

## Plan on Attending SBH's 36th Annual Business Conference

The **36th Annual SBH Business & Investment Conference** will be held Wednesday, **January 11, 2012**, from 7 am to 2 pm at the Ala Moana Hotel.

The theme of the conference is: "Small Business 2012—Climate Change for Hawaii Business."

**John Fund** of *The Wall Street Journal* will keynote the luncheon program at noon. A tentative program agenda and reservation form is on page 8 and also posted online at our website: [smartbusinesshawaii.com](http://smartbusinesshawaii.com). Send in your reservation today.

There will be networking, business success tips and political candidate forums during the conference—Hawaii's first major business event of the New Year.



Wall Street Journal columnist John Fund (right) returns as the keynote speaker in this year's annual SBH Conference. Shown with Sam Slom at a previous event.



A new home mortgage law has had unforeseen consequences for homeowners and lenders.

## Act 48 Mortgage Reform "Flounders"

By **Ron Margolis**, RA, ABR

"New Law Flounders!" That was a recent headline in the *Honolulu Star Advertiser*.

Here's the back story: When Senate Bill 651 was signed into **Act 48** on May 5, 2011, Hawaii's legislators thought they were taking a powerful and effective step in helping homeowners to deal with their banks.

The 101 page bill was intended to force lenders to make better efforts at negotiating loan modifications with borrowers through a mediation program overseen by the state's Department of Commerce and Consumer Affairs (DCCA).

Act 48 reformed and redefined the foreclosure process in Hawaii. This law sets up a MFDR (Mortgage Foreclosure Dispute Resolution) mediation process that is now apart of the non-judicial foreclosure process. Here's the problem: If the banks do not use the non-judicial foreclosure process, there is no mediation required.

So, if the bank does not pursue non-judicial foreclosure parts I or II (there are two styles of non-judicial foreclosure in Hawaii) what do the banks do? They file a judicial foreclosure. This is in the Kaua'i civil court

system. The local lenders have always pursued their foreclosure in the court system, so this is nothing new.

However, last week alone, 20 new cases were filed on Kaua'i. What does this mean? The majority of these new judicial foreclosures are the result of the mainland foreclosing banks, cancelling their former non-judicial

*Continued on page 4.*

### SBH MEMBER CALENDAR

PHONE 396-1724 • FAX: 396-1726

Monday, December 19

**SBH Board of Directors Meeting**  
SBH Office • 12 noon

Wednesday, January 11, 2012  
**36th Annual SBH Conference**

**John Fund**

Wall Street Journal  
Ala Moana Hotel • 7 am – 2 pm

SmartBusiness  
HAWAII

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**UHERO's Economic Forecast for Hawaii • Pages 3 & 4.**



# Smart Business Views

By Sam Slom, President – Smart Business Hawaii

The week long occupation of Honolulu by the **Asian Pacific**

**Economic Cooperation (APEC)** Summit, and its 21 pampered leaders, ended in mid-November after major road closings, armed men and equipment, business disruption and political protests. Best guess is that APEC will not produce as much visitor spending as originally estimated and that the feds will pay back very little of the high security costs absorbed by Honolulu. Most small businesses will not gain economically during this week.

Hooray for State Senator **Will Espero** who questioned Governor Abercrombie's unilateral decision to close Iolani Palace because of 22 peaceful protesters. It caused APEC embarrassment and loss of revenues to the **Friends of Iolani Palace**.

State Senate President **Shan Tsutsui** and House Speaker **Calvin Say** sent out a memo saying the 2012 Legislative Session which convenes in mid-January, will not feature a celebration, entertainment or free eats. Family members and friends will not join Senators on the Senate floor. It will be low key and "business like" because of the "continuing slow economic recovery in Hawaii." This was the case in 2010 too.

**Phyllis Shimabukuro** and sister **Lois**, Mikilua Poultry, Inc., spoke on "Buy Local: Challenges to Hawaii's Agricultural Products" at the November 17 SBH Sunrise Networking Breakfast forum, the final forum for 2011. Sunrise will return in late January.

**Rush Limbaugh** gave away four trips to Hawaii in his latest sweepstakes promotion of his new tea product, Two If By Tea. And El Rushbo also said the winners would not be staying at some dinky shack on the North Shore; they would stay in Waikiki! The USMC turned 236 November 10 and Rush has been a long time supporter of the Marines and a scholarship program for children of the fallen heroes.

Remember when **KISS** rock and business legend **Gene Simmons** was the SBH keynote speaker at our January 2008 Annual Business Conference? The star of A&E Network's "Gene Simmons Family Jewels" reiterated in Honolulu that he would *never* get married, even though he and **Shannon Tweed** had lived together then for 25 years with two grown children. On October 1, the couple wed. An important lesson I learned years ago: Never say Never!

**Bob Taylor** will retire from his post as

president and CEO of Maui Divers Jewelry December 31, after 35 years with the company.

**Mary Beth Brenner**, who joined the company last year as executive VP, will succeed Taylor as president and CEO of the company, which has 500 employees and is Hawaii's largest jewelry manufacturer and retailer. During Taylor's tenure, Maui Divers expanded from five to 56 retail stores and has been profitable every year. Maui Divers Jewelry was a winner of the Best in Business category of PBN's Business Leadership Hawaii awards in 2006.

On the first Sunday of every month from 10 am – 1 pm, **Maunaloa Communities Foundation (MCF)**, formally the Independence Day at Maunaloa Bay, will invite local farmers, artisans, food vendors and community groups to gather at Koko Marina Center in the parking lot between First Hawaiian Bank and Chevron gas station. The new program began November 6.

Honolulu, Olathe, Kan., Roseville, Calif. and Eden Prairie, Minn. received first place rankings for top tech cities in the **2011 Digital Cities Survey**, according to the results of the 11th annual survey conducted by the Center for Digital Government and Government Technology.

The *New York Times* reported a major study that examined 40 states with bans on soda at schools—Hawaii is one of those states—which they have not succeeded. Keiki find other ways to get their sugar and get fat. The role of parents?

"Dog the Bounty Hunter" **Duane Chapman** and family opened a retail store in Koko Marina Shopping Center. Da Kine Dog House features official "Dog the Bounty Hunter" merchandise, from clothing and accessories, to photos, books, DVDs, mouse pads, bags, key chains, and much more. Season 8 of "Dog the Bounty Hunter" premieres on December 14th, on A&E.

The 2011 **Tire Dealer Humanitarian Award** was presented to **Lex Brodie's Tire Company** on October 31, at the annual Tire Industry Association's (TIA) convention in Las Vegas. Lex Brodie's was the single recipient selected out of approximately 30,000 independent tire dealers, retreaders and wholesalers in North America.

Not receiving your weekly email of **SBH News + Views**? Call Darlyn at 396-1724.

SBH wishes you, your family, employees and associates, the Merriest of Christmases, the Happiest Hanukah and a Happy New Year.

## BITE ME!

A classic example of how not to handle a problem with alleged retail "theft." The story of the Beretania Safeway which detained and arrested a young couple for eating a \$5 sandwich while shopping—they had paid \$50 for their groceries—and had the empty sandwich wrapper. I absolutely think businesses should prosecute shoplifting and theft.

But each situation should be handled appropriately and this was not. The woman was 30 weeks pregnant and felt faint. (Even husbands know the hormonal and nutritional problems faced with a late pregnancy). She ate while shopping. Apparently, employees were aware of this but said nothing till the couple actually left the store (or were about to; there is conflicting statements) with their baby girl, **Zofia Nicole** and **Marcin Leszczynski**, were detained, and waited four hours for an HPD officer. Safeway wanted to prosecute. Because both the mother and father—recent residents from the Mainland—were arrested, the state Child & Protective Services was called and they took the baby from their parents. The baby was separated for 18 hours.

This story got national media attention. Safeway later decided not to prosecute. Too late. This is why employee training and procedures are important to every business.

## SMALL BUSINESS NEWS

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Small Business Hawaii (SBH), was founded in 1975, by Lex Brodie. SBH is a private, independent, non-profit [501 (c) (6)] statewide association of nearly 2,000 business members.

SBH is dedicated to improving Hawaii's business climate, creating a better Hawaii through private, competitive enterprise, and promoting, educating, and effectively representing small business, while advocating tax reduction, lower business costs and job creation incentives to diversify Hawaii's economy.

SBH invites comment small business issues in Hawaii. Send them to Small Business Hawaii by the 10th of the month for the next issue. SBH accepts advertising only from SBH member firms. Call SBH for details on advertising.

# U.H. Economic Research: Economy In “Pause Mode”

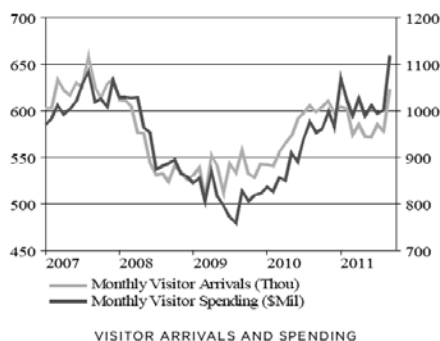
From the **University of Hawaii Economic Research Organization** (Summary)

## **This year’s Hawaii slowdown continues to play out, with external risks heightened.**

While in some respects the local economy remains healthier than the US as a whole, the same general problems are evident here, in particular stagnant labor markets, absent construction, and limited income growth. Hawaii’s recovery process is tenuous and far from complete. Our forecast is for gains as we move into 2012, but not at a pace that will lead to rapid improvement in economic conditions.

**U.S. economic conditions have not changed substantially** since the time of our last report. (For an in-depth discussion see the UHERO Annual Hawaii Forecast, September 2, 2011.) Consumer confidence and spending remains anemic and manufacturing activity continues to hover just barely above contraction. The European debt crisis has worsened, with sovereign debt pressures extending to more countries and funding pressures mounting for European banks.

Domestic political impediments have caused governments to dither, rather than adopting decisive action to stave off a major crisis, and announcements from Europe last week raise more questions than answers. The Euro zone region has likely slipped into recession, and the downside risks are clearly enormous if difficult to quantify. Japan has made progress in addressing post-quake reconstruction, while developing Asia has slowed to some extent as demand in the rich world has softened.



**In Hawaii, the visitor industry has suffered** this year, from the Japanese quake, higher energy prices, and deteriorating US consumer confidence. While year-over-year growth rates were impressive early on, there has been considerable weakening since January. By August, monthly arrivals had fallen 4.5% below their level in August 2010, although



**Hawaii’s tourist economy is tied to external, fluctuating, worldwide conditions.**

the year-to-date total remained 2.3% higher than the total for the first eight months of last year. Visitor spending growth decelerated from nearly 28% year-on-year growth in January to just 2.5% year-on-year in August. September numbers were much more encouraging, with arrivals up 4.1% and expenditure rebounding by more than 17%.

There have been positive developments in several areas recently. The post-quake Japanese visitor falloff has been reversed. In September, arrivals from Japan were nearly 1% higher than their year-earlier level. Oil prices have retreated somewhat from the peak level of \$110 in April to less than \$86 in September, although they remain \$10/bbl higher than in September 2010. Higher oil prices contributed to weak arrivals numbers mid-year, so even a partial retreat is good news. We have seen added capacity on international flights, and of course the opening of Disney’s Aulani resort was welcome news.

**Hawaii’s recovery pace has slowed to a standstill this year.** Despite downside risks from the US and abroad, we expect modest gains for the state economy in 2012.

**Most worrisome this year has been the steady decline in visitors from the US mainland.** These arrivals began the year roughly 10% higher than at the start of 2010; they trended lower thereafter, and in August they were 10% lower than the year-earlier level. September brought tantalizing evidence that some firming in US travel could be occurring, with US arrivals up 2.3% compared with September 2010. Still it is hard to get too excited about future US visitor performance given the generally dismal economic outlook for the US mainland.

The strong point for tourism this year has been the stunning visitor numbers from countries other than the US and Japan.

**The construction industry remains in the deep doldrums,** although there is now clear evidence of stabilization on Oahu. Statewide contracting jobs have edged into positive territory, rising about 2% year-on-year in September. This is all about Honolulu County; with the exception of Kauai, Neighbor Island construction jobs are still running considerably below last year’s level. Permits for new construction are languishing at low levels. Adjusted for inflation, real building permits for both residential and nonresidential construction are at levels not seen since the early 1980s..

**Residential real estate in the Islands has lost some ground** this year after rallying a bit in 2010. On Oahu, in the year to September, resale volume is off 2.2% and the median single family home price is down more than 4%. Volumes are up on each of the Neighbor Islands, but median prices are down 6.0-8.6%. On Maui and to a lesser extent the Big Island there is still a clear downward trend with no sign of price stabilization. There continues to be a substantial foreclosure overhang, equal to at least two months of resale inventory.

**Employment gains began in the Islands at the beginning of 2010,** and the number of payroll jobs reported in the separate establishment survey began to pick up about nine months later. Recovery by both measures has largely stalled out in recent months, although year-to-date averages remain in positive territory compared with the first nine months of 2010. The statewide unemployment

*Continued on page 4.*

# UHERO – Summary Report on Economy *Continued from page 3.*

rate has moved back up to 6.4% on a seasonally adjusted basis, from 6% in June. The statewide payroll job count in September was about equal to that of January 2011 and still 5% below the December 2007 peak. Clearly the jobs recovery has been disappointing.

**However, real personal income has flattened out** in recent months. Labor income growth had expanded at a nearly 3% rate in the third quarter of last year, but slowed thereafter and contracted by 0.7% in the second quarter of this year. In part, this reflects an uptick in inflation, which reduces the purchasing power of income. This year's cut in payroll taxes and strong growth in transfer payments like unemployment compensation and Medicaid have provided some cushion. There is considerable uncertainty regarding potential program extensions, but, consistent with existing law, we assume an expiration of this year's payroll tax relief at the end of 2011.

As a result, we project real income growth of 0.9% in 2012, down from 1.3% growth this year. Real income will expand by a healthier

2.1% in 2013.

**Hawaii's slowing this year has been disappointing**, but not particularly surprising. The dynamic snap-back of tourism last year raised hopes of a broader acceleration of activity here, but this was not to be. Instead, the underlying economic challenges reasserted themselves, including foreign and domestic public debt scares, intractable unemployment, languishing construction, and still-pricy oil.

The biggest present risk is in Europe,

where a euro zone that is probably already in recession could be crushed by the sovereign debt crisis if political will is not found to drive a comprehensive solution. The US economy and Hawaii can avoid falling into outright recession if Europe manages to get things right. We are counting on that.

The **UHERO Forecast Project** is a community-sponsored research program of the University of Hawai'i at Mānoa. The Forecast Project provides the Hawai'i community with analysis on economic, demographic, and business trends in the State and the Asia-Pacific region. For sponsorship information and a PDF copy of the latest report, go to:

<http://www.uhero.hawaii.edu>.

Table and visitor data graph obtained from the November 4, UHERO summary report PDF. Waikiki Beach photo on page 3 for this article by Mel.

## Floundering New Law *Continued from page 1.*

proceedings, only to start them over in our Kaua'i courts.

The mainland lenders are now, post Act 48, simply choosing the safer (for them) judicial process. This is not necessarily good for the homeowners. Deficiency judgements are a key issue. No homeowner wants to lose their home and then have their assets pursued by the lender. Under Act 48, in a non-judicial foreclosure, the bank can no longer pursue a deficiency judgement.

However, in a judicial foreclosure the bank can and will most likely pursue the deficiency judgement. That means if the borrower owes \$300,000 and their foreclosed home sells for \$200,000, the bank will then file a deficiency judgement against the homeowner for \$100,000. This judgement is good for ten years and can be renewed for another ten years.

When this bill was being discussed, Hawai'i attorneys who participated on the state's Mortgage Foreclosure Task Force warned legislators that this switch to all judicial

foreclosures could be a repercussion of Act 48. Apparently, the legislators did not heed the warnings. Since May 5th, there has not been a single non-judicial foreclosure completed on Kaua'i. All foreclosures are being restarted in the court system. This was not the intent of the law.

Are the banks bypassing Hawai'i's Act 48? Or did the legislators, in their rush to defend homeowners, pass a law that left the banks no choice but to protect their assets in a judicial proceeding?

If there were a way for the chief justice and the state's judges to integrate the mediation process into the new judicial proceedings (a process the state has now spent hundreds of thousands of dollars on) perhaps homeowners would have a face-to-face opportunity to work out a solution with their lenders. Then, homeowners would have the respect that the state legislators intended them to have when dealing with their delinquent loans, underwater properties, and mainland banks.

HAWAII ECONOMIC INDICATORS  
YEAR-OVER-YEAR PERCENT CHANGE

	2009	2010	2011	2012	2013	2014
Visitor Arrivals	-4.4	8.8	2.1	2.7	1.9	2.0
U.S. Visitor Arrivals	-3.9	7.3	0.8	1.3	1.3	1.4
Japan Visitor Arrivals	-0.6	6.1	-6.6	5.4	0.5	0.8
Other Visitor Arrivals	-10.5	18.3	17.0	5.1	4.8	4.6
Payroll Jobs	-4.5	-0.8	1.2	1.7	2.1	1.9
Employment	-4.1	-0.2	1.6	1.5	1.8	1.9
Unemployment Rate (%)	6.8	6.6	6.0	5.5	5.0	4.6
Inflation Rate, Honolulu MSA (%)	0.5	2.1	3.2	1.6	2.1	1.7
Real Personal Income	-1.4	1.6	1.3	0.9	2.1	2.3
Real GDP	-1.6	-0.1	1.7	2.1	3.0	3.4

Note: Source is UHERO. Figures for 2011-2014 are forecasts.

# Stop the Spending: Hawaii Finances Need to be Controlled

By **Sam Slom**

President & CEO of Smart Business Hawaii

The 2010 Comprehensive Annual Financial Report (CAFR) showing the financial condition of the state government was just published, last month and it showed a substantial cost increase for medical services for state employees.

As Hawaii Reporter recently reported, "the 2009 CAFR shows an unfunded liability for the Employees Union Trust Fund of \$7.2 billion and for the Hawaii State Teachers Association's Voluntary Employees' Beneficiary Association (VEBA) of \$1.6 billion for a total of \$8.8 billion

(for July 1, 2007, even though the CAFR is for June 30, 2009). Whereas the 2010 CAFR details unfunded liability for the EUTF of \$11.5 billion and for the Hawaii State Teachers Association's VEBA of \$2.5 billion for a total of \$14.0 billion. (These numbers are for July 1, 2009.)"

This is an increase of 60 percent or \$5.2 billion in just two years, largely because Hawaii has among the most generous health benefits in the nation, but we have to do what we can



to get these growing costs under control.

Every year at the Hawaii State Legislature, I sponsored senate legislation to establish fiscal notes, alternative budgeting, reform for health care and changes for the public Employee Retirement System.

The Administration is content with lame efforts to 'slow the growth of the deficit,' and the lop-sided Democrat Legislature has thus far been unwilling to seriously confront this problem.

We are running out of time and we must act aggressively and decisively to change direction to save what is left of economic security for the taxpaying families we represent.

If you are diagnosed with terminal cancer, you can't settle for slowing the growth; you must get rid of the cancer.

We have had several options to deal with this problem but have not had the political backbone to do it. It is clear that the trend is devastating.

The 2011 CAFR will be worse than 2010 and so on until we are unable to act.

Taxpayers must hold the 2012 legislature's feet to the fire and be directly involved in next November's election to remove those elected officials unwilling or unable to stop this fiscal cancer.

## What Has APEC Ever Done for Anyone?

By **George L. Berish**, The American Party

Can you imagine Gov. Palin, or the Fairbanks Mayor, paying spoiled jet-setting members of the political-class to party in Alaska at their constituents' expense? I can't. Yet that's what Hawaii's politicians have done.

Why? These partygoers are not business women and men who take risk to assemble capital, labor and natural resources into a profit making enterprise. They are people who enjoy never-ending taxpayer-funded resort travel with their hands out, e.g. being exempt from Hawaii's Hotel Room Tax.

Please remember. "For-profit enterprises" produce things whose value is greater than the value of the capital, labor and natural resources they consume. Producing more than is consumed increases our standard of living and employment.

"Government and government-subsidized enterprises" produce things whose value is less than the value of capital, labor and natural resources they consume. Producing less than is consumed reduces standard of living and employment. [Even before they go belly-up after squandering billions of loans the Administration guaranteed Americans will now repay for them.]

So it's this simple. Hawaii's isolation (by an expensive-to-cross ocean, and Waikiki's Ala Wai moat) holds great value for a jet-setting political-class plagued by professional "occupiers", and other rabble, who perennially show up to rain on their parties. On the Mainland, and in Europe, it's materially cheaper and easier to assemble a critical mass of such hecklers. Here it's too expensive and difficult. Therefore, intelligent people who earn the money they spend – i.e. run producing, not consuming, enterprises -- would logically charge APEC extra for Hawaii's extra value.

Instead Hawaii's politicians (that spends money we, not they, earn) are paying APEC's political class members to use Hawaii. Perhaps for them it's worth the price we pay to be able to bask in the national media coverage attracted by APEC's bigger political fish. But it's not to me. You?

Seriously. Do you believe travel agents anywhere are encouraging their best (i.e. most profitable) clients to visit Hawaii this week, or recommending they go elsewhere? I know it's the latter, because my wife and I stayed at a Waikiki luxury hotel this weekend. We received a great Kamaaina discount and noon check-in. Upon arrival we received an unrequested and wonderful room upgraded. Then we were asked if we'd like to delay check out till 4PM. And then we found APEC's repellent effect on regular room-tax paying guests left more of the normally more-than-adequate staff free to make our stay doubly enjoyable. Finally we learned some small shop owners will shut down this week, because sealing off Waikiki for APEC's elite tribe also sealed out their regular customers.

Why?

## Lemonade Alley Finds Success

**Lemonade Alley** is a business & financial literacy contest for Hawai'i kids K-12. It's also a fund-raising event for Boys & Girls Club, Boy Scouts and YWCA of Hawaii. It's open to kids on all islands and is a free way for them to get biz-wise and street-smart.

The event took place November 12, with 32 Finalist Teams building lemonade stands on Iolani School's baseball field to make/sell lemonade and compete in 4 divisions each with \$1,000 in cash prizes and a potential bottling contract with Wailua Bottlers. During the finals, teams were judged on the quality of a 1-page business plan, recipe, booth, standup oral pitch and amount of money donated to charity.

Lemonade Alley is also a first-of-its-kind "green" (paperless) business plan competition featuring an online submission and judging process provided by presenting sponsor **Bi-zGym.com**. **Wally Amos** and **Caroline Kim** were great advocates for the event.

# Defeated Hawaii Politicians Can Collect Your UI Tax Payments

By **Malia Zimmerman**, HawaiiReporter.com

Former Honolulu City Council Member **Rod Tam** admitted in Honolulu District Court this week that he has been living off of his unemployment benefits since he left office in January 2011.

The two term council member, who once served in the Hawaii state legislature and ran unsuccessfully for mayor of Honolulu in 2010, left the council office because he came up against term limit restrictions.

Early last month, Tam was sentenced to two days in prison and more than 300 hours of community service by Hawaii District Judge **Randal Shintani** after pleading guilty to 34 misdemeanors and petty misdemeanors related to theft of about \$15,000 in taxpayer money and a host of campaign spending violations.

Depending on the circumstances, Tam, like other Hawaii residents looking for work, could potentially qualify for as many as 73 weeks of unemployment, according to **William Kunstman**, spokesperson for the state Department of Labor.

That includes 26 weeks from the state and 47 more weeks authorized by the federal government through an emergency declaration.

Tam, 58, won't go to prison immediately. Tam asked the judge to delay his sentence so that he can continue to qualify to collect state unemployment for the maximum number of weeks. He told the judge that if he went to prison, he would have his benefits cancelled. Instead, Tam will spend December 31, 2011 and January 1, 2012, the first two days that he says he is off state unemployment, behind bars.

But Kunstman said that it may not have been necessary to delay Tam's incarceration for several weeks because that would not likely have impacted his unemployment claim.

For example, if Tam is seeking a management position or other types of Monday-through-Friday jobs, going to prison on a holiday or over the weekend for 48 hours would not have caused him to have his

unemployment cancelled.

Lawmakers say Hawaii is one of the most generous states in the nation when it comes to unemployment benefits.

In August 2011, the Department of Labor and Industrial Relations reports that the EUC benefit payment was approximately \$19,969,269 ( $\$19,969,269 / 4.3 \text{ weeks} = 4,644,016$ ) or \$4.6M/week, and it is 100% Federally funded.

Granting these benefits to politicians - who were either voted out by constituents or termed out because of length of service in office - is just one example of the government's generosity with this fund, which all employers must pay into.

Hawaii Reporter sought the list of Hawaii politicians receiving unemployment benefits, but this remains confidential under state law.

Tam's case has shone the light on a practice that not all states allow.

When former Rosemead City Councilman **John Nunez** collected \$11,000 in unemployment benefits after he failed in his bid for re-election in March 2009 for the part time position, his case led state California lawmakers to question the practice.

The Orange County Register reports that State Sens. **Gloria Romero**, D-Los Angeles, and **Bob Dutton**, R-Rancho Cucamonga, introduced a bill "to forbid elected officials from receiving unemployment benefits after they lose or leave their elected office."

"This common-sense measure will ensure public servants don't bilk our unemployment system when they leave office," Dutton told the OC Register. "California's unemployment insurance fund is bleeding red ink, having borrowed more than \$7 billion so far from the federal government to stay afloat. We must identify and eliminate all forms of abuse and ensure that only those who rightly qualify for benefits receive them."

Nunez, like Hawaii Council Member Rod Tam, also left office under a cloud. Nunez was the subject of a costly sexual harassment lawsuit that cost the city \$330,000.

Romero told the Orange County Register at the time that: "As elected officials, we are public servants who answer a call to give, not to receive," Romero said in the statement. "I am outraged to hear that an elected official would file for unemployment and I am committed to ensuring that this never happens again."

Illinois also made the news in March 2011 over a controversy involving a politician seeking unemployment benefits, but lawmakers there typically prohibit the practice.

Democrat **Todd Stroger** filed for unemployment benefits with the Illinois Department of Employment Security when he lost his election for President of the Cook County Board, Chicago Now reports. He is now a radio talk show host.

Chicago Now research shows: "With respect to eligibility of elected officials for unemployment, a spokesman for the Illinois Department of Employment Security said that generally money elected officials earn in their official capacity is not included when calculating unemployment benefits."

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# Was Lingle “False” When She Said, “Nothing Was Done Wrong with Superferry?”

By **Robert Thomas**, Attorney

You remember the **Hawaii Superferry**, don't you? In case your memory doesn't go back that far, here are our posts on the Hawaii Supreme Court's first opinion, and here are our thoughts on the second. What brings up this case now is then-Governor (and present U.S. Senate candidate) **Linda Lingle**'s recent statement, quoted by *Honolulu Civil Beat*:

“I want to be clear on this point and on the record. And I want you to share this with everybody you talk to: Remember that nothing was done wrong with Superferry — nothing,” Lingle said. “Let me elaborate. Some people talk about an EIS when they talk about the Superferry. There was never an EIS required of any interisland vessel. Not before and not since, that I'm aware of.”

Civil Beat followed up with a “fact check,” asking whether her statements were true or not. CB concluded:

Lingle said “nothing was done wrong with the Superferry.” That's false. The Hawaii Supreme Court twice invalidated actions taken by the state related to the Superferry. First, in 2007, it ruled that the state should not have given the Superferry an exemption to the environmental review process. The second time came in 2009 when the court ruled that the “special law” — approved by the Legislature and signed into law by Lingle — was unconstitutional. Lingle may disagree with the court, but it's the court that gets to decide what's right and wrong under the law, not a governor who wants to exert executive authority.

The piece also concluded: Technically speaking, Lingle left herself an out, by saying “there was never an EIS required of any interisland vessel” that she's “aware of.” But her statement is misleading at best and also inaccurate. An EIS wasn't required of the Superferry. It was required of the harbor improvements. And other harbor improvements related to ferries between Maui, Lanai and Molokai were required to undergo an Environmental Impact Statement. It should be remembered that Lingle knows Maui well. She was its mayor, after all.

So, do Lingle's claims hold up?

Attempting to “fact check” an opinion is a fool's errand. And Lingle's core assertion that the administration did nothing “wrong” is surely an opinion. If reasonable minds could differ



The Hawaii Superferry and former Governor Linda Lingle (left & above).

on whether the State took the “wrong” course -- which they plainly could, as evidenced by the circuit judge's rulings in the State's favor -- then what Lingle was ultimately stating (that she believes that she took the correct course and the Hawaii Supreme Court got it wrong), is as “true” as a contrary opinion is “false.”

It can't be claimed that someone's judgment regarding a particular course of action when the law was unsettled is “false” simply because the supreme court eventually ruled that the action should have been accomplished another way, or could not be accomplished at all. That is not a realistic view of the role of the courts or the other branches: while judges may have the last say in many cases about what is legal and what is not, it is not accurate to state that “it's the court that gets to decide what's right and wrong under the law, and not a governor who wants to assert executive authority.” While courts play a major role in making law and ruling in cases, and in many cases have the last word about what the law is, they don't have the only word, and the other two branches of government have the independent responsibility to make their own decisions about what they believe is “right and wrong under the law.” This is especially true of the executive, who is charged with implementing and interpreting laws on a daily basis when he or she decides how to execute the law.

And to suggest that the courts, particularly courts of last resort such as the Hawaii Supreme Court, do not make or change the law when they interpret and apply it, is simply wrong. Of course courts “change the law,” and it would be fair to say the Hawaii Supreme Court did change the law in this case in the sense that the result it reached in interpreting

the EIS statute was not so beyond dispute that reasonable people could not disagree beforehand. Indeed, there is a strong case to be made that the Court did get it wrong, and there is little room to argue that the law was so clear that the governor and legislature acted in bad faith.

Finally, the legal issue in the case was indeed limited to the harbor improvements and was not a claim that the ferry itself needed an EA/EIS. But I'd reckon that in the mind of most observers, it was a challenge to the ferry itself. That's how these things work: those who object to private projects often look for the chapter 343 “hook” that will trigger the chapter's requirements (use of state lands, use of state money, etc.; this has resulted in some very aggressive interpretations by the courts about what it means to “use” state lands, for example).

If there was any doubt as to the ultimate goal of the plaintiffs to stop the ferry and not just the harbor improvements, note that both the plaintiffs' theory, and the court's opinions, were based on the impacts the ferry might have, not simply the possible environmental impacts that might be brought about only from minor changes to the Kahului Harbor.

Robert H. Thomas is one of the preeminent land use lawyers in Hawaii. He specializes in land use issues including regulatory takings, eminent domain, water rights, and voting rights cases. He has tried cases and appeals in Hawaii, California, and the federal courts.

**For a great Christmas gift**, see Aspekt Publishing Co for the New English Youth Edition of *The Adventures of Jonathan Gullible*. 40+ full-color illustrations, includes audio CD. <http://www.jonathangullible.com/>

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**“CLIMATE CHANGE FOR HAWAII BUSINESS”**

**WEDNESDAY, JANUARY 11, 2012 • THE ALA MOANA HOTEL • HIBISCUS BALLROOM**

**TENTATIVE PRELIMINARY PROGRAM (Dec. 2011)\***

7:00 am Registration and Coffee – Garden Lanai  
Network and Visit Business Exhibit Tables - Foyer

7:45 am Aloha and Welcome –  
**Sam Slom**, President, Smart Business Hawaii (SBH)

8:00 “Hawaii’s Visitor Industry & Our Economic Prosperity”  
**Mark Dunkerley**, CEO, Hawaiian Airlines \*

8:30 “Judicial Reform and Business Impact in Hawaii”  
**Mark Recktenwald**, Chief Justice, Hawaii Supreme Court

9:00 “Strategies for Hawaii’s Business Recovery”  
**Tyler Roukema**, Outback Steak House Hawaii Kai  
**Marissa Capelouto**, Oahu Express, Ltd.  
**Matthew Longfellow**, Valpak of Hawaii  
Moderator: **Geal Talbert**, UBS Financial Services

9:45 Brief Refreshment Break  
Visit Business Exhibits (Foyer)

10:00 “Transportation Issues and Their Impact on Hawaii”  
**Randall O’Toole**, Reason Foundation\*

10:30 “Rich States, Poor States: Where Does Hawaii Stand?”  
**Jonathan Williams**, Vice-President,  
American Legislative Exchange Council (ALEC)

11:00 “Hawaii U.S. Senate Candidate Forum” \*

**Ed Case** (D)  
**John Carroll** (R)  
**Mazie Hirono** (D)  
**Linda Lingle** (R)

Moderator: **Malia Zimmerman**, HawaiiReporter.com

12 noon **Luncheon and Program**  
Hibiscus Ballroom I & II

1:00 KEYNOTE SPEECH

**John Fund**, *The Wall Street Journal*  
Business & Political Journalist, Author  
Popular Fox Television Public Affairs Opinion Panelist  
“The 2012 Election and the Impact on the Economy”

2:00 pm Adjournment • Mahalo for attending!



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**John Fund**

2:15 pm, The Garden Lanai

\* Program subject to change pending final arrangements with speakers.

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# Tax Experts Favor System With Broad Base, Low Rates

By **Lowell Kalapa**,  
President, Tax Foundation of Hawaii



Tax experts, public finance gurus, and public administrators preach that a good tax system is one that has a broad base that will allow a low rate to be imposed.

It is not so much the idea of a low rate of tax, as much as that it applies to all taxpayers who earn or spend that income or own that asset. Such is the case of Hawaii's general excise tax where the statewide rate is 4%, one of the lowest in the country. In this case, the tax applies to anyone who wants

to do business in the state by selling goods or services. For those who are outside the state and sell goods and services to consumers in the state, that sale is subject to the complementary use tax and is imposed on the consumer when the goods or services are received.

Because there are so very few transactions that are exempt from the general excise tax, the base, or the amount against which the tax rate is applied, is broad or large. In fact, as also noted earlier, because the tax is imposed at all stages, the tax base is actually larger than the total wealth of the state as measured by personal income. However, where the general excise tax would exacerbate the cost of the goods or services, exemptions have been provided. But in their search for money to help fill in budget holes, the legislature did suspend several of those exemptions for the next two years. Time will only tell if the suspension of those exemptions will have a negative impact on the state's economic recovery.

For example, stevedoring activities, that is the loading and unloading of cargo that comes over the islands' docks or through the state's airports, are now being taxed at the full 4% retail rate. There is, no doubt, that this added cost will show up on grocery store shelves in the form of higher prices and conversely, it will show up in the prices charged for goods sold on the world market.

Another exemption that was suspended is the deduction contractors take when a portion of the contract amount is paid to subcontractors working on the same project. In the absence of the exemption, the contractor will pay the 4% on the full amount received from the client and when the portion owed the subcontractor is turned over, the subcontractor will pay another 4% tax on the amount he or she receives. This, no doubt, will drive the cost of construction up at

a time when the industry is hurting for work. Those who were planning on building may just end up waiting until the two-year period expires.

The broad base discussion is not only limited to the general excise tax as a study commissioned in Honolulu is looking at the possibility of broadening the tax base of the real property tax by eliminating many outdated exemptions. In many cases these exemptions were carried over from a time when the state legislature determined the policies governing the real property tax.

Probably the most controversial proposal is to eliminate the homeowner's exemption.

Commission members noted that the exemption discriminates against those whose shelter is rented and not owned. Since the home exemption is extended only to owners of residential property who actually occupy that property, the renter gets no such break as their landlords who own and rent the properties are not afforded a similar exemption even though the property is providing shelter.

Similarly, commissioners are considering eliminating other exemptions for homeowners where the homeowners are disabled or are veterans, noting that a disability or the fact that one was a veteran does not necessarily mean that particular homeowner is in need of additional relief from their real property tax. In this case, the amount of the exemption is also relatively small having not been increased in over thirty years and takes less than \$100 off the these homeowners' tax bills.

It is not that the commission has no compassion for homeowners, but instead believes that tax relief should be needs based. To that end, they recognize that Honolulu's real property tax laws already provide tax relief to those low-income families who truly cannot afford to pay their share of the county's costs. This relief comes in the form of the circuit breaker tax credit that takes into consideration the homeowner's income.

The circuit breaker credit sets a percentage of homeowner's income and should the tax bill exceed that percentage, the homeowner is excused from paying any amount that goes over that threshold. If county officials adopt this philosophy, they would be returning the real property to a broader base that could provide the opportunity to lower the rate for all real property taxpayers.

Lowell Kalapa is president of the Tax Foundation of Hawaii.  
More on the web: <http://www.tfhawaii.org>

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# 4,000 Elevators Overdue for Safety Inspections

By **Jim Dooley**, Hawaii Reporter

Some 4,000 elevators in Hawaii are overdue for safety inspections and to clear the backlog, the state must double the number of inspectors now on staff, lawmakers heard today.

But hiring new inspectors will be difficult because the starting salary of a state inspector is \$42,000, while their counterparts in the private sector are paid \$50 per hour and earn as much as \$110,00 annually before overtime.

So officials from the state Department of

Labor say they will probably ask the Legislature in January to approve steep new increases in elevator inspection and permit fees to pay for sharp increases in the compensation of inspectors.

That testimony was delivered by Labor Department Director Dwight Takamine and Jennifer Shishido, manager of the boiler/elevator inspection office.

A similar backlog of safety inspections of boilers has also built up around the state and the same pay disparity applies, said Keith Rudolph, chief boiler inspector.

"I could go out in private industry tomorrow and get a \$30,000 raise," Rudolph told members of the state House Committee on Labor and Public Employment.

Committee chairman Rep. Karl Rhoads, D-28th (Palama, Downtown, Chinatown, Sheridan) congratulated Rudolph on his commitment to public service.

Various speakers told the committee that the backlog numbers are not a cause for alarm.

Elevators and boilers around the state are regularly serviced and maintained by their owners and there has not been an elevator-related fatality here since 1992.

But Takamine told the committee

the Abercrombie administration is committed to clearing the inspection backlog.

"Public safety is a top priority," he said.

The backlog can have adverse economic effects when equipment is shut down, or new equipment can't be put in operation, because of delays in permitting and inspections, witnesses said.

The department is working with private industry and with the public employees labor union to impose new fees which will flow into a special fund that will increase salaries for state inspectors, witnesses told the committee.

The department is also exploring the possibility of turning over inspections to private third parties, but that solution would require the state to pay the higher prevailing wages in the private sector, witnesses said.



## Tobacco Label Ruling

By **Tony Tortoric**

The Food and Drug Administration's efforts to slap graphic labels on packaging of tobacco products – including artisan cigar boxes – suffered a setback today when U.S. District Judge Richard Leon granted an injunction that stopped regulations forcing cigarette makers to place the labels on their products. The International Premium Cigar & Pipe Retailers Association agreed.

Judge Leon said that the labels, some of which include photos that appear to be digitally retouched, fail to meet the standard of "purely factual and uncontroversial information." He agreed that the tobacco companies' claims against the FDA violated their First Amendment rights and has a significant chance of standing.

"We certainly agree with this judge and his interpretation of constitutional law," said Bill Spann, chief executive officer of the IPCPR. "Today it's cigarette packaging and tomorrow it could be artisan cigar boxes. When does all this over-regulation end? Businesses as well as people have rights that are too often disregarded because of someone else's prohibitionist agenda."

The FDA, which released the nine new graphic warnings in June to have them go into effect in September 2012, was instructed by Congress to issue the new rule as part of the Family Smoking Prevention and Tobacco Control Act. Judge Leon wrote that just because Congress ordered the size and placement of the new warnings, "doing so does not enable this requirement to somehow automatically pass constitutional muster."

"Too many people want to tell you how to live your life. Where does the 'Nanny State' end?" said Spann.

## Hawaii's Unemployment Trust Fund Out Of Debt

By **Dwight Takamine**, Director, State DLIR

We are pleased to announce that the Unemployment Trust Fund (UTF), which is used to pay unemployment benefits, entered the new federal fiscal year in the black. The state had borrowed funds from the federal government beginning in December 2010 and anticipated owing \$1 million in interest on September 30. Instead, the state only paid \$211,000 for interest on loans made in December 2010.

The fact that the UTF currently has a positive balance alone is encouraging news. Furthermore, the additional \$1.2 million savings is significant for the business community and Hawaii's economy," said The Chamber of Commerce of Hawaii's President, Jim Tollefson.

However, the State and Hawaii employers were potentially facing additional interest payments this year. For loans taken during calendar year 2011, the accrued interest of \$371,000 would be waived as long as the state took no further federal loans between October 1 and December 31, 2011. The DLIR, however, projected needing to borrow again during the last quarter of 2011, which would require the immediate payment of \$371,000 in interest that had accrued on federal loans taken since January 1, 2011.

To avoid having to borrow from the federal government again, Governor Abercrombie approved an agreement between the DLIR and the Department of Budget & Finance that temporarily allows the DLIR to replenish the Unemployment Trust Fund from the State treasury, thus avoiding having to pay the \$371,000 in accrued interest. Hawaii employers will save \$1,200,000 because the law providing the mechanism for the assessment for the interest payment allows the DLIR to forego charging an Employment & Training Fund Assessment next year. DLIR projects paying off any short-term loan by the end of 2011.

# Nuclear Scientist & Hawaii Reporter Columnist Mike Fox Dies

By **Malia Zimmerman**, HawaiiReporter.com

When Nuclear Scientist, Dr. **Michael R. Fox**, first contacted *Hawaii Reporter* several years ago, the then Kaneohe resident was concerned that the public was not getting the correct information about such controversial science topics as man made global warming, sea levels, sun spots, nuclear science, nuclear power, solar and windmills.

He was passionate about changing this by publicizing real science, and as a result, launched a column called *Fox Energy and Environment Reports* in *Hawaii Reporter* in 2003.

Mike wrote dozens of articles over the years that comforted scientists and many conservatives with his exposes on what he called corrupt and phony science and he angered many man made global warming believers. He took no prisoners when it came to taking on powerful people like former Vice President Al Gore and the claims Gore made about climate change.

More recently, Mike's family notes that he became a strong advocate for the position that "global climate change is a natural phenomenon which is not influenced by any human activity," and one of his favorite sayings was "Everybody is entitled to his own opinion: No one is entitled to his own facts."

While Mike always remained loyal to *Hawaii Reporter*, publishing his articles here first, many other publications including *Junk Science* picked up his columns and republished them. He consulted with *Fox News* for a time and had his well sourced work studied and cited internationally. It was not uncommon for Hawaii Reporter to receive emails praising Mike's writings from some of the most remarkable and well known scientists in the world.

Mike started his professional career at the Idaho National Engineering Laboratory in 1965, and taught chemistry at Idaho State University in Pocatello, but Mike's second career educating the public

started long before he became a columnist for *Hawaii Reporter*.

As an advocate for scientific literacy and fact-based discussions, he attended speaking engagements all over the northwest and in Hawaii, as well as South Africa, and Rio de Janeiro.

When Mike left Hawaii to move back Washington with his wife Jennifer in 2007 so that they could spend more time with their grandkids, he continued as a regular columnist. He had a network of friends and fellow scientists who discussed and debated his work regularly and that often spawned new articles.

For those interested in his background: On December 31, 1936, he was born in Olympia, Washington, attended Olympia High School, graduated from St. Martin's College in 1959 with a BS in Mathematics and Chemistry, and furthered his education with a degree from the University of Washington with a Ph.D in Physical Chemistry in 1965. Mike was a long-time member of the American Nuclear Society, serving as Chairman of the national Public Information Committee from 1985 through 1996. He won the Society's Landis Public Communication and Education Award in 1985.

Unfortunately, Mike left us for a better place on Friday, November 4, after a long battle with cancer. His wisdom and knowledge on such a broad variety of topics will be sorely missed, but there is no doubt he continues his journey in Heaven to uncover more scientific mysteries - or finally get the answers that he always sought.

Friends and family may comment on Mike's website, <http://foxreport.org> and make donations to local Hospice organizations in his name as Hospice volunteers helped to make his final days more comfortable.

His friends also plan to put together the articles that he wrote for *Hawaii Reporter* and other places into a book so that his teachings and knowledge will remain for many generations to come.

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## Veterans Parade Should Not Have Been Cancelled

By **Brenda Reichel**, Owner of Carats & Karats

I am so mad right now with the majority of government officials in the state of Hawaii, the City and County of Honolulu and President Obama's administration.

Everyone who has ever served in any military branch should be embarrassed beyond belief that the Wahiawa Veterans' Day Parade had been canceled for November 11, 2011.

Every member of our local, state and national government that is supposed to represent us has failed to represent a group so in need of our continued support. I am ashamed of those in have had any part in canceling Veteran's Day Observances and the Parade. You don't get my vote.

Our Veterans should not be insulted by not recognizing their service and the lives that have been given up for our freedom and the freedom of others.

My father served twice in Viet Nam, and 20 years in the Army, my uncle served in the Navy, I too have an honorable discharge from the U.S. Army.

I am letting all my friends and everyone else I know how terrible that I feel about our service members having been slapped in their face by the parade not being held. Wahiawa is not near the APEC in Waikiki.

We have more right than any one to show our support for our current military and veterans.



## APEC's Lasting Impression

The dignitaries are gone, the roads are open and everyone is back to business as usual. That was not the case from November 8 to November 13. While APEC was in town, motorists had to face a series of road closures, check points, and traffic jams. Small businesses near major APEC venues (such as the Convention Center pictured above) experienced a downturn in traffic as barriers kept APEC attendees and local customers away.

Events were cancelled or moved, general aviation operators were grounded, and boating restricted. One has to ask, "What has APEC ever done for anyone?" See that answer on page 5.

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