

Tyler Roukema to Speak at SBH Sunrise Breakfast

Tyler Roukema, owner of the Hawaii Kai Outback Steakhouse, and SBH's 2011 "Young Entrepreneur of the Year," will be the next special guest speaker at the SBH Sunrise Networking Breakfast, **Thursday, November 29** (after Thanksgiving), in the Pineapple Room, Macy's Ala Moana (3rd Floor), from 7 – 8:30 am.



Tyler will discuss Hawaii's entrepreneurship, competitive restaurant business and current economic trends.

The public is welcome to the SBH Networking Sunrise. Advance reservations

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Former Governor Ben Cayetano (right) and his wife Vicky on the campaign trail for the office of Honolulu Mayor.

PAYCHECKS HAWAII Endorses Cayetano, Lingle, Djou, Romney – Ryan and More

PAYCHECKS HAWAII, the private, independent, non-partisan political action affiliate of Smart Business Hawaii (SBH) announced its endorsements for the November 6, 2012 General Election. PAYCHECKS, organized in 1984 by SBH founder **Lex Brodie** and **Sam Slom**, rates every State Legislator after the annual Session (June) and makes election year endorsements based on who would be best for Hawaii's small business and an improved business and tax climate.

At the top of the PAYCHECKS HAWAII endorsement list is former Governor **Ben Cayetano**, who is now running for Mayor of Honolulu and vows to stop the \$9.03 billion-plus fixed heavy rail project that started construction this past summer before it was stopped by the Hawaii Supreme Court for not conducting a comprehensive archeological survey to identify "Iw'i" or the location of ancient Hawaiian burials along the route.

The vote for Honolulu mayor will be the most important decision rendered in this year's election for the City & County of Honolulu as well as the entire state.

In the highly contested U.S. Senate race, the nod goes to former Governor **Linda Lingle**



Linda Lingle
For U.S. Senate



Charles Djou
For U.S. House 1st



General Election November 6, 2012.

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SBH MEMBER CALENDAR

PHONE 396-1724 • FAX: 396-1726

Monday, November 12

SBH Directors' Meeting
SBH Office • 12 – 1:30 pm

Thursday, November 29

SBH Sunrise Networking Breakfast
Tyler Roukema

Macy's Pineapple Room
Ala Moana Center • 7 – 8:30 am

Wednesday, January 9, 2013

**36th Smart Business Hawaii
Business & Investment Conference**
Ala Moana Hotel • 8 am – 2 pm

SmartBusiness
HAWAII

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Following the Lost UH Money to North Carolina • Pages 5 & 6



Smart Business Views

By Sam Slom, President – Smart Business Hawaii

This is it: your vote can ensure meaningful change or a continuation of the past four years of

to transform its project into Ward Village, during the next 10 years offering retail, residences and affordable housing among public open spaces and pedestrian-friendly streets.

Hawaii business on life support. Exercise your right — and responsibility — and **Vote November 6!** PAYCHECKS HAWAII lists its business friendly endorsements for Hawaii which starts on page 1.

Jump From Space. I was one of the 8 million people who watched the live streaming of Austrian **Felix Baumgartner's** leap from space. He jumped a record 128,000 feet—24 miles—also breaking the sound barrier at over 800 mph. It was spectacular. Best of all, it was organized and financed privately by Red Bull and other sponsors. Did you see Red Bull's command center in Roswell, New Mexico? It was similar to NASA in Houston.

Space X. Another private business venture, the fledgling company, Space X, successfully transported the Dragon cargo capsule to the international space station on its own Falcon 9 rocket in advance of Baumgartner's historic leap. The free market has once again proven it can do what government can't or refuses to do. Look for more private business breakthroughs in space and if we clean up our business climate, Hawaii can be a viable part of this effort.

Long Term Debt Worries. The non-profit organization, State Budget Solutions, headed by former Washington State Legislator, **Bob Williams**, came out with its list of worst debt-ridden states, and Hawaii is among the 5 worst. Hawaii is the second highest, in per capita long term debt—\$29,062 per person in Hawaii and a whopping \$83,000 per worker in Hawaii. The culprit is our underfunded debt, especially the state Employees Retirement System. Most of our local leaders continue to be in denial, but Hawaii is headed for a new financial crisis.

The zipline industry study by the State Auditor, shows that not only will more government regulation not be effective, but it would be prohibitively costly and not guarantee more safety. I believe that this careful analysis of a number of other local government regulations would yield the same results. Unfortunately there are people in and out of state government who want more regulation.

Ward Villages. Ward Centers owner, The Howard Hughes Corporation, which bought the project from General Growth Properties in 2010, announced plans last month to redevelop an urban master planned community in Kakaako. Ward Centers intends

HMSA Tapped. Governor **Neil Abercrombie** chose HMSA, to be the state's pre-eminent Obamacare provider. The HMSA 2010 plan will be the benchmark. Remember, back in 1974 when HMSA (and later Kaiser) dominated the then new Hawaii PrePaid Health Care Act and managed to keep away competitors while keeping premiums high for decades? Expect the same in 2014 unless Obamacare is repealed.

Rail Suit. At press time, still no ruling by federal judge **A. Wallace Teshima** on the lawsuit filed in May, 2011, and heard August 21, 2012. The SBH Foundation is one of the plaintiffs.

Repeal Act 55. The Legislature needs to repeal Act 55 which created the PLDC, a government-centric process to exclude the public from zoning and development changes.

Roukema at Sunrise. Come hear Outback Steakhouse's **Tyler Roukema** speak at the next SBH Sunrise Networking Breakfast, Thursday, November 29, 7 – 8:30 am at the Pineapple Room, Macy's, Ala Moana Center. Tyler was SBH's 2011 "Young Entrepreneur of the Year," and will discuss the Hawaii competitive restaurant business and business in general. Call Darlyn (396-1724) or go online for reservations.

Olelo 52 is now on 55: OC16 moved to channel 12 on Oceanic, and now Channel 52 will switched over to Channel 55 as of October 18. The move affects only Oceanic Time Warner cable customers. 'Olelo's Channel 52 on Hawaiian Telcom Cable will be moving to Channel 55, but not until December 1st.

Become an SBH Member. Is your business a member of SBH? No? Lots of benefits and a strong networking organization. Call Darlyn today (808-396-1724) or go online to www.smartbusinesshawaii.com.

What? Not receiving your weekly (Wednesday) electronic copy of **SBH News + Views**? More than 15,000 business owners do receive it. It's complimentary. Ad space available too. Call Darlyn at 396-1724.

Want more local business information? Please visit the several SBH websites at: www.smartbusinesshawaii.com, www.educate808.com and www.sbhfoundation.org.

As we approach the holidays, I'd like to wish you a very Happy & Safe Thanksgiving.

SBH Sunrise November 29

Continued from Page 1.

are required and are first come, first serve.

Last month, former UH engineering professor and transportation expert, **Panos Prevedouros**, outlined the FAST traffic alternative to the rail which you can read more about on page 10 of this newsletter.

SBH members and their guests pay \$25 (in advance) for networking, the program, a complete buffet breakfast and free parking.

Participants are all introduced and may bring promotional materials. The cost is \$35 at the door if space is available.

Call Darlyn at SBH 396-1724 for reservations or mail the reservations form on page 11. You can also register on line: <http://smartbusinesshawaii.com/index.php/events/rsvp>

great quotations

"Elections should be held on April 16th — the day after we pay our income taxes. That is one of the few things that might discourage politicians from being big spenders."

— Thomas Sowell

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.

PAYCHECKS HAWAII Candidate Endorsements for 2012

Continued from page 1.

whose election may help push the GOP into the driver's seat in the Senate.

In the race for Congress PAYCHECKS HAWAII the endorsements go to Republicans **Charles Djou** in the First Congressional District (urban Honolulu) and **Kawika Crowley** in the 2nd Congressional District (rural Oahu and neighbor islands).

The list of endorsements from President of the United States down to a number of legislative races appear on the adjacent list.

The following election deadlines are currently in effect:

General Election Deadlines

General Registration Deadline

October 8, 2012 (passed)

Absentee Ballot Application by Mail

October 30, 2012

Walk-In Absentee Voting

October 23 – November 3, 2012

General Election

November 6, 2012

Polling Place Hours: 7:00 a.m. - 6:00 p.m.

Office of Elections website:

<http://hawaii.gov/elections>

You can find your polling place location at the Hawaii elections website as well as redistricting information. Vote on Nov. 6.



Kawika Crowley for U.S. House, 2nd District.

President & VP of the United States

Mitt Romney

President

Paul Ryan

Vice-President

Linda Lingle

U.S. Senate

Charles Djou

U.S. House D 1

Kawika Crowley

U.S. House D 2

Benjamin Cayetano

Mayor - Honolulu

Sam Slom

State Senate (9th)

Liz Larson

State Senate (12th)

Dean Capelouto

State Senate (20th)

Colleen Meyer

State Senate (23rd)

Fred Hemmings

State Senate (25th)



Mitt Romney
President of the U.S.



Paul Ryan
Vice-President

George Fontaine

State House (11th)

Jeremy Low

State Senate (18th)

Julia Allen

State House (20th)

Tiffany Au

State House (26th)

Corrine Ching

State House (27th)

Carole Kaapu

State House (28th)

Aaron Johanson

State House (31st)

Beth Fukumoto

State House (36th)

Bob McDermott

State House (40th)

Marissa Capelouto

State Senate (42nd)

Lauren Cheape

State House (45th)

Richard Fale

State House (47th)

Links to endorsed candidate websites appear on the SBH website:

<http://smartbusinesshawaii.com/index.php/news/article/candidates-2012/>

Voters to Decide on Two State Constitutional Amendments

Hawaii voters will have to decide on two amendments to the State Constitution in the general election on November 6. Both constitutional amendment questions were passed by the State Legislature this year. I voted in favor of both during the session.

The two Constitutional Amendment questions address the following sections and issues:
Article VII, Section 12 — Assistance to Dam and Reservoir Owners (**HB 2594 CD1**)

“Shall the State be authorized to issue special purpose revenue bonds and use the proceeds from the bonds to assist dam and reservoir owners to make their facilities compliant with current safety standards?”

Article VI, Section 3 — Appointment of Retired Judges to Serve as Emeritus Judges (**SB 650 HD1**)

“Shall the chief justice of the state supreme court appoint judges who have retired upon attaining the age of seventy years as emeritus judges, permitting the appointed judges to serve as temporary judges in courts no higher than the court level they reached prior to retirement and for terms not to exceed three months per each appointment?”

Those who want to study these questions further can find the complete text to these two Con-Am bills at the Hawaii State Legislature and on the Hawaii State Elections website.

http://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=HB&billnumber=2594

http://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=SB&billnumber=650

<http://hawaii.gov/elections> - look for the link to the Constitutional Amendment PDF.

Honolulu voters will also be deciding on 2 City Charter amendments.

<http://www.honoluluelections.org/>



Sam Slom
State Senate 9th



Fred Hemmings
State Senate 25th



Marissa Capelouto
State House 42nd



Lauren Cheape
State House 45th

Hawaii's Reapportionment Plan Denies Equality to Military & Families

By Robert Thomas

The State of Hawaii has a long history of refusing to count military personnel and their families for purposes of reapportioning the state legislature. A brief filed this week in the federal court case challenging Hawaii's 2012 Reapportionment Plan asks a three-judge federal court to enforce the Equal Protection Clause of the U.S. Constitution. The 2010 U.S. Census reported 1,360,301 as the total resident population of Hawaii. The Census includes military personnel, military families and students as residents of Hawaii.

In 1965, in *Burns v. Richardson*, the U.S. Supreme Court upheld Hawaii's use of its count of registered voters as the population basis for apportionment, a population base which effectively excluded low-registration

groups such as military personnel and students, many of whom were below the pre-26th Amendment voting age of 21. Burns was based on the "special population problems" created by a "transient" military, which in the early 60's was primarily draftees, as the armed services geared up for the conflict in Vietnam. Contrary to popular opinion, the Burns case does not permit the State to ignore military personnel and their families. The Court allowed Hawaii to count only registered voters because there was no evidence doing so would result



in apportionment substantially different from that, which would have resulted if the State had counted "state citizens." At that time, unlike today, Hawaii's voter registration and voter participation levels were the highest in the nation, so a count of registered voters would have produced an apportionment substantially similar to a count of state citizens.

The Hawaii Constitution was amended in 1992 to require the Reapportionment Commission to count only those deemed "permanent residents," instead of registered voters. Only Hawaii and Kansas use a population base other than the U.S. Census count of residents.

In the current reapportionment cycle, Kansas extracted far fewer Census-counted residents than Hawaii, and in its August 3, 2011 proposed plan, the Hawaii Reapportionment Commission did not remove anyone. The Commission subsequently presented a second plan which extracted approximately 16,000 military personnel, military families, and students, but included non-citizens, minors, and incarcerated felons who cannot legally vote.

After the Hawaii Supreme Court ruled that the Commission did not exclude enough people, the Commission "extracted" 108,767 Census-counted residents of Hawaii – nearly 8% of the state's entire population. These people were not counted by the Census in any other state but Hawaii. The State claims that military personnel excluded from the count do not intend to remain in Hawaii, a conclusion the State reaches only because of a federal tax form (DD2058) in which servicemembers asked a different state to withhold taxes from their pay. Providing information on DD2058 forms may violate the Privacy Act, and the State's apportionment process cannot be predicated on a violation of federal law. The State also assumes that military family members lack the same intent to remain as their military sponsor.

As set out in the brief, the State has a high burden to show that the conditions that existed in 1965 in the Burns case have not changed. Today, however, the nature of military service has changed: populations are much more stable, we have an all-volunteer force, and military personnel and their families are much more integrated into the community than they were 50 years ago. Additionally, voter participation in Hawaii is now the country's lowest, and excluding servicemembers and their families from the count does not approximate a count of "state citizens."

Abercrombie Earns 'F' From Cato Institute

As the public grows more and more dissatisfied with partisan gridlock, growing deficit and record spending in Washington DC, the best chance for fiscal reform may be at the state level.

That's the assessment by **Chris Edwards**, the director of tax policy studies at the Cato Institute and editor of www.DownsizingGovernment.org, who released a report Tuesday, October 9, ranking the best and worst governors in the nation in terms of fiscal management.

Just four governors received an A grade – Governors **Sam Brownback** of Kansas, **Rick Scott** of Florida, **Paul LePage** of Maine and **Tom Corbett** of Pennsylvania.

Meanwhile, five governors ranked so poorly they were awarded F's. Hawaii **Governor Neil Abercrombie**, a Democrat and former Congressman who was elected to the state's highest office in 2010, was one of those elected leaders who flunked the study. Hawaii is one of the overall highest taxed states in the nation, and under Abercrombie, taxes have increased and may be on the rise again in the 2013 legislative session.

Edwards said Abercrombie has been governor of Hawaii for less than two years, yet he has already revealed his strong preference for higher taxes and spending. "State general fund spending jumped almost 12 percent in his first year in office. To fund the higher spending, the governor has supported a slew of tax increases," Edwards said.

Edwards notes Abercrombie signed into law: "Higher taxes on rental cars, "Limitations on income tax deductions", and "An expansion of state general excise taxes."

Abercrombie has also proposed higher taxes on pension income, soda and alcohol, Edwards said. "No wonder that the governor's approval ratings have been some of the lowest of any governor," Edwards added.

The governor had no comment on the report, said **Donalyn Dela Cruz**, spokesperson for the governor. Hawaii governors have ranked better in the past.

When **Ben Cayetano** was governor in 1998, he received a B grade from the Cato Institute. **Linda Lingle** received a C grade in 2010.

Other governors awarded an F grade include **Pat Quinn** of Illinois, **Dan Malloy** of Connecticut, **Mark Dayton** of Minnesota and **Chris Gregoire** of Washington.

Unlike the governors who ranked poorly, those who received A grades made major changes in their state that improved the economic well being of their residents.

According to the study,

Governor Brownback cut the top individual tax rate in Kansas from 6.45 percent to 4.9 percent and increased the standard deduction. He also and cut taxes on small business income.

See the full report at Cato.org.

Following the Trail of UH's "Lost" \$200,000 to North Carolina

By **Malia Zimmerman**, HawaiiReporter.com

A scam by principals in the Miami, Florida-based talent agency Epic Talent LLC that targeted the University of Hawaii and left the school short \$200,000 and without the Stevie Wonder concert the company agreed to stage, may extend as far as North Carolina.

Before Epic Talent LLC of Miami opened under its current name in February 2012, its web site said was known for 15 years as BAB Productions. BAB Productions is also the name used by Charles D. Harrison, a resident of Charlotte, North Carolina, when he scammed 200 investors of \$13 million through a Ponzi scheme, a crime for which he is serving 14 years in prison and must pay \$13 million in restitution, beginning in 2009.

Like Epic Talent, Harrison claimed to have ties to celebrities, and said investors' money would be used to fund concerts for nonprofits including churches, colleges and universities.

However, in reality, the investor funds were diverted back to other investors in Ponzi-fashion and investors, many in their senior years, lost their entire investment despite his promise of a 10 percent return.

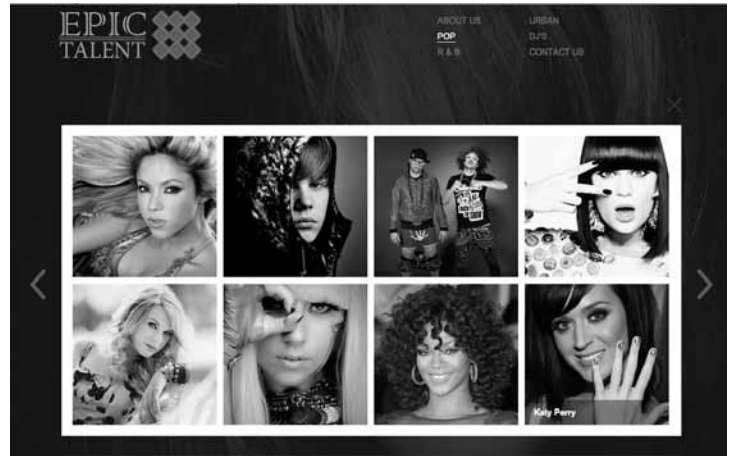
Hawaii Reporter has learned law enforcement is looking into a possible connection between Florida's operation and North Carolina, but it is unconfirmed whether that ties back to BAB Productions of North Carolina or a principal in Epic Talent LLC.

On to Florida

Epic Talent purports to have three principals including director Sean G. Barriero, US Account Executive Sannise "Sunny" Crosby and UK Account Executive J. Spencer. The company bills itself as the agent for America's top pop stars including Beyonce, Prince, Jay Z and Kanye West.

But on its web site, Epic Talent LLC no longer claims it represents Stevie Wonder, a change from just weeks ago when the company took a \$200,000 deposit from the University of Hawaii for a Stevie Wonder concert the principals claimed they could deliver in Hawaii this past August.

Hawaii Reporter was in Florida for several days until Monday, October 1, and there



Part of Epic Talent's website purporting to promote big name stars such as Shakira, Justin Beiber, LMFAO, Jesse J., Taylor Swift, Lady Gaga, Rihanna and Katy Perry among others. Stevie Wonder has long been removed.



University of Hawaii President MRC Greenwood on the hot seat at the Senate Special Committee for Accountability informational briefing this past September.

discovered Epic Talent LLC has no worldwide headquarters where the nation's top talent is supposedly represented. In fact, the headquarters is just a mailbox.

Hawaii Reporter also visited the home of Sannise Crosby, account executive for Epic Talent, at 18800 NW 29th Street in Miami Gardens, Florida.

Her house is in a dilapidated suburb outside Miami where many of the homes are wrapped with bars on their windows and doors.

The Crosby home's mustard yellow walls were in need of paint, a detail that is notable because also listed at that address is Divine Painting, Inc. and Divine Painting Properties, Inc., two companies headed by Sannise's father, Gamal Crosby, for which she serves as the executive.

Hawaii Reporter's Jim Dooley reports legal filings in Miami-Dade County, Florida, list pending federal tax liens of \$84,867 against Sannise Crosby and \$23,565 against Divine Painting. The lien against Sannise Crosby was filed last year and the Divine Painting lien was filed in 2010.

Last year, a Florida used car dealer filed repossession papers for a 2002 Ford Taurus driven by Sannise Crosby and financed by Gamal Crosby, Dooley reports.

Sannise Crosby's uncle, who was at the home, got Sannise on the phone for Hawaii Reporter by calling Gamal Crosby's phone, her

Continued on page 6.

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The Ongoing Case of the “Wonder Blunder”

Continued from Page 5.

father.

In a brief conversation, Sannise confirmed Epic Talent LLC has no office in Miami and operates out of a mailbox drop. Sannise promised to meet Hawaii Reporter later that evening, but did not call within 45 minutes as promised to designate a place and time later that evening.

Her uncle denied any knowledge of Sannise’s business dealings or big named stars she claims to represent.

While Sannise’s story is noteworthy, her background may not be as intriguing as her partner’s.

Sean Barriero, 44, is a principal in several other businesses that appear to be operated either from mailbox drops or a home in Miami Gardens.

Barriero lists his business address at 14359 Miamar Parkway in Miramar, Florida, but a visit to that location revealed it is actually a UPS store with more than 400 mailbox drops in that location, none of them belonging to Barriero, according to the store clerk. The store clerk confirmed he had never heard of Barriero.

Barriero is also listed as an assistant vice president for CTN-J Investments, CTN-J Group or CTN-J Inc, depending on the business filing. The head of that company is Charles West, 33, of Miami Gardens, who lives just 0.8 miles from Sannise Crosby. West also owns All American Casket Supply, which operates from the same phone number as the CTN-J group of companies that Barriero is a part of.

In addition, West runs a business called C.A.R.M Professional Services Inc, which has many of the same principals as the CTN-J businesses, but neither the operator in Miami or Hawaii Reporter could find a business listing for such an organization.

A public records search of Sean Barriero lists a relative in North Carolina.

Behind the “Wonder Blunder”

University of Hawaii Athletic Department officials – including Stadium Manager Rich Sheriff and Athletic Director Jim Donovan – saw the concert as a way to get the athletic department out from under a \$10 million crushing debt.

They relied on Robert Peyton, head of Bob Peyton Entertainment Corp. and BPE Productions, Inc., a Hawaii concert promoter, who arranged the deal. Peyton also said he



UH Chancellor Tom Apple

sent a deposit of \$50,000, despite having his house in foreclosure and facing bankruptcy as well as battling a crippling diabetic condition.

University officials said they were pressured by Epic Talent principals to send the \$200,000 deposit to secure the deal on threat of it being cancelled. In an unusual and unprecedented move, the University wired the money to Bank of America in Orlando, Florida.

Another \$200,000 was due just before the concert, and Peyton, as noted in Maui Now News, said Epic Talent was trying to increase the original price of \$730,000 plus travel.

Wonder’s real agents came forward to say they had not arranged the concert and University officials scrambled.

Peyton continued to claim everything was on track, but University officials held a press conference to disclose that they had opened their own investigation with the help of an outside law firm and also brought the FBI.

On July 10, UH cancelled the concert and refunded some 6,000 tickets.

The next day at a hastily called press conference, the media learned Donovan and Sheriff were put on indefinite leave with pay while the University looked into whether they were culpable in any criminal activity. That would prove to be an expensive mistake with lasting consequences.

Donovan, who hired a lawyer, was reinstated, but he was transferred to a newly created marketing and branding position under University of Hawaii-Manoa Chancellor Tom Apple for \$211,000 per year for three years.

Sheriff was also reinstated.

The University saga was nicknamed the ‘Wonder Blunder.’

Politics of University Actions Comes Center Stage

Because the legislature has fiscal oversight of the University of Hawaii and the Senate is responsible for confirming the Board of Regents, who in turn appoint the

University president, the Senate launched its own investigation on September 24.

In testimony, September 24, at the state capitol, Donovan told Senators he did not want the position and wants to remain as athletic director.

Donovan had 8 months remaining on his contract and was vying for a 3 to 5 year extension, but University President MRC Greenwood was not a fan of Donovan’s before the botched concert and was already looking for a way to bring in her own choice for Athletic Director.

She refused Donovan’s request for a 3- or 5-year contract.

Donovan was away when the \$200,000 was wired to Epic Talent, but he approved of the idea and did not look into it further.

On September 24, Donovan told Senators he had been excluded from a number of key decisions in his department. When he went on leave, UH vice president Rockne Freitas, a former UH assistant athletic director, took over.

Following the Money

Will the University get its \$200,000 back? Not likely, since it may be in a Florida shell corporation, in North Carolina or already out of the country.

But Senators will continue their probe into what happened to the University’s money – and the structural and managerial systems at the University that allowed the institution to be scammed.

They will also examine how these costly mistakes continue to add up for the taxpayer:

- \$200,000 to Epic Talent• \$633,000 plus benefits for Donovan (plus his legal bills)
- \$50,000 to a law firm to prepare a fact finders report
- \$25,000 to another law firm for redacting names from the fact finders report
- Plus the cost of the refund of the Stevie Wonder tickets.

The Senate’s second hearing was Tuesday, October 2, and was open to the public.

Invited to appear were UH Manoa Chancellor Tom Apple, Stan Sheriff Center Manager Rich Sheriff, and UH Regents James Lee, Carl Carlson and Coralie Matayoshi. Peyton was also invited to appear but he declined after being hospitalized because of his diabetes.

Jim Dooley contributed to this report which originally appeared on the HawaiiReporter.com website.

Repeal Public Lands Development Corporation – Act 55

By Dean Capelouto

Even though I have been very outspoken and testified against the Public Lands Development Corporation (PLDC), it finally dawned on me why so many people, from different walks of life are so opposed to this legislation that was rammed down the public's throat by the legislature, and then signed into law by the Governor.

What could bring Hawaiian sovereignty folks, environmentalists, financially conservatives, small business owners, and those that value democracy and the voice of the people together in the same room – and in the same voice?

Any good parent, checks their children's school work from time to time, and this morning, I happened to stumble across my son's Kapolei High School social studies assignment entitled "Roots of Democracy", and it was like a lightning bolt hit me – squarely in the face.

As I read the assignment, I subconsciously started to compare what our children were being taught in high school to the specific issue with Act 55 and the PLDC.

The assignment defined Democracy as "rule by the people". It went on to describe the five basic principles, which include 1) Consent of the Governed, 2) Representative Government, 3) Rule of Law, 4) Individual Rights, and 5) Checks and Balances.

My conclusion from the assignment was that – by using these 5 standards – we can "and should" either judge our democracy as effective – or we can judge it as a failure.

My further contention after careful consideration was that the reason that so many are outraged by this legislation is that every single tenant and principle of democracy was violated when this was rammed through as the new law of the land.

Consent of the Governed

Hawaiian Sovereignty groups do not recognize the authority of the local government to make decisions about lands that were technically "stolen" from them during the overthrow of the rightful Hawaiian government almost 140 years ago. So in this aspect, our government has failed to get "consent of the governed" by these Hawaiian Sovereignty groups in dictating to them what will be done with public and ceded lands, which no one questions are supposed to be "reserved" for the people of Hawaii and Hawaiian descendants. Those who understand the history about how Hawaii came into existence to become a provisional



The implementation of Act 55 has sparked a number of protests at various venues throughout the State of Hawaii.

government, then a territory, and then a state – are sensitive about this, and they have a rightful reason to be angry about this legislation. For our elected officials to ram Act 55 through was culturally insensitive.

Representative Government

Since when does a non-elected panel of good ole boys from Oahu get to dictate and force into action what will happen, not just on Oahu, but also on the neighbor islands land, neighbor island public beaches, and neighbor island ceded lands. Isn't this why our American country left and broke free from the tyranny of England? Who in their right wisdom, would be so disrespectful of the voices from our brothers and sisters from the neighbor islands, and not to include them at the decision making table. My brothers and sisters on the neighbor islands have a right to be angry. Act 55 fails the test of having a "representative government".

Rule of Law

Our environmental laws, codes, and ordinances, are in place to protect our environment, yet the PLDC is authorized to bypass this at their discretion. Why even have environmental laws, codes, and ordinances, if a select group of non-elected people can over-ride and bypass this altogether at their discretion? Most of us, that have any sense of connection to the land, agree that bypassing environmental review, and fast tracking development projects, is a red flag. Once the land is ruined, it is difficult to go back and restore it to its original condition. We need to err, on the side of protecting the environment – if any doubt exists, as this is a promise, gift and legacy we must leave to our children, and the generations that follow. Our pristine beaches, and rare eco-system, are something that is best when

Continued on page 8.

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Repeal of the PLDC is Needed Continued from Page 7.

personally experienced and touched, rather than a picture that can only be found in a textbook. This 5-member board is not above the rule of law, but Act 55 gives them the authority to be above rule of the law. As far as environmental review, in regards to rule of law, Act 55 – once again, fails the principles of democracy test.



By Panos Prevedouros, PhD

B, C, E, 3, 9, 11, 20, 43, 53, 73, 81, 90, 91, 92, 93, 94, 96, 97, 98A, 101, 102, 103, 201, 202

No, this is not the code for a very nerdy version of the Hawaii-based *LOST* television series. These are all the bus routes that will be eliminated or terminated to the nearest rail station. See Final EIS appendix D.

We all know how the public reacted to the relatively *manini* changes to TheBus last summer. Wait until two dozen routes are drastically changed.

Several of these routes are express providing a competitive service. Many of them are heavily used.

In addition several new and confusing “feeder” routes will be added. So basically the No.1 transit bus in the nation will be dismantled and reconfigured to provide life support for the rail.

Rail’s ridership would be much closer to zero than the projected 90,000-some riders per day in the opening year, without dismantling and rearranging the majority of TheBus as we know it today, given that (1) nobody lives at the stations and (2) the whole rail line will have only four park-and-ride lots.

The total bus ridership that will be forced to transfer each day is found on page 46: 69,480 rail riders daily will come from the bus. That’s round trip.

So, over 30,000 bus riders daily will be forced to get out of their bus and transfer to rail going to their destination. They may also need to catch a bus at the other end to get to their final destination (i.e., from Ala Moana Center to UH, Waikiki, and from other stations to all the ridges and valleys that the rail does not serve.) Coming home they will have the reverse transfers from bus to rail to bus. There will be chaos.

What is the logic of providing such a disservice to the loyal transit riders of TheBus?

In conclusion then, B, C, E, 3, 9, 11, 20, 43, 53, 73, 81, 90, 91, 92, 93, 94, 96, 97, 98A, 101, 102, 103, 201, 202 is the code for transit failure by design in Honolulu.

Individual Rights

Let me get this correct? The PLDC or their agents can come on to your “private property” – without your consent, and disconnect water or utilities, if they happen to be adjacent to any project they happened to be working on. After stepping on your property rights, they then have the right to charge you for any “upgrades” to the system as part of re-connecting water and other utilities. If you refuse to pay, they can then fine you for failure to pay. Then if you fail to pay the fines, then they can “take your property”. The PLDC administrative procedures leave “no area” for a private property owner to file a grievance against the PLDC or any mediation process. Therefore, Act 55 fails the democracy test because it steps on individual’s rights and the rights of private property owners.

Checks and Balances

The PLDC consists of 2 appointed – nonelected officials from the legislature, and 3 department heads from other branches of city and state government. As a matter of public trust, you would think that all 5 of these officials would have to have some “basic qualifications” in the function they are performing, yet in essence, they are all appointed as people who are being repaid, by politicians in a return of favor for favor. So now instead of being able to hold our elected officials “directly responsible” for rape and pillaging our lands and environment, the buck, and responsibility has now been passed over to the good old boy network, and if and when they fail, the PLDC board members can be thrown under the bus, which keeps the elected officials off the hook – and one step removed from doing what the people asked them to do in the first place. The PLDC members are allowed to directly negotiate outside of public scrutiny any contract and are allowed to participate in backroom deals and non-bid contracts.

From the perspective of checks and balances, Act 55 is the “super highway onramp” for potential greed, scams, and corruption, at the expense of the people of Hawaii. Act 55 – fails the democracy test for checks and balances (in essence - it is pay to play, by another name).

To hear our elected officials say that they are now back tracking and asking to amend Act 55 is an insult to the average person in Hawaii. How can one piece of legislation single handedly violate so many of our principles of democracy is “unforgivable”. In the upcoming election – don’t accept anything less than a full repeal of Act 55, as a response from your candidates. Act 55 and the PLDC violate every principle of justice and moral democracy that our society was built on. To allow Act 55 and PLDC to stand as the law of the land, and not hold elected officials accountable, speaks about us as a society. On Nov 7th, we will all have to look in the mirror, and say – did we stand for democracy – or do we go down the path of certain corruption and greed? How can one piece of legislation violate every single principle of democracy?

Ask your elected officials – what in the world they were thinking when this travesty of democracy was passed.... if they do not agree to a complete repeal, our founding fathers, demand that we hold them accountable, and we must vote them all out, if necessary.

Dean Kalani Capelouto is a small business owner and Candidate for Senate District 20, which includes Kapolei, Makakilo, Kalaeloa, Waipahu, Ewa Estates, Varona Village, West Loch. Article originally published at hawaiiereporter.com.

Special Funds Hide Public Funds From Hawaii Taxpayers

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

One of the frustrating things about watching state government finances these days is that the picture is less than pristine, that is, for the average taxpayer it is not always quite clear just how much money is being spent on state programs and services.

This is because so much of state government is hidden from view by the multitude of special funds that have been created over the past 25 years. Advocates of these special funds argue that these special funds insure that the fees and user charges paid by the beneficiaries of the funds' programs get their money's worth. The problem with that is that most of those beneficiaries don't have oversight or the authority to determine whether or not the fund is collecting too much or not enough and, therefore, whether or not the fees being charged are appropriate.

And despite the argument that the special funds provide protection against the money in these funds being used for anything other than their intended purposes, the track record is telling as taxpayers have watched these special funds being raided over the years every time the state hits a bump in the road and needs money to bail out the general fund. For example, a couple of years ago car rental businesses decided that it would help their business if they could have a consolidated operations and maintenance facility that would help to reduce, if not eliminate, duplicative functions. They acquiesced to taxing themselves at the rate of \$4.50 per day per vehicle to raise the money needed to pay for this facility. When warned that this fee would create a huge target for lawmakers to raid should they need the money, rental car companies disagreed saying the fee was a part of the airport operations and lawmakers could never really raid those revenues.

A year later, as the fortunes of the state general fund took a nosedive, lawmakers turned to this special fund and the \$4.50 fee it received eyeing it with envy. While they could not take the money that had already been generated from the fee, they just assumed that since rental companies could already charge such a fee, they would just suspend the fee under that special fund and impose the fee under another chapter of the law and earmark the revenues from the \$4.50 for the state general fund. So, in a way, lawmakers were able to "cockroach" the money from the rental car facility special fund and put the fee under another chapter of the law and direct the money into the state general fund.

While these shenanigans seem to be the standard for lawmakers, having the special fund mechanism facilitates these hijinks which contribute to the cloudy picture of state finances. So when the taxpayer asks just how much lawmakers are spending, the answer is less than clear. Budget makers will respond by saying its four or five billion dollars a year, and then pause and tell you that's only the general fund and doesn't count special funds.

And, oh yes, that is only for operating expenses and not for capital improvements like building a road.

But a good part of the problem is the plethora of special funds that have been created over the past 25 years. The problem was recognized years ago when the legislature asked the State Auditor to periodically review these special funds and establish criteria as to what is an acceptable special fund. And over the years the State Auditor has continued to point out the deficiencies of many of these special funds, yet lawmakers refuse to do anything about cleaning up the special fund situation.

Now the Honolulu city council wants to have that same ability to create additional funds with or without the mayor's recommendation. The charter currently provides that additional funds may be created upon the recommendation of the mayor and with the approval of the council. A charter amendment that will be on the ballot next month would open the flood gates that could spawn numerous special funds at the whim of the council that would make it difficult for taxpayers to watch where the money is being raised and spent.

The amendment argues that these special funds "may enhance the transparency of the City's finances and the City's accountability to the public by ensuring that, when appropriate, money collected by the City from licenses, fees, and taxes, and other revenue are set aside and expended for their intended public purpose."

Given the track record of the state legislature, this amendment should send up "red flags" that instead of providing transparency for City finances, these special funds hold the potential for making sure taxpayers don't know what's going on with their tax dollars. Taxpayers should reject this proposition as these special funds can and will be used to obscure how elected officials are handling your money.

Lowell Kalapa is president of the Tax Foundation of Hawaii.

More on the web: <http://www.tfhawaii.org>

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FAST is the Best Transportation Option for Oahu

Ben Cayetano unveiled a traffic solution in September that will make life better for Oahu's commuters. Dr. Panos Prevedouros discussed it at the October 25 SBH Sunrise Networking Breakfast.

FAST, an acronym for "Flexible, Affordable, Smart Transportation", will combine a host of modern technologies with the goal of reducing commute time on Oahu from the current average of 29 minutes to 25 minutes.

Express Bus Rapid Transit (BRT) for Leeward and Central Oahu as well as a College Express BRT connecting the University of Hawaii at Manoa, Hawaii Pacific University, Honolulu Community College and everything in between

FAST

Flexible, Affordable, Smart Transportation

Added Traffic Lanes on King Street* and Nimitz Highway

Contra-flow lanes on King St. and Dillingham Blvd.* to accommodate rush-hour traffic and dedicated BRT Lanes.

Short underpasses to reduce in-town congestion

A 2-mile elevated reversible Nimitz Flyover for express travel from the airport viaduct to Iwilei and downtown Honolulu
Island-wide traffic signal optimization and 21st

century traffic management systems

Bus Rapid Transit has been an effective form of mass transit in the Twin Cities, Minnesota, Los Angeles, California and numerous cities in China, India, Indonesia, Britain, Brazil, Canada and Mexico. Unlike the heavy rail system, which would not be ready to serve UH Manoa for decades, a pilot BRT could be operational within six months at Manoa.

In addition to introducing advanced traffic management systems to Oahu, the FAST program will include common sense policies that will both decongest the highways and be rapidly implemented. These include deploying tele-work programs, staggered hours and flex time work schedules.

Unlike heavy rail which will take ten or more years to complete, Honolulu commuters will see traffic congestion reduced by Governor Cayetano's FAST program within six months.

Contra-flow lanes, express buses and flex time schedules are all solutions that can start working in a few months.

Honolulu-wide signal optimization will greatly improve traffic flow and will take just a couple years to set up. The result will be savings of millions of gallons of fuel and thousands of hours needlessly sitting at traffic lights.

The entire plan is estimated to cost \$1.5 billion—A fraction of the proposed elevated heavy rail system.

And it delivers much more than rail, which shortens or eliminates 20 our current bus routes.

FAST will reinvigorate Honolulu's former world-class bus system and will not require people to change their lifestyle. Moreover it will benefit everyone who uses the roads, whether they are in a car, a delivery truck or a bus.**

And, perhaps most importantly, FAST will not incur a crushing debt, aesthetic blight nor entail an increase in property taxes on the citizens of Honolulu.

Licensing Ziplines Adds Little Consumer Protection

Ziplines have been used for more than 100 years to transport people and goods by use of a cable, a pulley, and gravity. More recently, the recreational industry has featured ziplines and "canopy tours" (guided transit of a forest canopy by means of ziplines) as a part of "challenge courses," adventure activities often located high up on support structures or trees. The first zipline course in Hawai'i opened in 2002. Today, there are 22 ziplines and canopy tours throughout the state.

In House Concurrent Resolution No. 118, House Draft 1, Senate Draft 1, the 2012 Legislature asked the Auditor to analyze Senate Bill No. 2433, Senate Draft 2 (S.B. No. 2433, S.D. 2) relating to challenge course technology and include an assessment of alternative forms of regulation. In our analysis of S.B. No. 2433, S.D. 2, we applied the Hawai'i Regulatory Licensing Reform Act, Chapter 26H, Hawai'i Revised Statutes, which limits regulation of professions and vocations, not businesses such as zipline and canopy tour operators. The Legislature's policy and criteria for assessing the merits of regulation require that those desiring the measure must provide the evidence supporting the case for engaging the State's policing powers to regulate.

The proposed bill would require annual inspections performed by state elevator inspectors or private inspectors certified by the Department of Labor and Industrial Relations (DLIR). Despite risks inherent in thrill rides, there was insufficient data of serious harm to the public to warrant regulation. We found that all 22 businesses are required by their insurance agencies to provide annual

inspection reports by insurer-accredited companies designated under industry standards as qualified challenge course professionals.

As a result, the industry is basically self-regulating.

In addition, the DLIR estimates that it would need \$400,000 initially and \$350,000 each year to create and maintain a self-sufficient inspection and permitting program. To fund such an operation, the department would have to charge each of the 22 operators an initial licensing fee of \$18,000, as well as an annual fee of \$15,000. The bill proposes an initial and annual fee of \$100.

Potential host agencies are a poor fit

The DLIR was selected as a potential host agency. However, the department has a multi-year inspection backlog of 5,000 elevators and is not inspecting attractions that fall under its jurisdiction for amusement rides.

Moreover, the other proposed host agency, the Department of Commerce and Consumer Affairs (DCCA), lacks the capability and authority to inspect accident sites. If S.B. No. 2433, S.D. 2, were enacted, it may create a false sense of safety for the public and raise the potential for liability to the State.

The DLIR concurred with our analysis of S.B. No. 2433, S.D. 2. The DCCA opted not to comment on a draft of the sunrise report provided to it.

Article text from State Auditor's Office Synopsis
See the full report at <http://www.state.hi.us/auditor/Reports/2012/12-08.pdf>



SBH/HMAA's new comprehensive medical plan became effective September 1, 2011. It is especially tailored for sole proprietors and independent contractors. Want details to see if this plan is good for you?

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Know a friend or a business who is not an SBH member? Invite them to become a member. Give them this newsletter with the application form on the bottom, or call SBH @ 396-1724 and we'll get in touch with them.



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IF YOU MEAN BUSINESS... PLEASE JOIN SMART BUSINESS HAWAII

Hawaii Falls to 37th In Business Climate Index

By Stephen Zierak, CPCU/ARM

The Tax Foundation, a national organization that studies federal, state, and local tax policy, today released its 2013 State Business Tax Climate Index. This report, issued annually, ranks states as to the relative impact tax policy has on ability to attract business enterprises. Hawaii has dropped from 35th to 37th place over the past year.

Joe Henchman, a Vice President at the Foundation, explained that the annual index “measures the elements of each state’s tax system that are important to all types of business, reducing the many complex considerations to an easy to use ranking.” **Scott Drenkard**, an economist with the group, has constructed an overall index based on a study of 5 important tax systems. In order of weighting, this includes indices of personal tax (most businesses file as individuals), corporate tax, sales tax, property tax, and unemployment insurance. These indices are combined to establish an overall index ranking for each state, 37th in Hawaii’s case.

The Foundation notes that businesses prefer tax structures where a tax applies broadly with low flat rates, rather than codes with many exceptions and with high graduated rates. When asked, Drenkard said that Hawaii’s fall occurred not because of changes to Hawaii’s code, but because positive reforms in other states lowered Hawaii’s relative position.

Oregon has allowed its 11% personal income tax bracket to expire, so for now Hawaii is the only state with an 11% top rate. Not surprisingly, Hawaii ranks 41st on personal tax. It has a very positive ranking of 4th on corporate tax. Hawaii is 31st on sales tax. The GRT has the virtue of a very broad base including services, but the 4.5% rate (5.0% on Oahu) is quite high given the base. Hawaii is 30th in unemployment insurance, and 15th in property tax.

There is a lot of consistency among the best ten and worst ten states. The best ten states usually get along without one of the three major taxes (personal, corporate, and sales), plus are well structured in the other categories. The worst ten states feature high rates and

poorly structured loophole-filled systems. New York and New Jersey usually vie for 50th place, with New York winning the dubious honor in 2013 due to some modest reforms in New Jersey. California retains its 48th place finish.

Most states will move no more than one spot up or down year to year. However, Michigan moved six places up due to tax reforms that included replacing its margin tax (a complicated gross receipts tax) with a low flat corporate income tax. Maine also jumped seven places due to reform of both personal and corporate tax systems.

As we watch Hawaii slip towards the bottom ten, we must also remember that Hawaii businesses face other challenges than just the tax systems here. The Jones Act uniquely punishes Hawaii. It increases the prices of goods here (and the cost to send goods elsewhere) as it “protects” American shipping from competition. Think of it as the Jones Act tax. Hawaii’s education system is a shambles, one of the worst in the country. Land use regulation, and regulation in general, is excessive. It is no surprise that manufacturing accounts for only 2% of the state’s GDP, as compared to 12% countrywide.

Our paradise appears quite different from the perspective of an entrepreneur, deciding where to open a new business. And it is new businesses that grow economies. We say we want to diversify away from our reliance on tourism and military installations. Yet, our irresponsible tax, spend, regulate politicians do everything in their considerable power to make such diversification impossible.

The Tax Foundation’s annual study is available to Governor Abercrombie and the legislature. Joe Henchman said, “State based organizations and policymakers use the Index to gauge how their state’s tax system compares to others, and as a road map for improvement.” We could fix our bloated tax system. We could slash our public spending. We could seek relief from the Jones Act. We could insist on schools run for the benefit of their customers (students/parents) rather than the teachers’ union. We could repeal the most insane regulations.

But then perhaps that just wouldn’t be Hawaii.
