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July 25, 2016

The Honorable Donovan M. Dela Cruz
Senator, Twenty-Second District
The Twenty-Eighth Legislature
State of Hawai'i
State Capitol, Room 202
415 South Beretania Street
Honolulu, Hawai'i 96813

Dear Senator Dela Cruz:

Re: Availability of Veto Override Vote

By letter dated July 18, 2016, you asked whether the Senate may vote to override the Governor's veto after the first day of the forty-fifth-day special session. We answer in the affirmative. Through informal legal advice, we answered your question by the next day pursuant to your request. We are issuing our same advice as a formal opinion because we believe that the same question may arise again in the future.

Section 16 of article III of the State Constitution provides in pertinent part in the paragraph for reconsideration of vetoed bills returned after adjournment sine die of the session -- "The legislature may convene at or before noon on the forty-fifth day in special session, without call, for the sole purpose of acting upon any such bill returned by the governor." The Twenty-eighth Legislature did convene in special session on the forty-fifth day, July 12, 2016, to consider returned bills.

Although section 16 of article III does not state the duration of the forty-fifth-day special session, the Supreme Court of Hawai'i has stated that "a constitutional provision must be construed in connection with other provisions of the instrument." Hawai'i State AFL-CIO v. Yoshina, 84 Haw. 374, 376, 935 P.2d 89, 91 (1997) (quoting Carter v. Gear, 16 Haw. 242, 244 (1904), aff'd, 197 U.S. 348 (1905)). Section 10 of article III of the State Constitution provides that "special sessions shall be limited to a period of thirty days," excluding "Saturdays, Sundays, holidays . . . and any days in recess," and may be extended for "not more than fifteen days."

Section 17 of article III of the State Constitution provides the general procedures upon veto:

Section 17. Upon the receipt of a veto message from the governor, each house shall enter the same at large upon its journal and proceed to reconsider the vetoed bill, or the item or items vetoed, and again vote upon such bill, or such item or items, by ayes and noes, which shall be entered upon its journal. If after such reconsideration such bill, or such item or items, shall be approved by a two-thirds vote of all members to which each house is entitled, the same shall become law.

Section 17 does not expressly require that the vote on a vetoed bill must occur only on the same day of receipt of the vetoed bill. In addition, for the forty-fifth-day special session, section 16 of article III, provides, "Any such bill may be amended to meet the governor's objections and, if so amended and passed, only one reading being required in each house for such passage, it shall be presented again to the governor, but shall become law only if the governor shall sign it within ten days after presentation." Consequently, during the forty-fifth-day special session, the Legislature, in considering the returned bills, may vote pursuant to section 17 to override the veto, may amend the bill pursuant to section 16 to meet the Governor's objections, or may take no further action on a returned bill. We believe that the pertinent constitutional provisions do not require that the Legislature must take final actions by the end of the first day of the forty-fifth-day special session.

Furthermore, section 15 of article III of the State Constitution provides that "[n]o bill shall pass third or final reading in either house unless printed copies of the bill in the form to be passed shall have been made available to the members of that house for at least forty-eight hours." If the Legislature is considering possible amendments to the returned bill, final actions on an amended bill cannot be taken on the first day of the forty-fifth-day special session.

Based on these constitutional provisions pertaining to the Legislature's procedures upon veto and the forty-fifth-day special session, we believe that the Legislature either may vote to override the veto, or may amend and pass the returned bill, or may take no action on a returned bill during the special session. We believe that the option to vote to override the veto would be available during the special session and we found no constitutional provision requiring that a veto override vote must

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occur only on the first day of the forty-fifth-day special session. We believe that the option to vote to override the veto would not be available only when the bill has already been amended, passed, and presented to the Governor pursuant to the third paragraph of section 16 of article III of the State Constitution.

Pursuant to section 12 of article III of the State Constitution, each house of the Legislature shall "determine the rules of its proceedings" and may provide further requirements for the reconsideration of returned bills. However, we are not aware of any rule that might be read to prevent a veto override vote after the first day of the forty-fifth-day special session.

Very truly yours,



Maurice S. Kato
Deputy Attorney General

APPROVED:



Douglas S. Chin
Attorney General

cc: The Honorable Ronald D. Kouchi,
Senate President
Ms. Carol Taniguchi, Senate Chief Clerk