shall be fined not more than \$10,000 or imprisoned not more
13 than 5 years, or both".

14 Section 7. This Act shall take effect upon its approval.

15 INTRODUCED BY:

16 APR 5 1961

17

18

19

20

21

22

23

24

25

Walter M. Allen
James G. Shigemura
Abner Sabina

Honolulu, Hawaii
May 8, 1961

RE: H. R. No. 45
H. D. 2

Honorable Elmer F. Cravalho
Speaker of the House
First Legislature
General Session, 1961
State of Hawaii

Sir:

Your Select Committee on House Resolution No. 45, H. D. 2, relating to the investigation of alleged violations concerning the expenditure of public funds by public officials of the County of Maui and the City and County of Honolulu, begs leave to report as follows:

The Resolution charges this Committee with ^①investigating the procedures for the expenditure of public funds, and conflicts and irregularities that may have occurred or are likely to re-occur in the course of the expenditure of public funds in the County of Maui, and to determine whether there is a need for corrective legislation. Your Committee is also charged with making a preliminary report before the end of the current session, and this is only such a preliminary report.

In accordance with the direction of the Resolution, your Committee conducted hearings on the following dates in the Chambers of the Maui County Board of Supervisors, Wailuku, Maui: April 12, 13, 17, and 18, 1961.

Subpoenaed and testifying were the following witnesses: Maui County Chairman Eddie Tam; Maui County Supervisors Tom Tagawa, Richard Caldito, Harry Kobayashi, Soon Oak Lee, Goro Hokama, Lanny Morisaki, Toshio Ansai, and Marco Meyer; Maui County Attorney Harold Duponte; Maui County Engineer, Koichi Hamada; ILWU officials Tom Yagi, Regino Colotario and Tai Sung Yang; Contractors Muneo Yamamoto, and Haruo Fujitomo, of F & M Contractors, Inc., and Mr. Ricky Yasui. Mr. Edwin Wasano, ILWU official, who, knowing a subpoena had been issued for him, voluntarily appeared and was directed by the chairman to testify.

Your Committee confined its investigation primarily to the problems of the opening of bids for the awarding of public works contracts. In this respect the major portion of the hearings was devoted to investigating the reasons for the delay in the Wailuku War Memorial Convention-Hall Gymnasium project hereinafter referred to as the Wailuku Gym. References were

also made to the Waiakamoi and Kihei Water projects relative to postponement of bid openings on these projects.

Although references were made in the hearings to the problems of civil service, influence of public officials by pressure groups and irregularities and conflicts of interest among public officials, time limitations did not permit the Committee to probe deeper into these areas at this time.

The following order of chronological events is listed as background in the development of the eventual problems that have arisen in the Wailuku Gym project:

In December 1959, the Maui County Engineer was instructed by the Board of Supervisors to work with the County Attorney and formulate a policy and submit recommendations in regard to (a) the matter of setting a uniform advertisement whenever calling for bids on all public works projects; (b) the matter of setting a definite time for the closing of all bids. Testimony of the Attorney and the Engineer indicates the latter has not contacted the Attorney and nothing has been done to date in this regard.

On March 18, 1960, the Board passed Resolution No. 41 authorizing expenditures of \$95,000 by the County Public Works Department for the Wailuku Gym site preparation. Included in this authorization were: grading, \$29,000; road construction, \$18,000; irrigation system, \$25,000; engineering services, \$5,000; and architectural services, \$27,000. Each of these amounts are in excess of the statutory limitations imposed on expenditures of public funds and except for the architectural and engineering services should have been expended only in accordance with the provisions of Chapter 9, R.L.H., 1955.

In October and November of 1960 advertisements for sealed tenders on the Wailuku Gym were made and the date for opening of the bids was set at December 2, 1960.

On November 18, 1960, a request was made by the Maui Contractors' Association to the Board to postpone the bid opening for the reason that the general contractors could not get adequate quotations from sub-contractors at the time and postponement would be in the best interest of the County and its people. This message was referred to the Public Works Committee.

At the meeting of December 2, 1960, the Board approved the delay on the recommendation of the Public Works Committee (Committee Report No. 230). The new bid opening date was set at January 20, 1961, with no further extension. The bids were opened on that date and were referred to the County Engineer,

Attorney and the Chairman of the Public Works Committee for their inspection and recommendation.

On the evening of February 8, 1961, a meeting was held at the Hotel Iao Needle, Wailuku, Maui, for the purpose of seeing whether the ILWU and F & M Contractors could resolve their differences and clear the air in the matter of the delay in the award of the Wailuku Gym contract. The meeting was arranged by Mr. Ricky Yasui, at the request of Mr. Haruo Fujitomo, who was of the belief that the ILWU was really seeking the delay in the contract. Representing the ILWU were Thomas Yagi, Edwin Wasano, and Tai Sung Yang. Haruo Fujitomo, Tadashi Fujitomo, and Seichi Tateyama represented F & M. Also present were John Murakami, assistant County Supervisor of Building Inspection, and Ricky Yasui. The latter two were observers and not directly concerned with the discussion at hand.

At this meeting one of the ILWU officials is purported to have made statements to the effect that: F & M should withdraw its bid and the contract could be awarded to Thomas T. Tanaka, of Honolulu, since he was the second lowest bidder; if F & M did not withdraw its bid, charges of collusion would be brought against Haruo Fujitomo by Muneo Yamamoto, which would bring about investigations that might expose County officials; and that this was a battle between the A F of L - C I O and the ILWU. Haruo Fujitomo also testified that the A F of L - C I O officials in Honolulu were aware of this meeting and that he refused to agree to the ILWU's request. The meeting ended with nothing concluded.

In a letter to the County Engineer dated February 13th, the County Attorney issued his report recommending acceptance of F & M as the lowest bidder on the Wailuku Gym project. The opinion also contained the caveat that the work could not be separated.

On or about February 16th, Tom Yagi, Edwin Wasano, Tai Sung Yang and Regino Colotario of the ILWU met with Supervisors Tom Tagawa, Harry Kobayashi, Soon Oak Lee, and Richard Caldito at the ILWU Hall on Lower Main Street in Wailuku. At this meeting the ILWU officials urged the Supervisors to award the contract to Tanaka rather than F & M Contractors, Inc. The rationale of this move was that Tanaka had submitted the lowest bid for the basic work. (However, on the overall project, including all of the alternate work, F & M Contractors' bid was lowest.) It was proposed that the work on "Alternate 6", which was installation of the bleachers, could be eliminated for the purposes of awarding the contract to Tanaka, and the County could purchase the materials and perform the installation with County employees. According to the ILWU officials their only interest was a monetary savings to the people of Maui.

It is clear from the testimony that the Supervisors had unofficially been made aware of the County Attorney's opinion.

At the February 17th meeting of the Board of Supervisors, the matter of the award of the contract was discussed. Although it had apparently not been placed on the agenda by Acting Chairman Tom Tagawa, the matter was brought to the attention of the Board by a communication from the Attorney for F & M Contractors, Inc. In answer to an inquiry by the Board, the County Engineer stated he needed more time to make his report in order to confer with the County Attorney on what he stated was a legal matter. The request of the Engineer was granted, and the matter was dropped. Later that same day Tagawa and Supervisor Lanny Morisaki went to Chairman Tam's home. At this time the matter of the meeting with the ILWU officials was discussed, and Chairman Tam stated that he thought the contract should be awarded to F & M Contractors, for the reason that it was the low bidder.

On February 21, 1961, Edwin Wasano, Tai Sung Yang and Regino Colotario of the ILWU called on Chairman Tam at his home and again discussed the award of the contract and how important this matter was to the ILWU, locally, statewide and nationally. Chairman Tam stated his position on the award, his awareness of the political consequences thereof, and the attorney's recommendation in the matter. Chairman Tam also stated that this was one time when the union should allow the Board members to make their own decisions.

On the morning of March 1, 1961, Tom Yagi called on Chairman Tam at his office and indicated that a scheduled meeting between the ILWU officials and the Democratic Board members on March 2, 1961, was not needed. He stated that Muneo Yamamoto would file charges of collusion against Haruo Fujitomo with the State Contractors Licensing Board and the charges would bring about the suspension of F & M's license.

On the morning of March 2, 1961, Supervisors Morisaki, Caldito, and Tagawa met with Chairman Tam at his residence, and the matter of the contract award was discussed. No firm commitments were made but the general opinion was that the award should be made to F & M. In the early evening of this same day the scheduled meeting was in fact held, with ILWU officials Yagi, Yang and Colotario, and Supervisors Morisaki, Caldito, Tagawa, Kobayashi, Lee, Hokama and Chairman Tam attending. Tom Yagi, of the ILWU, requested a delay in the award until the matter of collusion charges was cleared and mentioned the meeting with F & M representatives at the Hotel Iao Needle. Intimation was made that the Republican members of the Board would agree to the ILWU request for delay. Testimony of some of the Board members present at that meeting indicated that no action to delay would be taken by the Board members unless a written communication was received informing them that the charges had been filed against F & M. This meeting was also held at the ILWU headquarters in Wailuku.

At the March 3, 1961, Board meeting a letter was received from Muneo Yamamoto advising the Board that he had filed charges with the Contractors Licensing Board charging Haruo Fujitomo with collusion in the bids for construction of Aloha Lanes Bowling Alley in Wailuku. Shortly after this, the Democratic members held a "caucus" in the Chairman's office at which time Chairman Tam called Mr. Shaw of the Licensing Board inquiring whether he was in receipt of Mr. Yamamoto's letter. Mr. Shaw's answer was that the matter was referred to the Attorney General. Chairman Tam also called the Attorney General's office and inquired whether that office was in receipt of the letter. Deputy Attorney General Yoshio Shigezawa replied that since the Licensing Board had not done anything yet he could not discuss the matter. In the call to Mr. Shaw, discussion was had as to the possibility of the County Board awarding the contract in the light of the charges. Mr. Shaw told Chairman Tam that it was the Board's prerogative to do as it pleased in the matter of award; also, the investigation into the charges set forth by Mr. Yamamoto may take months or years to resolve. During this caucus Tom Yagi called Chairman Tam and indicated that Jack Hall would like to see a deferment. This was all made known to the members present at the caucus and a secret vote was taken in regard to the award, the tally was 4-3 in favor of awarding the contract to F & M. The Board reconvened and Supervisor Caldito moved to award. He was seconded by Tom Tagawa. Supervisor Hokama moved to defer and was seconded by Soon Oak Lee. After discussion, wherein the Republican members of the Board, together with the Democratic members, spoke in favor of the deferment, the motion carried 8 to 1 with Chairman Tam dissenting.

The general consensus among those voting for deferment indicates a desire to "clear the air" before awarding the contract, rather than jeopardize the project if the charges by Mr. Yamamoto proved to be true and F & M's license were suspended. At the same time, however, the Board members are well aware that any successful bidder must submit a performance bond guaranteeing execution of the contract.

Hence, at the present time the Maui County Board is waiting for the Contractors' Licensing Board and the Attorney General to complete their investigations and findings. It appears that no action will be taken until Mr. Yamamoto's charges against Mr. Fujitomo are substantiated or refuted.

The hearings held by your Committee, although restricted primarily to the matter of the award of the Wailuku Gym contract, have pointed out a number of areas in the statutes relating to the expenditure of public funds which appear to pose rather serious problems.

The first problem relates to the apparent disregard of the limitation on expenditure of public funds, contained in Sections 9-21 and 9-22, Revised Laws of Hawaii 1955.

Although the two sections of the law are rather involved and somewhat ambiguous, it seems clear that, in the case of the site preparation work for the Wailuku Gym, the expenditures were in violation thereof, as mentioned earlier herein.

The reasons given by the County Engineer for this apparently illegal expenditure were that the extent and character of the work could not be known beforehand, and the County's workers had to be kept busy. It should be noted here, however, that the appropriations were based on what the Engineer called rough estimates. It seems obvious to your Committee that, once having estimated the expenditure to be in excess of the statutory limitation, the Engineer and the County were bound to follow the requirements as to advertisement and award of contracts. While the members of the Board testified that they were unaware of the statutory limitation, a Committee of the Whole Report (No. 80) dated June 6, 1958, indicates that the matter had been brought to the Board's attention.

Your Committee does not feel that the reasons given by the County Engineer justify the expenditure.

Another problem brought to light is the matter of postponement of the opening of bids and the delay in the award of the contract once F & M Contractors, Inc., had been determined to be the low bidder. This problem involves interpretation of Section 9-26 of the Revised Laws of Hawaii. The statute calls for the bids to be opened at the hour and place set forth in the advertisement.

According to the leading treatise on municipal corporations (10 McQuillin, Mun. Corp., 3rd ed., s. 29.70) such provisions are mandatory and lack of substantial compliance will ordinarily invalidate a contract entered into in violation thereof. However, some court cases have held that such a provision is directory only and lack of compliance will not invalidate a contract award.

In the face of this conflict, your Committee is unable to state categorically that the postponement was legal or illegal or that anyone's rights were or were not violated.

With respect also to the delay in the award of the contract, the statute states no time period, after the opening of bids, within which the contract must be awarded. A cursory check of other agencies involved in awarding contracts for

public works indicates a rather wide divergence of methods of handling the matter of awards. However, the consensus seems to be that a sufficient period of time should be allowed in order that the agencies may examine the bids before awarding the contract.

The various agencies also seem to feel that sixty days should be allowed for this purpose. It is their feeling that this should be ample time for extensive, complicated contracts and, that, in most instances the simpler contracts should and probably would be awarded within that period of time.

Hence, with regard to Chapter 9, it seems evident that numerous provisions are vague and ambiguous. This, in turn, has given rise to varying interpretations and has caused different procedures to be followed by the various agencies. A complete revision of Chapter 9 seems to be warranted. It should be noted that House Bill No. 1461, recently passed by this Honorable Body on the recommendation of the Judiciary Committee and your Select Committee, is, if enacted, into law, only the first step in such revision.

The hearings have also pointed out that the immediate question of the award of the contract in the instant case has proven to be only the focal point in what appears to be a perplexing problem in the County of Maui -- the apparently all pervasive influence of the ILWU over the actions of the County officials.

While there is conflict in the testimony as to precisely what was said at the various meetings held among the ILWU officials and the Maui Supervisors, the influence of the ILWU is clearly set forth in the pattern of events.

Your Committee, naturally, is well aware that pressure groups exist as a concomitant part of our form of government. Your Committee is also of the opinion that, for the most part, such pressure groups serve a salutary purpose in providing government officials with much needed information and advice. Also, it should be noted that there is nothing inherently evil in the actions of such pressure groups. However, although difficult to define precisely, your Committee feels that there are certain limits of propriety which should govern those actions. One measure of such limits is whether the objective sought by such groups really serves the interest of the general public or is, in fact, detrimental thereto.

In the case of the contract in question, your Committee feels that the local leadership of the ILWU went beyond the bounds of propriety in its activities. Your Committee believes that the interest of the general populace of Maui has not been served by the undue delay or by the activities of the local ILWU leadership in this matter.

The local ILWU officials attempted to justify their actions on the basis that they represent a majority of the people in Maui County and that the award of the contract to Thomas T. Tanaka would result in an overall savings to the government. Your Committee has no quarrel with the right of the ILWU or any group for that matter to make known the feelings of its members. However, your Committee does not agree that their proposed plan would be a money saving one. Moreover, the opinion of the County Attorney indicated their plan could not legally be followed.

Your Committee believes that one of the purposes of the ILWU is to win out in an organizational battle with the A F of L - C I O for the right to represent employees of the construction trades on Maui. Such a victory could be enhanced if F & M Contractors, Inc., one of the largest construction firms on the island could be deprived of this contract. The inter-union battle is a matter of common knowledge on Maui. Your Committee's concern is that government should not and must not be used to promote the cause of either disputant. Your Committee also wonders if, perhaps, Muneo Yamamoto with full knowledge lent himself to the cause of the ILWU in this regard. It seems clear that the local leadership of the ILWU was well aware from the beginning of the move contemplated by Mr. Yamamoto, and may very well have played an important part in influencing his actions.

It is, of course, difficult, if not impossible, to legislate against pressure groups. However, legislative steps can be taken to minimize their effect on government activities, at least in the matter of tightening the statutes pertaining to public contracts.

Public awareness of activities of pressure groups is, of course, one method of keeping them within proper bounds. In fact, one theory of legislative hearings, to which your Committee, it should be noted, does not completely subscribe, is that the purpose thereof is to create public awareness of various problems and issues. In this regard your Committee feels that the people of Maui have been made aware of the actual situation as a result of your Committee's hearings, and this has been healthy.

Your Committee has received much information on other matters relative to the administration of the affairs of Maui County which deserve careful scrutiny. The problems seem to have mushroomed out like an atomic cloud, branching out and reaching into nearly all phases of Maui's economic and government activities.

Time and staff limitations, as well as the pressure of legislative duties, have not allowed your Committee to continue this investigation at this time. However, your Committee will continue its work in the immediate future.

At the conclusion of its further investigations, your Committee will render a full and complete report on the administration of the affairs of Maui County and the expenditure of public funds therein.

Respectfully submitted,

Walter M. Heen
Walter M. Heen, Chairman

Dorothy L. Devereux
Dorothy L. Devereux

Joseph L. Dwight, Jr.
Joseph L. Dwight, Jr.

Hiroshi Kato
Hiroshi Kato

Akira Sakima
Akira Sakima

James Y. Shigemura
James Y. Shigemura

Frederick W. Rohlfing
Frederick W. Rohlfing

MAY 8 1961

SELECT COM. REP. NO. 17

Honolulu, Hawaii
May , 1961

RE: H. R. No. 45
H. D. 2

Honorable Elmer F. Cravalho
Speaker of the House
First Legislature
General Session, 1961
State of Hawaii

Sir:

Your Select Committee on House Resolution No. 45, H. D. 2, relating to the investigation of alleged violations concerning the expenditure of public funds by public officials of the County of Maui and the City and County of Honolulu, begs leave to report as follows:

The Resolution charges this Committee with investigating the procedures for the expenditure of public funds, and conflicts and irregularities that may have occurred or are likely to re-occur in the course of the expenditure of public funds in the County of Maui, and to determine whether there is a need for corrective legislation. Your Committee is also charged with making a preliminary report before the end of the current session, and this is only such a preliminary report.

In accordance with the direction of the Resolution, your Committee conducted hearings on the following dates in the Chambers of the Maui County Board of Supervisors, Wailuku, Maui: April 12, 13, 17, and 18, 1961.

Subpoenaed and testifying were the following witnesses: Maui County Chairman Eddie Tam; Maui County Supervisors Tom Tagawa, Richard Caldito, Harry Kobayashi, Soon Oak Lee, Gero Nakama, Lanny Morisaki, Toshio Anzai, and Marco Meyer; Maui County Attorney Harold Dupont; Maui County Engineer, Keichi Hamada; IIRU officials Tom Yagi, Regino Colotario and Tai Sung Yang; Contractors Manao Yamamoto, and Haruo Fujitomo, of F & M Contractors, Inc., and Mr. Ricky Yasui. Mr. Edwin Wasano, IIRU official, who, knowing a subpoena had been issued for him, voluntarily appeared and was directed by the chairman to testify.

Your Committee confined its investigation primarily to the problems of the opening of bids for the awarding of public works contracts. In this respect the major portion of the hearings was devoted to investigating the reasons for the delay in the Wailuku War Memorial Convention-Hall Gymnasium project hereinafter referred to as the Wailuku Gym. References were

also made to the Waiakamoi and Kihei Water projects relative to postponement of bid openings on these projects.

Although references were made in the hearings to the problems of civil service, influence of public officials by pressure groups and irregularities and conflicts of interest among public officials, time limitations did not permit the Committee to probe deeper into these areas at this time.

The following order of chronological events is listed as background in the development of the eventual problems that have arisen in the Wailuku Gym project:

In December 1959, the Maui County Engineer was instructed by the Board of Supervisors to work with the County Attorney and formulate a policy and submit recommendations in regard to (a) the matter of setting a uniform advertisement whenever calling for bids on all public works projects; (b) the matter of setting a definite time for the closing of all bids. Testimony of the Attorney and the Engineer indicates the latter has not contacted the Attorney and nothing has been done to date in this regard.

On March 18, 1960, the Board passed Resolution No. 41 authorizing expenditures of \$95,000 by the County Public Works Department for the Wailuku Gym site preparation. Included in this authorization were: grading, \$29,000; road construction, \$18,000; irrigation system, \$25,000; engineering services, \$5,000; and architectural services, \$27,000. Each of these amounts are in excess of the statutory limitations imposed on expenditures of public funds and except for the architectural and engineering services should have been expended only in accordance with the provisions of Chapter 9, R.L.H., 1955.

In October and November of 1960 advertisements for sealed tenders on the Wailuku Gym were made and the date for opening of the bids was set at December 2, 1960.

On November 18, 1960, a request was made by the Maui Contractors' Association to the Board to postpone the bid opening for the reason that the general contractors could not get adequate quotations from sub-contractors at the time and postponement would be in the best interest of the County and its people. This message was referred to the Public Works Committee.

At the meeting of December 2, 1960, the Board approved the delay on the recommendation of the Public Works Committee (Committee Report No. 230). The new bid opening date was set at January 20, 1961, with no further extension. The bids were opened on that date and were referred to the County Engineer,

Attorney and the Chairman of the Public Works Committee for their inspection and recommendation.

On the evening of February 8, 1961, a meeting was held at the Hotel Iao Needle, Wailuku, Maui, for the purpose of seeing whether the ILWU and F & M Contractors could resolve their differences and clear the air in the matter of the delay in the award of the Wailuku Gym contract. The meeting was arranged by Mr. Ricky Yasui, at the request of Mr. Haruo Fujitomo, who was of the belief that the ILWU was really seeking the delay in the contract. Representing the ILWU were Thomas Yagi, Edwin Wasano, and Tai Sung Yang. Haruo Fujitomo, Tadashi Fujitomo, and Seichi Tateyama represented F & M. Also present were John Murakami, assistant County Supervisor of Building Inspection, and Ricky Yasui. The latter two were observers and not directly concerned with the discussion at hand.

At this meeting one of the ILWU officials is purported to have made statements to the effect that: F & M should withdraw its bid and the contract could be awarded to Thomas T. Tanaka, of Honolulu, since he was the second lowest bidder; if F & M did not withdraw its bid, charges of collusion would be brought against Haruo Fujitomo by Muneo Yamamoto, which would bring about investigations that might expose County officials; and that this was a battle between the A F of L - C I O and the ILWU. Haruo Fujitomo also testified that the A F of L - C I O officials in Honolulu were aware of this meeting and that he refused to agree to the ILWU's request. The meeting ended with nothing concluded.

In a letter to the County Engineer dated February 13th, the County Attorney issued his report recommending acceptance of F & M as the lowest bidder on the Wailuku Gym project. The opinion also contained the caveat that the work could not be separated.

On or about February 16th, Tom Yagi, Edwin Wasano, Tai Sung Yang and Regino Colotario of the ILWU met with Supervisors Tom Tagawa, Harry Kobayashi, Soon Oak Lee, and Richard Caldito at the ILWU Hall on Lower Main Street in Wailuku. At this meeting the ILWU officials urged the Supervisors to award the contract to Tanaka rather than F & M Contractors, Inc. The rationale of this move was that Tanaka had submitted the lowest bid for the basic work. (However, on the overall project, including all of the alternate work, F & M Contractors' bid was lowest.) It was proposed that the work on "Alternate 6", which was installation of the bleachers, could be eliminated for the purposes of awarding the contract to Tanaka, and the County could purchase the materials and perform the installation with County employees. According to the ILWU officials their only interest was a monetary savings to the people of Maui.

It is clear from the testimony that the Supervisors had unofficially been made aware of the County Attorney's opinion.

At the February 17th meeting of the Board of Supervisors, the matter of the award of the contract was discussed. Although it had apparently not been placed on the agenda by Acting Chairman Tom Tagawa, the matter was brought to the attention of the Board by a communication from the Attorney for F & M Contractors, Inc. In answer to an inquiry by the Board, the County Engineer stated he needed more time to make his report in order to confer with the County Attorney on what he stated was a legal matter. The request of the Engineer was granted, and the matter was dropped. Later that same day Tagawa and Supervisor Lanny Morisaki went to Chairman Tam's home. At this time the matter of the meeting with the ILWU officials was discussed, and Chairman Tam stated that he thought the contract should be awarded to F & M Contractors, for the reason that it was the low bidder.

On February 21, 1961, Edwin Wasano, Tai Sung Yang and Regino Colotario of the ILWU called on Chairman Tam at his home and again discussed the award of the contract and how important this matter was to the ILWU, locally, statewide and nationally. Chairman Tam stated his position on the award, his awareness of the political consequences thereof, and the attorney's recommendation in the matter. Chairman Tam also stated that this was one time when the union should allow the Board members to make their own decisions.

On the morning of March 1, 1961, Tom Yagi called on Chairman Tam at his office and indicated that a scheduled meeting between the ILWU officials and the Democratic Board members on March 2, 1961, was not needed. He stated that Munee Yamamoto would file charges of collusion against Haruo Fujitomo with the State Contractors Licensing Board and the charges would bring about the suspension of F & M's license.

On the morning of March 2, 1961, Supervisors Morisaki, Caldito, and Tagawa met with Chairman Tam at his residence, and the matter of the contract award was discussed. No firm commitments were made but the general opinion was that the award should be made to F & M. In the early evening of this same day the scheduled meeting was in fact held, with ILWU officials Yagi, Yang and Colotario, and Supervisors Morisaki, Caldito, Tagawa, Kobayashi, Lee, Hokama and Chairman Tam attending. Tom Yagi, of the ILWU, requested a delay in the award until the matter of collusion charges was cleared and mentioned the meeting with F & M representatives at the Hotel Iao Needle. Intimation was made that the Republican members of the Board would agree to the ILWU request for delay. Testimony of some of the Board members present at that meeting indicated that no action to delay would be taken by the Board members unless a written communication was received informing them that the charges had been filed against F & M. This meeting was also held at the ILWU headquarters in Wailuku.

At the March 3, 1961, Board meeting a letter was received from Muneo Yamamoto advising the Board that he had filed charges with the Contractors Licensing Board charging Haruo Fujitomo with collusion in the bids for construction of Aloha Lanes Bowling Alley in Wailuku. Shortly after this, the Democratic members held a "caucus" in the Chairman's office at which time Chairman Tam called Mr. Shaw of the Licensing Board inquiring whether he was in receipt of Mr. Yamamoto's letter. Mr. Shaw's answer was that the matter was referred to the Attorney General. Chairman Tam also called the Attorney General's office and inquired whether that office was in receipt of the letter. Deputy Attorney General Yoshio Shigezawa replied that since the Licensing Board had not done anything yet he could not discuss the matter. In the call to Mr. Shaw, discussion was had as to the possibility of the County Board awarding the contract in the light of the charges. Mr. Shaw told Chairman Tam that it was the Board's prerogative to do as it pleased in the matter of award; also, the investigation into the charges set forth by Mr. Yamamoto may take months or years to resolve. During this caucus Tom Yagi called Chairman Tam and indicated that Jack Hall would like to see a deferment. This was all made known to the members present at the caucus and a secret vote was taken in regard to the award, the tally was 4-3 in favor of awarding the contract to F & M. The Board reconvened and Supervisor Caldito moved to award. He was seconded by Tom Tagawa. Supervisor Hokama moved to defer and was seconded by Soon Oak Lee. After discussion, wherein the Republican members of the Board, together with the Democratic members, spoke in favor of the deferment, the motion carried 8 to 1 with Chairman Tam dissenting.

The general consensus among those voting for deferment indicates a desire to "clear the air" before awarding the contract, rather than jeopardize the project if the charges by Mr. Yamamoto proved to be true and F & M's license were suspended. At the same time, however, the Board members are well aware that any successful bidder must submit a performance bond guaranteeing execution of the contract.

Hence, at the present time the Maui County Board is waiting for the Contractors' Licensing Board and the Attorney General to complete their investigations and findings. It appears that no action will be taken until Mr. Yamamoto's charges against Mr. Fujitomo are substantiated or refuted.

The hearings held by your Committee, although restricted primarily to the matter of the award of the Wailuku Gym contract, have pointed out a number of areas in the statutes relating to the expenditure of public funds which appear to pose rather serious problems.

The first problem relates to the apparent disregard of the limitation on expenditure of public funds, contained in Sections 9-21 and 9-22, Revised Laws of Hawaii 1955.

Although the two sections of the law are rather involved and somewhat ambiguous, it seems clear that, in the case of the site preparation work for the Wailuku Gym, the expenditures were in violation thereof, as mentioned earlier herein.

The reasons given by the County Engineer for this apparently illegal expenditure were that the extent and character of the work could not be known beforehand, and the County's workers had to be kept busy. It should be noted here, however, that the appropriations were based on what the Engineer called rough estimates. It seems obvious to your Committee that, once having estimated the expenditure to be in excess of the statutory limitation, the Engineer and the County were bound to follow the requirements as to advertisement and award of contracts. While the members of the Board testified that they were unaware of the statutory limitation, a Committee of the Whole Report (No. 80) dated June 6, 1958, indicates that the matter had been brought to the Board's attention.

Your Committee does not feel that the reasons given by the County Engineer justify the expenditure.

Another problem brought to light is the matter of postponement of the opening of bids and the delay in the award of the contract once F & M Contractors, Inc., had been determined to be the low bidder. This problem involves interpretation of Section 9-26 of the Revised Laws of Hawaii. The statute calls for the bids to be opened at the hour and place set forth in the advertisement.

According to the leading treatise on municipal corporations (10 McQuillin, Mun. Corp., 3rd ed., s. 29.70) such provisions are mandatory and lack of substantial compliance will ordinarily invalidate a contract entered into in violation thereof. However, some court cases have held that such a provision is directory only and lack of compliance will not invalidate a contract award.

In the face of this conflict, your Committee is unable to state categorically that the postponement was legal or illegal or that anyone's rights were or were not violated.

With respect also to the delay in the award of the contract, the statute states no time period, after the opening of bids, within which the contract must be awarded. A cursory check of other agencies involved in awarding contracts for

public works indicates a rather wide divergence of methods of handling the matter of awards. However, the consensus seems to be that a sufficient period of time should be allowed in order that the agencies may examine the bids before awarding the contract.

The various agencies also seem to feel that sixty days should be allowed for this purpose. It is their feeling that this should be ample time for extensive, complicated contracts and, that, in most instances the simpler contracts should and probably would be awarded within that period of time.

Hence, with regard to Chapter 9, it seems evident that numerous provisions are vague and ambiguous. This, in turn, has given rise to varying interpretations and has caused different procedures to be followed by the various agencies. A complete revision of Chapter 9 seems to be warranted. It should be noted that House Bill No. 1461, recently passed by this Honorable Body on the recommendation of the Judiciary Committee and your Select Committee, is, if enacted into law, only the first step in such revision.

The hearings have also pointed out that the immediate question of the award of the contract in the instant case has proven to be only the focal point in what appears to be a perplexing problem in the County of Maui -- the apparently all pervasive influence of the ILWU over the actions of the County officials.

While there is conflict in the testimony as to precisely what was said at the various meetings held among the ILWU officials and the Maui Supervisors, the influence of the ILWU is clearly set forth in the pattern of events.

Your Committee, naturally, is well aware that pressure groups exist as a concomitant part of our form of government. Your Committee is also of the opinion that, for the most part, such pressure groups serve a salutary purpose in providing government officials with much needed information and advice. Also, it should be noted that there is nothing inherently evil in the actions of such pressure groups. However, although difficult to define precisely, your Committee feels that there are certain limits of propriety which should govern those actions. One measure of such limits is whether the objective sought by such groups really serves the interest of the general public or is, in fact, detrimental thereto.

In the case of the contract in question, your Committee feels that the local leadership of the ILWU went beyond the bounds of propriety in its activities. Your Committee believes that the interest of the general populace of Maui has not been served by the undue delay or by the activities of the local ILWU leadership in this matter.

The local ILWU officials attempted to justify their actions on the basis that they represent a majority of the people in Maui County and that the award of the contract to Thomas T. Tanaka would result in an overall savings to the government. Your Committee has no quarrel with the right of the ILWU or any group for that matter to make known the feelings of its members. However, your Committee does not agree that their proposed plan would be a money saving one. Moreover, the opinion of the County Attorney indicated their plan could not legally be followed.

Your Committee believes that one of the purposes of the ILWU is to win out in an organizational battle with the A F of L - C I O for the right to represent employees of the construction trades on Maui. Such a victory could be enhanced if F & M Contractors, Inc., one of the largest construction firms on the island could be deprived of this contract. The inter-union battle is a matter of common knowledge on Maui. Your Committee's concern is that government should not and must not be used to promote the cause of either disputant. Your Committee also wonders if, perhaps, Muneo Yamamoto with full knowledge lent himself to the cause of the ILWU in this regard. It seems clear that the local leadership of the ILWU was well aware from the beginning of the move contemplated by Mr. Yamamoto, and may very well have played an important part in influencing his actions.

It is, of course, difficult, if not impossible, to legislate against pressure groups. However, legislative steps can be taken to minimize their effect on government activities, at least in the matter of tightening the statutes pertaining to public contracts.

Public awareness of activities of pressure groups is, of course, one method of keeping them within proper bounds. In fact, one theory of legislative hearings, to which your Committee, it should be noted, does not completely subscribe, is that the purpose thereof is to create public awareness of various problems and issues. In this regard your Committee feels that the people of Maui have been made aware of the actual situation as a result of your Committee's hearings, and this has been healthy.

Your Committee has received much information on other matters relative to the administration of the affairs of Maui County which deserve careful scrutiny. The problems seem to have mushroomed out like an atomic cloud, branching out and reaching into nearly all phases of Maui's economic and government activities.

Time and staff limitations, as well as the pressure of legislative duties, have not allowed your Committee to continue this investigation at this time. However, your Committee will continue its work in the immediate future.

At the conclusion of its further investigations, your Committee will render a full and complete report on the administration of the affairs of Maui County and the expenditure of public funds therein.

Respectfully submitted,

Walter M. Heen, Chairman

Dorothy L. Devereux

Joseph L. Dwight, Jr.

Hiroshi Kato

Akira Sakima

James Y. Shigemura

Frederick W. Rohlfing

(To be made one and eight copies)

FIRST LEGISLATURE, 196 1
STATE OF HAWAII

H. R. NO. 45
H. D. 2

HOUSE RESOLUTION

1 WHEREAS, the Legislature is authorized under Section 1,
2 Article III of the State Constitution to enact "all rightful
3 subjects of legislation not inconsistent with the constitution
4 or the Constitution of the United States"; and

5
6 WHEREAS, laws relating to revenues of the state and
7 counties and the proper appropriation and means of disbursement
8 thereof are rightful subjects of legislation; and

9
10 WHEREAS, through newspaper accounts and a preliminary
11 investigation by a Select Committee of the House of Representa-
12 tives, First State Legislature, General Session, 1961, there
13 appears to be an inadequacy in our present statutes relating to
14 the procedure of awarding of contracts in Maui County, of which
15 an example is the Wailuku War Memorial Convention Hall Gymnasium
16 project wherein the opening of the bid was scheduled originally
17 for December 2, 1960 and was postponed to January 20, 1961 and
18 after the bids were opened there were further delays in the
19 awarding of the contract and there appears to be no definite
20 date by which a decision on the awarding of the contract will
21 be made; and

22
23 WHEREAS, the Legislature through Act 224, Session Laws of
24 Hawaii 1959 appropriated \$300,000 and through Act 23, Session
25 Laws of Hawaii, 1960 appropriated another \$300,000 from the
26 general fund of the State of Hawaii to complete this project,
27 and the people in the County of Maui according to newspaper
28 accounts have expressed some concern as to when this project
29 will be completed since the site was acquired in April of 1960
30 and preliminary work has been completed so that construction
31 may be commenced on it; and

32
33 WHEREAS, through newspaper accounts and statements appear-
34 ing therein by various officials of the City and County of
35 Honolulu there appear to be questions as to whether the statutes
36 relating to purchasing practices, requirements for bidding and
37 the submission of bids and awarding of contracts by the city
38 officials are adequate to promote the public's interest to have
39 the least expensive and most effective use of the city and
40 state funds authorized by the Legislature to be expended by the

1 City; and

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

42

43

44

45

46

47

WHEREAS, the duty of public officials responsible for the expenditures of public funds is not only to have the least expensive and most effective use of the city and state funds, but also to avoid irregularities and conflicts of interest which may raise questions as to the integrity of public officials or may unduly influence public officials in the exercise of their duties; and

WHEREAS, the newspaper reports and preliminary investigation relating to purchasing practices, requirements of bidding, the submission of bids and awarding of contracts in the County of Maui and City and County of Honolulu raise questions as to whether there should be an investigation and recommendation concerning areas within the expenditure of public funds and the conflicts and irregularities that may occur in the course of the expenditure of public funds; now, therefore,

BE IT RESOLVED by the House of Representatives of the First Legislature of the State of Hawaii, General Session of 1961, that the Speaker of the House of Representatives is hereby respectfully requested to appoint a select committee or committees each to consist of not more than seven members of the House of Representatives, to investigate the procedures for the expenditure of public funds and conflicts and irregularities that may have occurred or are likely to re-occur in the course of the expenditure of public funds in the County of Maui and City and County of Honolulu and determine whether there is the need for corrective legislation;

BE IT FURTHER RESOLVED that such select committee or committees be appointed forthwith and proceed to make the investigation as heretofore provided, with first priority being given to the County of Maui situation since the decision in the awarding of the contract for the Wailuku Convention Hall-Gymnasium project has not been made as yet and there is a public interest that some decision be made as expeditiously as possible;

BE IT FURTHER RESOLVED that such select committee or committees shall exist during this session and continue if necessary as holdover committees of the House of Representatives in order to accomplish the objectives of this Resolution, and the Speaker is authorized to take such steps as may be necessary for such select committee or committees to function until the Budget Session of 1962; and

1 BE IT FURTHER RESOLVED that such select committee or committees
2 be required to make a report of their findings whether preliminary
3 or final including any proposed legislation before the end of this
4 session, and if necessary, a final report which shall include
5 recommendations, if any, and any proposed legislation not later
6 than ten days before the commencement of the Budget Session of 1962.

7
8 OFFERED BY:
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

97th *HB 1461* *mech.* *5* B. NO. *475*

AN ACT

PROVIDING FOR PREFERENCES IN PURCHASES MADE BY STATE AND COUNTY GOVERNMENTS, AND IN PRODUCTS USED IN PUBLIC WORKS; PENALTIES FOR VIOLATION OF PREFERENCES AND AMENDING SECTIONS 9-37 TO 9-44 OF THE REVISED LAWS OF HAWAII 1955, AS AMENDED.

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

1 SECTION 1. Sections 9-37 to 9-42 of the Revised Laws of
2 Hawaii 1955, as amended, are hereby further amended as follows:

3 "SECTION 9-37. DEFINITIONS. WHENEVER USED IN
4 SECTIONS 9-37 TO 9-44 INCLUSIVE.

5 (a) 'PERSON' INCLUDES EVERY INDIVIDUAL, PARTNERSHIP,
6 FIRM, SOCIETY, UNINCORPORATED ASSOCIATION, JOINT
7 VENTURE, GROUP, HUI, JOINT STOCK COMPANY, CORPORATION,
8 TRUSTEE, EXECUTOR, ADMINISTRATOR, TRUST ESTATE, DECE-
9 DENT'S ESTATE, TRUST OR OTHER ENTITIES, WHETHER SUCH
10 PERSONS ARE DOING BUSINESS FOR THEMSELVES OR IN A
11 FIDUCIARY CAPACITY.

12 (b) 'PRODUCTS' INCLUDES MATERIALS, MANUFACTURES,
13 SUPPLIES, GOODS, WARES, PRODUCE, AND FOODSTUFFS.

14 SECTION 9-38. PREFERENCE FOR LOCAL PRODUCTS. (a) FIT-
15 NESS AND QUALITY BEING EQUAL, THE STATE AND THE COUNTIES

1 AND ALL DEPARTMENTS, DIVISIONS AND INSTITUTIONS OF EITHER
2 SHALL PURCHASE PREFERENTIALLY PRODUCTS MANUFACTURED OR PRO-
3 DUCED IN THE STATE (AS CONTEMPLATED BY CHAPTER 117 REVISED
4 LAWS OF HAWAII, 1955 RELATING TO GENERAL EXCISE TAXES, AS
5 IT MAY BE AMENDED FROM TIME TO TIME) PROVIDED THAT THE PRICE
6 THEREOF IS NO HIGHER THAN THE USUAL AND CUSTOMARY CHARGE
7 MADE TO PRIVATE PERSONS SIMILARLY SITUATED AND PROVIDED THAT
8 THE PRICE THEREOF IS NO MORE THAN SIX PERCENT HIGHER THAN
9 THE COST OF LIKE PRODUCTS (INCLUDING COST OF TRANSPORTATION
10 AND DELIVERY) MANUFACTURED OR PRODUCED OUTSIDE OF
11 THE STATE.

12 (b) IN CASES WHERE BY LAW THE PURCHASE OF THE PRODUCT
13 IS REQUIRED TO BE MADE THROUGH COMPETITIVE BID, THE LOWEST
14 PRICE BID BY A PERSON TO FURNISH PRODUCTS MANUFACTURED OR
15 PRODUCED IN THE STATE (AS CONTEMPLATED BY CHAPTER 117 REVISED
16 LAWS OF HAWAII, 1955 RELATING TO GENERAL EXCISE TAXES, AS
17 IT MAY BE AMENDED FROM TIME TO TIME) SHALL BE DECLARED THE
18 LOWEST BID FOR THE AWARD OF THE CONTRACT, IF SUCH BID IS
19 NO MORE THAN SIX PERCENT HIGHER THAN THE LOWEST BID MADE BY
20 A PERSON TO FURNISH PRODUCTS MANUFACTURED OR PRODUCED OUT-
21 SIDE OF THE STATE.

22 (c) IN THE CASE OF PURCHASES BY THE STATE OR ANY
23 DEPARTMENT, DIVISION OR INSTITUTION THEREOF, THE GOVERNOR,
24 AND IN THE CASE OF PURCHASES BY A COUNTY OR ANY DEPARTMENT,
25 DIVISION, OR INSTITUTION THEREOF, THE BOARD OF SUPERVISORS
26 OR CITY COUNCIL, MAY ESTABLISH FROM TIME TO TIME, REVISE

1 AND FILE WITH THE COMPTROLLER A LIST OF LOCAL PRODUCTS,
2 TO WHICH THE PREFERENCE CONTAINED IN THIS SECTION SHALL
3 NOT APPLY.

4 (d) THE PREFERENCE PROVIDED FOR IN THIS SECTION SHALL
5 CONTROL OVER ANY CONFLICTING PREFERENCE PROVIDED FOR IN
6 SECTION 9-39.

7 SECTION 9-39. PURCHASES TO BE MADE FROM LOCAL
8 BUSINESSES. (a) ALL PURCHASES OF PRODUCTS MADE WITH
9 PUBLIC MONEY BY THE STATE OR ANY COUNTY OR ANY DEPARTMENT,
10 DIVISION OR INSTITUTION OF EITHER SHALL BE FROM A PERSON
11 WHO HAS MAINTAINED A BUSINESS IN GOOD FAITH INTENDED TO BE
12 PERMANENT IN AN ESTABLISHED PLACE OF BUSINESS IN THE STATE
13 FOR A PERIOD OF THREE MONTHS PRIOR TO THE PURCHASE CON-
14 TRACTED FOR, PROVIDED, HOWEVER, IF IT IS ESTABLISHED THAT
15 A PURCHASE CANNOT BE MADE FROM ANY SUCH PERSON, OR THAT THE
16 LOWEST PRICE FOR WHICH A PURCHASE CAN BE MADE FROM ANY SUCH
17 PERSON EXCEEDS THE CHARGE USUALLY AND CUSTOMARILY MADE TO
18 PRIVATE PERSONS FOR THE PRODUCT BY SUCH PERSON, OR THAT THE
19 PRICE FOR THE PRODUCT TO BE PURCHASED FROM ANY SUCH PERSON
20 EXCEEDS BY MORE THAN SIX PERCENT THE PRICE AT WHICH THE
21 PRODUCT CAN BE OTHERWISE PURCHASED, THEN THE PURCHASE NEED
22 NOT BE MADE FROM SUCH A PERSON.

23 (b) NO PURCHASE OF PRODUCTS BY THE STATE OR ANY
24 COUNTY OR ANY DEPARTMENT, DIVISION, OR INSTITUTION OF
25 EITHER SHALL BE MADE FROM ANY PERSON WHO HAS NOT MAINTAINED
26 A BUSINESS IN GOOD FAITH INTENDED TO BE PERMANENT IN AN

1 ESTABLISHED PLACE OF BUSINESS FOR A PERIOD OF THREE MONTHS
2 PRIOR TO ANY SUCH PURCHASE UNLESS SUCH PURCHASE BE AT THE
3 PREVAILING CONSUMER'S PRICE FOR SUCH PRODUCT AS ESTABLISHED
4 BY RECOGNIZED MERCHANTS HAVING AN ESTABLISHED PLACE OF
5 BUSINESS ON THE MAINLAND OF THE UNITED STATES PLUS TRANS-
6 PORTATION AND DELIVERY CHARGES TO THE STATE.

7 (c) IN CASES WHERE BY LAW THE PURCHASE OF A PRODUCT
8 IS REQUIRED TO BE MADE THROUGH COMPETITIVE BID, THE LOWEST
9 BID MADE BY A PERSON WHO HAS MAINTAINED A BUSINESS IN GOOD
10 FAITH INTENDED TO BE PERMANENT IN AN ESTABLISHED PLACE OF
11 BUSINESS IN THE STATE FOR A PERIOD OF THREE MONTHS PRIOR
12 TO SUCH BID, SHALL BE DECLARED THE LOWEST BID FOR THE AWARD
13 OF THE CONTRACT, IF SUCH BID IS NO MORE THAN SIX PERCENT
14 HIGHER THAN THE LOWEST BID MADE BY ANY PERSON WHO HAS NOT
15 MAINTAINED A BUSINESS PLACE IN GOOD FAITH INTENDED TO BE
16 PERMANENT IN AN ESTABLISHED PLACE OF BUSINESS IN THE STATE
17 FOR A PERIOD OF THREE MONTHS PRIOR TO SUCH BID.

18 SECTION 9-40. PREFERENCES IN PUBLIC WORKS. (a) ALL
19 PERSONS PARTICIPATING IN THE CONSTRUCTION OF ANY BUILDING
20 OR OTHER PUBLIC WORK BEING CONSTRUCTED UNDER CONTRACT WITH
21 THE STATE OR ANY COUNTY OR ANY DEPARTMENT, DIVISION, OR
22 INSTITUTION OF EITHER SHALL USE IN THE SAID CONSTRUCTION
23 ONLY PRODUCTS MANUFACTURED OR PRODUCED IN THE STATE (AS
24 CONTEMPLATED BY CHAPTER 117 OF THE REVISED LAWS OF HAWAII,
25 1955, RELATING TO GENERAL EXCISE TAXES, AS IT IS AMENDED
26 FROM TIME TO TIME) EXCEPT WHEN A REQUIRED PRODUCT IS NOT

1 AVAILABLE OR WHEN THE PRICE OF THE PRODUCT EXCEEDS BY MORE
2 THAN SIX PERCENT THE PRICE OF A LIKE PRODUCT (INCLUDING COST
3 OF TRANSPORTATION AND DELIVERY) MANUFACTURED OR PRODUCED
4 OUTSIDE OF THE STATE.

5 (b) ALL PERSONS PARTICIPATING IN THE CONSTRUCTION OF
6 ANY BUILDING OR OTHER PUBLIC WORK BEING CONSTRUCTED UNDER
7 CONTRACT WITH THE STATE OR ANY COUNTY OR ANY DEPARTMENT,
8 DIVISION OR INSTITUTION OF EITHER WHO ARE NOT REQUIRED TO
9 USE PRODUCTS MANUFACTURED OR PRODUCED IN THE STATE BECAUSE
10 OF EITHER EXCEPTION PROVIDED FOR IN PARAGRAPH (a), SHALL
11 PURCHASE ALL PRODUCTS USED IN THE SAID CONSTRUCTION FROM A
12 PERSON WHO HAS MAINTAINED A BUSINESS IN GOOD FAITH INTENDED
13 TO BE PERMANENT IN AN ESTABLISHED PLACE OF BUSINESS IN THE
14 STATE FOR A PERIOD OF THREE MONTHS PRIOR TO THE PURCHASE,
15 PROVIDED, HOWEVER, IF IT IS ESTABLISHED THAT THE PURCHASE
16 CANNOT BE MADE FROM ANY SUCH PERSON, OR THAT THE LOWEST PRICE
17 FOR WHICH A PURCHASE CAN BE MADE FROM ANY SUCH PERSONS EXCEEDS
18 THE CHARGE USUALLY AND CUSTOMARILY MADE TO PRIVATE PERSONS FOR
19 THE PRODUCT BY SUCH PERSON, OR THAT THE PRICE FOR THE PRODUCT
20 TO BE PURCHASED FROM ANY SUCH PERSON EXCEEDS BY MORE THAN SIX
21 PERCENT THE PRICE AT WHICH THE PRODUCT CAN OTHERWISE BE PUR-
22 CHASED, THEN THE PURCHASE NEED NOT BE MADE FROM SUCH PERSON.

23 SECTION 9-41. PREFERENCES NOTED ON BID ADVERTISEMENTS.
24 EVERY ADVERTISEMENT FOR BID BY THE STATE OR ANY COUNTY
25 OR ANY DEPARTMENT, DIVISION OR INSTITUTION OF EITHER TO
26 WHICH SECTIONS 9-38, 9-39 OR 9-40 APPLY SHALL INCLUDE A

1 REFERENCE TO THE PREFERENCE PROVISIONS CONTAINED IN
2 SECTIONS 9-37 TO 9-44, INCLUSIVE, AND EVERY CONTRACT
3 MADE PURSUANT TO SUCH ADVERTISEMENT FOR BID SHALL CONTAIN
4 THE PROVISIONS SET FORTH IN SECTIONS 9-38, 9-39 OR 9-40 AS
5 APPLICABLE AND SECTIONS 9-43 and 9-44.

6 SECTION 9-42. SECTIONS 9-37 TO 9-44, INCLUSIVE,
7 SHALL NOT BE APPLICABLE IN ANY CASE WHERE THEIR APPLICATION
8 WILL DISQUALIFY THE STATE OR ANY COUNTY OR ANY DEPARTMENT,
9 DIVISION, OR INSTITUTION OF EITHER FROM RECEIVING
10 FEDERAL FUNDS OR AID."

11 SECTION 9-43. VIOLATION VOIDS CONTRACT; DISQUALIFIES
12 FOR FUTURE CONTRACTS. ANY PURCHASE MADE OR ANY CONTRACT
13 AWARDED OR EXECUTED IN VIOLATION OF SECTION 9-37 TO 9-44
14 SHALL BE VOID AND OF NO EFFECT, AND NO PAYMENT SHALL BE
15 MADE BY THE STATE OR ANY COUNTY OR ANY DEPARTMENT, DIVISION
16 OR INSTITUTION OF EITHER ON ACCOUNT OF ANY SUCH PURCHASE
17 OF CONTRACT. IN ADDITION, ANY PERSON WHO FAILS TO COMPLY
18 WITH THE PROVISIONS OF SECTIONS 9-37 TO 9-44 SHALL NOT BE
19 AWARDED ANY CONTRACT OR BE GIVEN ANY ORDER FOR PURCHASE
20 BY THE STATE OR ANY COUNTY OR ANY DEPARTMENT, DIVISION,
21 OR INSTITUTION OF EITHER FOR A PERIOD OF THREE YEARS. THE
22 GOVERNMENTAL AUTHORITY LETTING THE CONTRACT SHALL DELIVER
23 A NOTICE OF DISQUALIFICATION CONTAINING FACTS SETTING
24 FORTH THE REASON FOR THE DISQUALIFICATION TO THE PERSON
25 TO BE DISQUALIFIED AND SHALL SEND COPIES OF THE NOTICE
26 TO THE DEPARTMENT OF THE ATTORNEY GENERAL OF THE STATE AND

1 THE COUNTY ATTORNEY OR CORPORATION COUNSEL, AS THE CASE
 2 MAY BE, OF EACH COUNTY. THE PERIOD OF THE DISQUALIFICATION
 3 SHALL COMMENCE 60 DAYS AFTER DELIVERY OF THE NOTICE TO THE
 4 PERSON TO BE DISQUALIFIED, PROVIDED, HOWEVER, THAT THE
 5 GOVERNOR OF THE STATE, IF THE CONTRACTING AUTHORITY COMES
 6 UNDER STATE JURISDICTION, OR THE MAYOR OR COUNTY CHAIRMAN,
 7 AS THE CASE MAY BE, IF THE CONTRACTING AUTHORITY COMES
 8 UNDER JURISDICTION OF ANY COUNTY, MAY WITHIN THE 60 DAY
 9 PERIOD RESCIND THE DISQUALIFICATION OR SUSPEND THE DIS-
 10 QUALIFICATION PENDING INVESTIGATION, IN WHICH LATTER CASE
 11 THE DISQUALIFICATION MAY BE RESCINDED UPON COMPLETION OF
 12 THE INVESTIGATION. IN EVERY PROCEEDING TO RESCIND THE
 13 DISQUALIFICATION, WHETHER ADMINISTRATIVE OR JUDICIAL, THE
 14 DISQUALIFIED PERSON SHALL HAVE THE BURDEN OF PROVIDING
 15 COMPLIANCE WITH SECTIONS 9-37 TO 9-44.

16 SECTION 9-44. PENALTY. ANY OFFICER OF THE STATE OR
 17 ANY COUNTY OR ANY DEPARTMENT, DIVISION, OR INSTITUTION OF
 18 EITHER OR ANY PERSON ACTING UNDER OR FOR SUCH PERSON OR
 19 ANY OTHER PERSON WHO VIOLATES ANY PROVISION OF 9-37 TO
 20 9-44 SHALL BE FINED NOT MORE THAN \$1,000 OR IMPRISONED
 21 NOT MORE THAN ONE YEAR, OR BOTH.

22 SECTION 2. This Act shall take effect upon its
 23 approval.

INTRODUCED BY:

Ralph F. ...
William J. ...
Francis ...
Edward ...

Honolulu, Hawaii

Date: 2/28/61