

NEIL ABERCROMBIE
GOVERNOR



DAVID M. LOUIE
ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1500

RUSSELL A. SUZUKI
FIRST DEPUTY ATTORNEY GENERAL

February 28, 2011

The Honorable Shan S. Tsutsui
President of the Senate
The Twenty-Sixth Legislature
State of Hawaii
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear President Tsutsui:

Re: Forty-Eight-Hour Review Period of Article III,
Section 15, of the Hawaii Constitution

This is in response to a request for advice as to whether the forty-eight-hour period of article III, section 15, of the Hawaii Constitution begins to run concurrently for both the House and the Senate when a final form of a bill is decked in the House, but no other step such as a separate journal entry in the Senate has occurred to record the receipt of an advance copy of the bill. We understand that on Thursday, February 17, 2011, a Senate bill amended by the House of Representatives was decked in the House. The forty-eight-hour period was up on Saturday, a non-session day, so the House could not pass the bill on final reading until the next session day, which was Tuesday, February 22, 2011. We understand that it was believed that as soon as the House passed the bill, certified it, and sent it to the Senate on February 22, 2011, the Senate could pass the bill on final reading in the Senate because the forty-eight-hour review period for this bill for the members of the Senate began when the bill was made available to the members of the House on February 17, 2011 when it was decked in the House. We understand that Attorney General Opinion No. 70-7 has been cited as supporting this conclusion.

For the reasons stated herein, we believe that our Opinion No. 70-7 only addressed the issue of whether the

OP. No. 11-1

review period was satisfied in the House only.¹ The opinion did not address the issue of whether the review period requirement is satisfied for both houses by the initial printing in one house. We advise that article III, section 15, of the Hawaii Constitution requires a separate forty-eight-hour period in the Senate after the House has passed, certified, and transmitted the final version of the bill to the Senate.

Section 15 of article III provides in pertinent part as follows:

No bill shall become law unless it shall pass three readings in each house on separate days. 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.

In interpreting the Hawaii Constitution, the Hawaii Supreme Court has instructed us that we are to begin with the words of the Constitution itself. "In interpreting constitutional provisions, the general rule is that, if the words used in a constitutional provision . . . are clear and unambiguous, they are to be construed as they are written." Taomae v. Lingle, 108 Haw. 245, 251, 118 P.3d 1188, 1194 (2005). Words are presumed to be used in their natural sense unless the context furnishes some ground to control, qualify, or enlarge them. Pray v. Judicial Selection Comm'n, 75 Haw. 333, 342, 861 P.2d 723, 727 (1993).

We believe that the plain language of article III, section 15, requires that, before any bill can pass third or final reading in either house, it must first be made available to the house that is voting on the bill for at least forty-eight hours. It has been suggested that the final form of the amended Senate bill was made available to the members of the Senate by the posting of the bill on the Legislature's website on

¹ The twenty-four-hour period referenced in Attorney General Opinion No. 70-7 was contained in article III, section 16, of the Hawaii Constitution, which has since been amended to require a forty-eight-hour review period and is now contained in article III, section 15.

February 17, 2011. However, when the words of section 15, "printed copies of the bill in the form to be passed shall have been made available to the members of that house," were written and adopted in 1978, there was no Internet. Consequently, we do not believe that we can read section 15 to mean that posting on the website is synonymous with "printed copies. . . have been made available."

The purpose of the forty-eight-hour review period is to make sure that legislators and the public have sufficient time to inform themselves of the final content of bills before third or final reading. In Standing Committee Report No. 46 of the 1968 Constitutional Convention of Hawaii, the Committee on Legislative Powers and Functions stated as follows:

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.

Stand. Comm. Rep. No. 46, 1 Proceedings of the Constitutional Convention of Hawaii of 1968, at 216 (1973).

In Standing Committee Report No. 46 of the 1978 Constitutional Convention of Hawaii, the Committee on Legislature stated that "[i]n view of the increasing numbers of bills being introduced in the legislature and the public

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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." Stand. Comm. Rep. No. 46, 1 Proceedings of the Constitutional Convention of Hawaii of 1978, at 603 (1980).

Because the purpose of the forty-eight-hour review period is to allow legislators and constituents to be able to review bills before third or final reading so as to avoid hasty decisions and surprises, we believe that article III, section 15, requires a separate forty-eight-hour period in the Senate after the House has passed, certified, and transmitted the final version of the bill to the Senate.

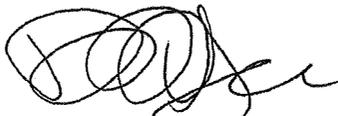
Should you have any questions regarding our conclusion, please do not hesitate to contact us.

Very truly yours,



Russell A. Suzuki
First Deputy Attorney General

APPROVED:



David M. Louie
Attorney General

c: The Honorable Calvin K.Y. Say
Speaker of the House of Representatives