



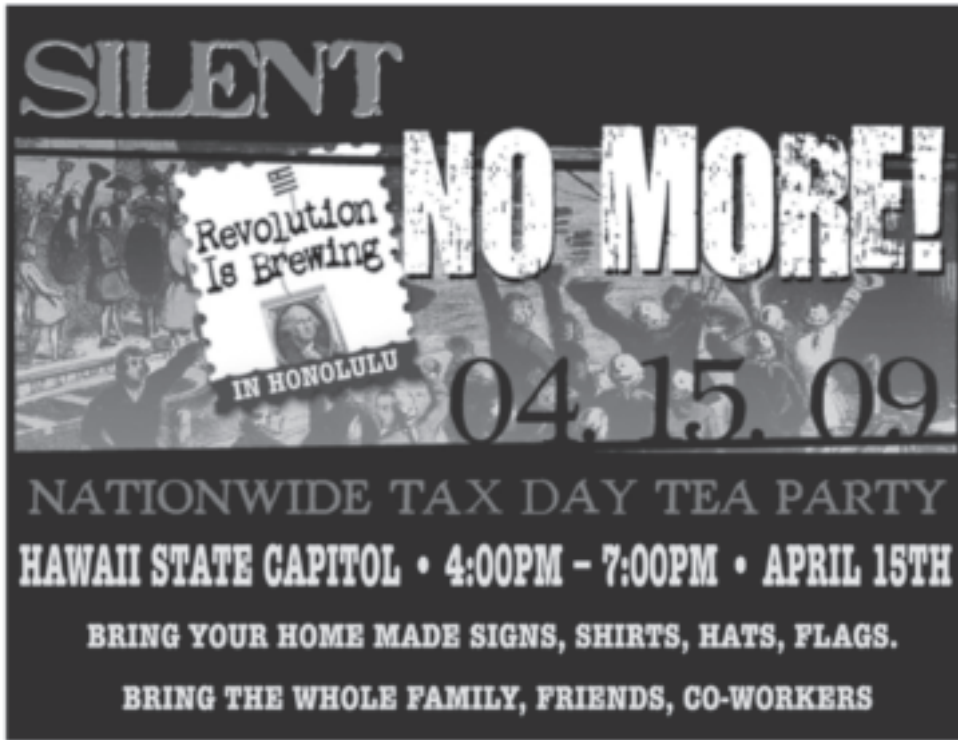
Creating A Better Hawaii
Through Private Enterprise

SMALL BUSINESS NEWS

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April 2009

Hawaii Tax Day Tea Parties Go Statewide



The **Hawaii Tax Day Tea Party** is being held at the Hawaii State Capitol and elsewhere around the islands on **April 15**. The Tax Day Tea Party at the State Capitol will start at 4:00 pm and run to 7:00 pm in the rotunda and outside on the sidewalk near the Father Damien statue and flagpoles.

Neighbor island tea parties are being planned for Hilo (starting at 4:00 pm) and Kahului, Maui (3:30 to 6:00 pm). Go to the Tax Day Tea Party website for more Hawaii information and links: <http://taxdayteaparty.com/teaparty/hawaii/>.

There are several other taxpayer protests planned for April, nationally and locally. The protests center around the already high tax burden — especially — on business and

Continued on page 8.

SBH MEMBER EVENTS
CALENDAR
PHONE 396-1724 • FAX: 396-1726

Monday, April 13
SBH Board of Directors
Noon • SBH Office

Wednesday April 15
Hawaii Taxpayer Tea Party
State Capitol • 4 – 7 pm

Thursday, April 30
SBH Sunrise Networking
Joshua Culling
National Taxpayers Union
Macy's Pineapple Room • 7 – 8:30 am

Friday, May 15
SBH Awards Banquet
Waialae Country Club • 5:30 – 8 pm

SmartBusiness
HAWAII

Joshua Culling of the National Taxpayers Union is April's SBH Sunrise Speaker

SBH's (Smart Business Hawaii) monthly **Sunrise Networking Breakfast** is Thursday, **April 30**, in the Pineapple Room, Macy's Ala Moana, 7 – 8:30 am. The program is timely.

Joshua Culling State Government Affairs Manager of the National Taxpayers Union will speak on "President Obama's Stimulus Package & Its Impact on Hawaii."

The NTU has been at the forefront of government tax and spending analysis. You will be able to separate fact from fiction on bailout and spending proposals during this talk.

Last month **Gwen Fujie** spoke on "Transforming "Business as Usual" to "Business Amazing."

Members at SBH Sunrise enjoy a complete buffet breakfast, free business exhibit area, networking, and business introductions to boost their business. Be smart, be there!

The public is welcome. Parking is free. Cost is \$25 for members and their guests who pay in advance; \$35 for non-members and at the door.

The reservation form is on page 8.

Clip it and send it in with your payment.

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SBH Awards Banquet May 15 Page 3
Legislature Threatens Tax Increases ... Page 5

Nicking the Taxpayer Again Page 9
More on Short Sales Page 10
SBH & Goodwill = Good Business Page 11

Hawaii Superferry & the Dysfunctional Supreme Court • Page 7



Smart Business Views

By Sam Slom, President – Small Business Hawaii

The death of the **Hawaii SuperFerry** on March 16 via the 5-0 ruling of the State Supreme Court puts another explanation point on Hawaii's hostile business climate and sets the stage for more anti-business special interest lawsuits. What shame. See story on page 7. The *Alakai* sailed away for Alabama on March 28.

The national hate **AlG** campaign is unprecedented and is class warfare at its worst. It shows what government as owner-employer is capable of. Special, punitive, ex post facto 90% tax rates — even though unconstitutional — show how clever politicians who really created these problems can pass them off to business and corporate employees. **AlG Hawaii, Inc.**, which was never involved in the parent company's dealings, still got tarnished. CEO **Robin Campaniano** sent out a lucid, rationale explanation.

As for **GM**: remember, "As goes **GM**, so goes America?" Corporate America is at full risk with **Obama**.

SBH now "**SmartBusiness Hawaii**" our official rebranding trade name. Look for many changes coming during this year.

SBH Board Member **Ed Case** made his long awaited announcement March 28 that he will run for Congress as a Democrat.

Paul Brewbaker left Bank of Hawaii as Chief Economist but continues as consultant and head of the Council of Revenues. The Council (March 12) further lowered Hawaii's revenue estimates and increased the deficit.

"Ben," the book, by former Governor **Ben Cayetano** (1994-2002) is a good read although he stings many of us in his personal opinion memoirs. The bestseller is now in its 2nd printing. **Malia Zimmerman** had a good interview with the "Bulldog Governor" on her O'lelo "News Behind the News" TV series.

The Ilikai was saved at the last moment and not closed after all. Residential and commercial units will be auctioned April 15.

Mike McCartney has yet another life. The former State Senator, Dem Party head, Hawaii Tourist Authority Board member, CEO of Hawaii Public Radio, head of the HSTA teachers union is now the new boss of the HTA. It pays to be a Democrat in Hawaii; you'll never be unemployed. Congrats Mike!

The HTA and NFL Pro Bowl contract still in the negotiating stage. Hawaii won't win.

SBH member (**HMAA**) **John Henry Felix**, is a leading candidate for the special 3rd District City Council race this month to re-

place **Barbara Marshall** who died last month. **Obama** on **Timothy (tax cheat) Geithner**: "He is as skilled a public servant as we have." Therein lies the trouble for all in business.

Déjà vu all over again: Primo beer is a hit again and will be exported to the Continental U.S. It is also coming out with new 22 ounce bottles — fit for a state lawmaker.

Nike Town closed in Waikiki. Tough times. Mesa Air ended its working agreement with Mokulele Airlines.

See you at the Honolulu Tea Party April 15 at the State Capitol. Bring tea.

JA Hawaii 2009 Business Laureates and **US SBA Awardees** at the Capitol during March. After all the kind words about business, the lawmakers went back to work to tax and mandate business to death.

What? California bans black cars in 2012.

The Department of Commerce and Consumer Affairs (**DCCA**) holds a free Financial Literacy Fair on Wednesday, April 8 at Tamarind Park in Downtown. As part of Financial Literacy Month in April, **DCCA's** Commissioner of Securities **Tung Chan** will provide financial education information, services and programs to the public. Exhibitors will offer free financial literacy information. Attend!

Grassroot Institute of Hawaii put **HawaiiVotes.org** online to see where your legislator stands and votes.

Remember when Senator Akaka, OHA and other supporters said there was no gambling in the Akaka Bill? Then it was amended (again) in January and that prohibition was removed. Akaka was amended (again) in March without gambling (again). Who to trust?

The City announced "free" bus passes for UH students. In small print it was announced that each UH student would now pay a new \$20 transportation activity fee.

Beware of "stimulus" scams trying to get your money to help get you **Obama** (taxpayer) money. You won't see any money.

Defense Secretary Gates said if the North Korean rocket approached Hawaii, he "might consider" shooting it down. Huh??

Next **SBH Sunrise Networking Breakfast** is Thursday, April 30, 7 am at the Pineapple Room at Macy's Ala Moana. Our speaker is the National Taxpayers Union's **Joshua Culling**, who speaks on: "Obama's Stimulus Package & Its Impact on Hawaii."

Was the Governor wrong in attacking employee bonuses at HawaiianTelcom?

Check our website at www.smallbusinesshawaii.com for updated alerts.

Ed Case to Make Run for Congress



Former U.S. Congressman and State Senator, **Ed Case** announced March 28 that he will run for Congress in 2010.

Case is a Democrat, attorney and member of the **SBH** Board of Directors.

He is widely known for his support of small business. In 2006 he challenged **Dan Akaka** for the U.S. Senate.

Case served in the U.S. House for 4 years between 2002 and 2007, representing the 2nd district.

SBH Co-sponsors Corporate Planners Lunch

SBH will join with the Hawaii Society of Corporate Planners to co-sponsor the HSCP's luncheon, **Thursday, April 16**, 11:30 am at the Hawaii Prince Hotel. The speaker is **KGMB-TV** economist, **Howard Dicus**. **SBH** discount. Reservation info: 537-2356.

SMALL BUSINESS NEWS

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Small Business Hawaii

dba SmartBusiness Hawaii

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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 3,000 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 news and commentary on issues in Hawaii. Send them to SBH by the **10th of the month**.

SmartBusiness

HAWAII

SBH is 'Smart Business Hawaii'

In line with our new branding, more interactive website (coming soon) and expanded programming, Small Business Hawaii (SBH) will be using our dba, "Smart Business Hawaii" beginning immediately.

In addition the newsletter will undergo a design change and the television show graphics will be updated.

SBH has always stood for success and the way to get there is to operate your business as smartly as possible using tips and strategies available from SBH online, at our events and from our staff.

The SBH Board of Directors approved the move in March and you will start seeing the changes regularly. For many years it was thought that the "small" was to limiting in our name and purpose since SBH has always helped all businesses regardless of size. Now, SBH can be even more effective.

Let us know what you think.

Your comments here: _____

Send in your comments to SBH • Fax 396-1726 • Mail: 6600 Kalaniana'ole Hwy. #212, Honolulu, HI 96825 • Ph. 396-1724

SBH Announces Annual Business Awards & Banquet

The annual SBH Business Awards will be presented at the annual business banquet, Friday, May 15 at the Waialae Country Club from 5:30 – 8 pm.

Until last year, from 1984, the SBH awards had been given during the annual business conference in January. Last year, the Directors felt it was better to carve out a special day and event to honor the business awardees and mid-May is now that time.

The awardees are chosen from SBH members and community leaders from nominees received by the Board of Directors and voted upon annually. The Directors also made several changes in the names of some of the awards to reflect SBH's new "Smart Business Hawaii" branding and to honor founder, Lex Brodie.

Awards for 2008 to be presented on May 15 include:

- SBH Lex Brodie Business of the Year — **First Hawaiian Bank, Inc** (celebrating 150 years of service in Hawaii).
- SBH Jean Fukuda Civic Leadership Award — **Debi Halcro**, Valenti Print Group for her service and leadership in behalf of many educational, business and charitable community organizations.
- SBH Young Entrepreneur of the Year

— **Emily Pick**, My Gym

• SBH George Mason Outstanding Business Reporting (co-winners): **David Shapiro**, *The Honolulu Advertiser* and **Sean Hao**, *The Honolulu Advertiser*

• Smart Business Success All Stars: **Kedric Dean**, Collection Management Services of Hawaii; **Arla & Walt Harvey**, East O'ahu Realty, Inc., and **Shelly Wilson**, Wil-

son Home Care.

The awards banquet and program is open to the public. Entertainment and Silent Auction included. Sponsorships available (contact Malia at 306-3161).

Advance reservations are required. Cost for the entire event including free parking is \$100 per person for SBH members and their guests. (Contact Darlyn at 396-1724).



Join us on May 15 at the Waialae Country Club for the SBH Awards Banquet.

Beware of a Fake Security One Company

By **Mary Paulson**, President, SecurityOne, Inc.

I'm Mary Paulson, President of Security One, Inc. We have been in business on Oahu since 1992 and I am writing to inform you of a business operating here illegally that is negatively affecting my company.

A mainland company calling themselves "Security One", "Security One, International" and "Security One Hawaii", with a sales manager by the name of **Art Hanneman**, is selling alarm systems door to door on Oahu. We are receiving daily calls from residents who were approached or bought alarm systems from this company and who want our assistance with a problem or complaint. Residents go to our website or yellow page ad, see our information, and assume they are dealing with a local, established company with a contractor's license as required by law. This company is using our success and reputation to profit without complying with State laws and regulations.

I have filed a complaint with the State DCCA and they are actively investigating this company. Investigation shows there is no business registration, or contractor's license listed under the name of this company. There are several "Salespersons" who leave only their cell phone numbers with customers or on paperwork.

I would greatly appreciate your assistance in informing the public of this company's activities.



HawaiiVotes.org is a new website by Grassroot Institute of Hawaii that helps voters track bills, reports on legislators and allows user comments through a message forum system.

Hawaii Voters Have New Online Tool

By **Tom McAuliffe**, Grassroot Institute of Hawaii, Inc.

There is now a powerful new tool for anyone interested in tracking the Hawaii state Legislature. Who serves in your district and how did they vote about a particular issue? How did the entire Hawaii House of Representatives or Senate vote on a specific bill? What does a bill really do rather than what it intends to do?

Who has missed the most votes? All the answers are now at your fingertips when you visit <http://www.HawaiiVotes.org>

'HawaiiVotes' is a free public service from the Grassroot Institute of Hawaii (GRIH), an independent, nonpartisan, nonprofit research, and educational institution. The purpose of the new site is to inform citizens, media, and public officials about legislation affecting their families, schools, jobs and communities.

"The new Web site empowers voters to hold their elected representatives accountable by being able to quickly and easily identify how their legislator voted on any bill or issue—from tax hikes, to gun rights, to teacher pay," said Grassroot Institute President **Jamie Story**. "We hope HawaiiVotes.org will demystify the democratic process for Hawaii's citizens. This is a tool whose time has come, and we are proud to present this gift to the people of this great state."

Foremost among the site's tools is its search engine, which facilitates searching by legislator, keyword, and 50 subject categories. Users also have instant access to concise, plain language, and objective descriptions of every single bill, amendment, and vote that takes place in the Hawaii state legislature.

Visitors can track all the votes of a particular legislator, or see how all legislators voted on a particular bill. Upon registration, users can also participate in the public forum and participate in surveys on current issues or bills before the Legislature.

HawaiiVotes is really the tool Hawaii voters have been asking for, and it's free, easy to use, fast and informative. Think of it as a giant spyglass on the Hawaii State Legislature. The forums also let you participate in community discussions on the issues.

Please visit the new site at <http://www.hawaiivotes.org> and let us know what you think.

CEOs Select Best, Worst States: Hawaii 41st

From *Chief Executive Magazine*

As the nation's unemployment figures continue to reach new heights, Chief Executive magazine's 2009 "Best & Worst States" survey took CEO's pulse on what the best and worst places for jobs and business growth are. For the fourth year in a row, CEOs rated Texas as the #1 state to do business and California as the worst.

Chief Executive's fifth annual survey asked 543 CEOs to evaluate their states on a broad range of issues, including proximity to resources, regulation, tax policies, education, quality of living and infrastructure. Providing additional insight to the evaluations, CEOs were also asked to grade each state based on the following criteria:

- 1) Taxation & Regulation,
- 2) Workforce Quality, and
- 3) Living Environment.

Hawaii ranked 41 worst.

See more about Hawaii's ranking here:

<http://tinyurl.com/bad41st>

See the full report here: <http://tinyurl.com/cyvufy>

SBH TV

Sundays @ 4:30 PM • OIelo TV Channel 54

SmartBusiness
HAWAII

Legislature Coming After More of Your Money

The 25th State Legislature which convened on January 21 and is fast heading for its May 7 adjournment. Lawmakers are now seriously looking at budget shortfalls – and many suggested tax increases.

Dozens of tax increase bills crossed over from both the House and Senate last month and most are still alive. They are bad for taxpayers and business of all sizes.

Among the very nasty tax bills being considered are the following:

SB 1346 – Increases the General Excise Tax to fund public education

SB 1678 – The so-called “Streamline Tax” bill, which will tax all out-of-state Internet and mail order purchases.

SB1611 – This proposes raising the following highway use taxes: liquid fuel by 10 cents per gallon; state vehicle registration fee by \$20; rental motor vehicle surcharge tax permanently to at least \$5 per day; and increase vehicle weight tax. (HB 1167 mirrors this bill.

SB38 – Increases the tobacco tax on products other than cigarettes from 40% to 60% of the wholesale price and deposits.

SB 199 – Sunsets and repeals all tax credits.
SB1111 – Increases the rate of the transient accommodations (hotel) tax beginning on July 1, 2009.

SB 1230 – Authorizes a tax on individuals and entities that transfer a stock ownership interest in a legal entity that owns real property located in Hawaii.

HB 39 – Adds a \$5 surcharge to fees charged by state agencies for certain services.

HB 560 – A new tax on liquor with funds going to new special fund for Veteran’s Services.

HB 1175 – Increasing the cigarette tax to 20 cents per cigarette.

HB 1271 – a tax increase collected on each barrel of petroleum product sold by a distributor.

HB 1518 – Authorizes vehicle towing companies to add GET to owners who leave a vehicle unattended on private or public property.

HB 1728 – Will allow administrative agencies the flexibility to increase fees.

HB 1735 – Advances the date of filing of a general excise monthly tax return from the last day of the calendar month following the month in which the taxes accrue to the 20th day of that month to generate a one-time windfall in revenue due to earlier collection



While the legislature is busy plotting ways to take more of your money through increased taxes and fees, they also took some time to honor those businesses and entrepreneurs who are still taking the risks to do business in Hawaii. One such group are the Small Business Administration’s awardees for 2009. They were honored last month in both the Senate and House chambers for their outstanding business achievements. Among the honored were: Phil Kahue, Barbara Haliniak, Tim Moore, Melissa Pavlicek, Agnes Reyes, Jean Jeremiah, Judy Aranaydo, Richard Xie, Michael Fairall, June Arakawa, Naomi Hazelton-Giambrone and Jayne Kim (seated). Senators standing included Galuteria, Sakamoto, Espero, Slom, Chun-Oakland, Baker, Tokuda and Fukunaga.

of taxes within the fiscal year.

HB 1744 – Suspends the distribution of TAT revenues to the counties for 6 years.

HB 1747 – Increases the income tax rate for income brackets of over \$100,000.

HB 1749 – Makes the insurance premium tax applicable to mutual benefit societies and health maintenance organizations.

SCORE Forum a Success!

The SCORE of Hawaii and Small Business Hawaii (SBH) joint business workshop on March 20, at the Waiālae Country Club. Was a success. Nearly 80 people attended the “Moving Your Business Forward in Today’s Economy” program which focused on assisting business entrepreneurs by providing insights, tools and resources to face today’s challenging economy.

Topics of discussion included: Restructuring Your Business for Survival, Renegotiating Your Lease; New Marketing Tools for the Evolving Economy; and Financing with Hawaii’s Top Lenders.

Luncheon keynote speaker was **Eddie Flores** of L&L Hawaiian Barbecue

What many legislators fail to realize is that all of the tax increases if passed have a very bad cumulative effect on individuals as well as businesses, organizations and visitors. It is bad enough that we have these tax increase proposals on the table. It will be worse if one or more of these pass and become law on top of the tax increases mandated by the State in the recent past as well as new ones being proposed by both the Federal and County governments. If anything, the state needs to do more belt tightening like families and small businesses finding new ways of funding or possibly cutting programs. Hawaii should not be among the most taxed states in the nation forever.

The latest updates to these and all other bills can be found at www.capitol.hawaii.gov.

The Honolulu Tax Day Tea Party is tentatively set for April 15 from 4 to 7 pm at the Hawaii State Capitol. Anyone who is against tax increases and excessive government spending should plan to be there.

Labor bills include the worst bill, the so-called “union Card” which would eliminate a secret ballot union election, give immunity to all union activities and target small business and agriculture.

Final Call for Member Sponsors & Vendors for 4th of July Event

In January it was reported that **Smart Business Hawaii** was partnering with Maunaloa Bay Foundation and others to help organize the 2nd annual East O'ahu 4th of July Celebration, Saturday, July 4, 2009.

SBH members and sponsors can still sign up by April 15. The emphasis is on food, fun and entertainment.

Here is the information you need:

Date and Time: Saturday, July 4, 2009.

The event begins at 2:00 p.m., with entertainers taking to the stage at the same time. The fireworks show begins at 8:00 p.m. (approx 20 minutes) from a barge located in Maunaloa Bay. The event ends promptly after the fireworks show.

Tent/Booths Basic Information: Tents are white in color and vaulted ceiling. Size is 10' x 10' and offered at \$470 for commercial use and \$270 for non-profit civic groups. Inclusive of fee are: tent set up & breakdown with backside flap, (1) 6' table and (4) chairs. Possible illumination post sunset to be confirmed 6/09. Else electrical power and sinks are the responsibility of the vendor. Company banner can only hang within the tent or on backside. Nothing is allowed outside of the tent. Standard name signage or tent numbering will be provided by IDMB event coordinators. No duplication of food sales. Bottle water sold exclusively by IDMB Foundation as an event/scholarship fundraiser.

Tent/Booth Location: Vendor tents will be located on the grassy area at the East entrance to Maunaloa Bay Park along Kalaniana'ole Highway & across from Roy's Restaurant. The area can accommodate up to 45 (10'x10') tents using the 2008 event layout.

Vendor requirements: Proof of Liability Insurance or deliver a Liability Indemnification absolving the Independence Day at Maunaloa Bay Foundation, the City and County of Honolulu and Small Business Hawaii of any liability resulting from the activity of their booth is required. Food booths/tents must provide a permit from the State Department of Health. Civic groups must have some form of activity, demonstration, or game to help promote the spirit of Friends, Family and Freedom.

Vendor is responsible to set up and breakdown as per event schedule

distributed by June 15, 2009. Clean up of vendor area during and after the event is the responsibility of the participant. Volunteers will offer whatever assistance we can with arrangements.

Questions can be directed to Elizabeth at 864-8081 and for applications and registration details contact Darlyn at **Smart Business Hawaii** (SBH) at darlyn_sbh@hotmail.com or stop in at SBH at 6600 Kalaniana'ole Hwy., Suite 212 (396-1724).

Some of the confirmed food and snack participants include: Subway Taco Del Mar Kahuku Corn Jamba Juice Bubbies Ice Cream Kale's shaved ice, popcorn, cotton candy, kettle corn and more.

Emphasis is on family fun and for the keiki there will be: Kikei I.D., face painting, spin the wheel, 3-D firework glasses and more.

CSA: Good Money After Bad?

In February 2007, the state auditor released a report on the Child Support Enforcement Agency (CSEA), a division of the Hawaii Department of the Attorney General.

This report came four years after a dismal 2003 CSEA report, which expounded upon the agency's lack of direction, lagging technology, poor efficiency, and underutilization of existing resources.

Despite CSEA's lackluster performance, \$3.5 million in state and federal funds were doled out to address its deficiencies in 2003. According to the state auditor, even with this large disbursement, agency operations have shown "minimal" improvement.

Yet in 2006, CSEA demanded even more money from the legislature—an additional \$3 million for IT improvements, \$2.5 million for computer system (KEIKI) enhancements and \$500,000 for an electronic file conversion. The legislature denied most of these demands based on the CSEA's demonstrated incompetence.

Reference

* The Auditor, State of Hawaii. Audit of the Child Support Enforcement Agency, Report No. 07-04. 2/2007. <http://hawaii.gov/auditor/Reports/2007/07-04%20oip%20opinion%2007-08.pdf>.

More facts like this in the recently released 2009 Hawaii Pork Report by the Grassroot Institute of Hawaii at:

<http://www.grassrootinstitute.org/Publications/2009PorkRpt.pdf>

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The Superferry and Hawaii's Dysfunctional Supreme Court

By **Sam Slom**, SBH President

The terrible 5-0 decision by the Hawaii State Supreme Court on March 16, 2009 in favor of the Sierra Club against the State of Hawaii and the Hawaii Superferry, is further evidence of the dysfunction of this court.

Several months ago this same Court ruled that a Congressional Resolution apologizing to the Native Hawaiian People by the United States in 1994 had the force of law and threw the ceded lands issue into controversy finally landing at the U.S. Supreme Court. The ramifications of this current ruling go far beyond a passenger ferry and the plain intent of Hawaii's laws.

The subsequent action by Hawaii Superferry to terminate its interisland passenger and freight service on March 19 after 11 months of daily sailings between Maui and O'ahu, to lay off its 260 remaining employees and to "shop around" for other out-of-state business for its ship the Alakai, was all predictable and tragic. The harm to Hawaii residents and especially small businesses from the Neighbor Islands will mount in coming months. But the court's action went further: It struck at the State Legislature's responsibility and separation of powers.

In siding with the California-based Sierra Club, the non-profit Maui Tomorrow, Inc., and an unincorporated Kahului Harbor Coalition against the representatives of the people—and granting the troika full attorney's fees and costs—the court went further and trespassed into legislative sovereignty while opening the door and encouraging environmental and other special interest lawsuits in the future.

And by the way, these groups who initially claimed interest in protecting the environment and warding off harm to whales, coral, and invasive species, were unmasked for their real motives: power, money and an anti-business mind set. For in the 11 months of sailings, after Superferry acquiesced to each and every demand of the state, the courts and these groups, and **no whales were harmed, no invasive species were spread and no harm came to the environment**; only low cost alternative choices for residents and businesses were provided.

The usual course of this case which began in the Maui Second Circuit Court, would have been to go to the state's Intermediate Court of Appeals. But the Supreme



The Hawaii Superferry was closed down by the State Supreme Court on March 16 after a ruling on a legal complaint filed by the Sierra Club of Hawaii that invalidated Act 2 which was passed into law by the Hawaii State Legislature and the Governor in 2007. The Superferry's ship, Alakai was taken out of service and left Hawaii waters on March 28. The closure of Hawaii Superferry is a huge blow to business and the public who appreciated the service as a vital travel and shipping option.

Court yanked the case—which it did have a legal right to do—and ruled on it directly.

Its unanimous ruling was that the Act 2 passed in the Special Session of 2007 to specifically address lower court concerns was unconstitutional. Not part of the law, which passed 39-12 in the House and 20-5 in the Senate, but all of it, including waiver of liability for the state and the original operating agreement between the state and the Hawaii Superferry. That is not common. Also uncommon was the fact that though the decision was 5-0, two of the Justices wrote dissenting opinions (Nakayama and Chief Justice Moon)

I was part of the 2007 legislative deliberations that led to Act 2. There was a lot of debate, hearings and community input. The process was open and transparent so that if it was thought what was being done was unconstitutional, someone would have said so—Lord knows there are enough attorneys to go around in and out of the Legislature. Of course, anyone can sue anyone for seemingly any purpose but the intent was clear: meet the law and provide Superferry with obligations they agreed to in exchange for sailing while an Environmental Impact Assessment was being completed (due by June 2009).

The presumption in law is that if a

legislative body passes a law it is constitutional unless proven otherwise beyond a reasonable doubt—the same standard for murder one. The Supreme Court said the Sierra Club did just that but evidence, legislative intent and reasonable minds would disagree.

The Court also found that the Legislature had passed a special and not a general law because only the Superferry could be bound by it. Further, the Court held its ruling on the basis that this action by the Legislature involved the state's ownership and use of its land. (Interestingly, the second Superferry vessel already completed and bound for the Big Island, is even more technically advanced than the Alakai and would not require any state land use for its passenger and freight embarking and disembarking).

It's true that Act 2 dealt with conditions for a "large passenger ferry" and that at the time only the Hawaii Superferry qualified. It was "special" viewed in that light. But the Legislature passes "special" laws all the time: health laws, tax laws, land laws. They have not been challenged in the past. Only Superferry now. Inquiring minds wonder why? Also, no other aircraft or surface vessels have been put to this scrutiny in the past.

This ruling appears overly broad, unrea-

Continued on page 8.

Hawaii Tea Party

Continued from page 1.

the expanded burden if the so-called Obama "stimulus" package advances. Several bills in the Hawaii State Legislature are being drafted to add new taxes or increase taxes and fees already in place.

A number of groups have banded together and requested taxpayers send a tea bag to their Congress people on April 1.

Additional information is available at HawaiiReporter.com, Small Business Hawaii (call Darlyn @ 396-1724) and at http://www.hawaii taxrevolt.com.

What would freedom be without protest?



TONGUE FU MASTER Gwen Fujie gave an energetic presentation at last month's SBH Sunrise Networking Breakfast. She spoke on how people and businesses can provide better customer service by maintaining a positive attitude with good communication techniques. This month, Joshua Cullin of the National Taxpayer Unions speaks at SBH Sunrise on April 30 starting at 7:AM in Macys' Pineapple Room.

New Search Feature Unveiled on Legislature's Website

A new feature is available on the Legislature's website, www.capitol.hawaii.gov, that makes it easy to find and access past and upcoming hearing notices on any measure. There are two ways to retrieve the information:

From the home page, click on the "Bill Status & Documents" link.

1. Type a measure number in the "2009 Regular Session Bill and Resolution Status, Text, and Committee Reports" box at the top of the page and click "Go."

After clicking on the status link for the measure, select the "Show Hearing Notices" link at the top of the status page, or

2. In the "2009 Regular Session Hearing Notices" box (2nd from the top), type in a measure number in the new "Search for hearing by bill number" area and click "Go."

Hawaii Superferry

Continued from page 7.

sonable and vague as to the separation of legislative and judicial powers. It could mean that major measures such as HB1309 (2005) that set in motion O'ahu's GET tax surcharge and rail transit is likewise special, land-related and therefore unconstitutional. So too the state's attempt at seizing Turtle Bay, special license for squatters in various valleys and state lands, and a bill that passed the Senate last week granting a 100-year ag moratorium for only two senate districts on O'ahu. There are many other county and state laws that may be similarly affected.

While the Governor mulls over a formal reconsideration of verdict by the Court, the Legislature is exploring an amicus brief to get further clarification and explanation from the Court on its obvious overstepping of its authority. Whether our Hawaii Superferry will ever sail again is still in doubt; whether this Supreme Court will continue its pattern of ill-advised decisions needs resolution now.

Sam Slom is the president of Small Business Hawaii and also serves as a State Senator in the Hawaii State Legislature from the Hawaii Kai to Kahala districts. You can reach Sam at sbh@lava.net or call SBH @ 396-1724.



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Joshua Culling, National Taxpayers Union
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Nicking the Hawaii Taxpayer Again

by **Lowell Kalapa**,
Tax Foundation of Hawaii

Everyone knows that the state, like others around the country, is facing a serious financial crisis as tax revenues ebb in the wake of the recession, but this would hardly be a time to raise taxes as families struggle to make ends meet.

Well, lawmakers appear to be shying away from raising any of the state's major taxes, such as the net income and the general excise tax, but that hardly prevents them from raising taxes on specific constituencies. In fact, if they can hit the well-heeled taxpayers, they think they might be able to get away with it. Such is the case of a proposal to levy a real property acquisition tax.

It appears that this measure is proposed to generate additional revenue by the imposition of a real property asset acquisition tax on all transfers and conveyances in the state, similar to the conveyance tax. Like the conveyance tax, revenues derived from this tax are also diverted to the rental-housing trust fund, the land conservation fund and the dwelling unit revolving fund.

While the intent of this measure is to provide an additional stable source of revenue, lawmakers need to remember the real estate market tends to be volatile. Although Hawaii has not suffered the severe depression of housing values like markets on the mainland, it nonetheless, is beginning to see signs of weakening demand for real property of all kinds.

As a result, the proposed new tax, like the conveyance tax, will no doubt experience sharp swings in the amount of money generated.



Although there are no rates currently in the bill, it appears that the tax rates would change depending on the size of the transaction, with more than likely higher rates on higher value transactions. No doubt, the thought is that if the property is more expensive, it is being purchased by a well-heeled taxpayer who can afford the higher tax rate. At least this seemed to be the logic behind the existing conveyance tax rates where the rates are highest on transactions that are more than a million dollars.

As with any tax, it is an additional imposition and the increase will be passed on to taxpayers and consumers. For example, residential properties will be increased by the additional tax borne by the property and commercial or industrial property owners will, no doubt, pass on the added costs of the tax to their consumers in the form of higher prices. Until a few years ago the conveyance tax was long recognized as not being a source for raising revenue.

Rather, it was implemented as a means by which to gather data for real property tax assessors and assist them in the valuation of property. Not only did lawmakers double the conveyance tax in 1993, but they earmarked the increases for specific programs, thereby ignoring the state auditor's concern about the creation of special funds and the proliferation of earmarked sources of revenues.

In 2005 lawmakers again increased the conveyance tax and structured it to increase as the value of the property rose and took specific aim at transactions that involved residential property that would not be owner occupied. This latter action demonstrated how not fully understanding the implication of this tax would impact other areas.

While on the one hand legislators are trying to encourage affordable rentals with all sorts of housing programs including the rental housing trust fund to which part of the conveyance tax accrues, on the other hand they made the acquisition of residential rental property more expensive, be it single-family or multi-family structures. In the case of the latter, such a transaction would probably involve a seven-figure valued property.

The current measure under consideration by lawmakers would also have the same effect on residential rental housing as well as on commercial and industrial real estate. This is just one more reason why investors shy away from setting up businesses in Hawaii. This is just not a way to balance the state's budget, especially at a time when the economy is in the doldrums.

It is becoming increasingly obvious that despite all the political rhetoric that Hawaii's people are over taxed, policymakers continue to search for more and more ways to heap another tax on a people that already find it difficult to make ends meet.

Although lawmakers are finding it a challenge to rein in spending, it hardly seems a time to add yet another burden on families who are already recognized as carrying one of the heaviest tax burdens in the country.

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Unfair Taxes to Cort: SBH, GRIH Support Amicus Brief

By **Pete Sepp**, National Taxpayers Union

Suppose executives from Company A, an over-the-counter medicine manufacturer, are told by their marketing team that their product, which they claim will relieve the common cold, is losing consumer appeal as well as money. Meanwhile, Company B, another firm in a similar line of business that has developed a different remedy, is winning over new customers and reaping additional profits as a result.

In a market-based economy where the laws of supply and demand rule, company A's executives would tell their marketing team to come up with a better ad campaign, or tell their researchers to come up with a new and improved product that will recapture their market share from Company B.

But suppose instead that Company A and Company B operate in a market where powerful politicians rule. Company A throws its dwindling supply of cash into lobbying public officials rather than competing honestly against Company B. Through pressure tactics, wining and dining "the right people," promises of electoral support, and campaign contributions, the lobbyists succeed in getting a new tax enacted on Company B whose revenues are transferred directly to Company A.

Most citizens who believe in the principles of fair play and limited government would find that scenario outrageous, almost impossible to believe. Well, prepare to be outraged.

In 2006, the Illinois Legislature invoked a 3 percent surcharge on Illinois' top-performing casinos. Those revenues, as directed by the statute, were to be transferred in whole to Illinois racetracks with no funds being contributed to state programs. That law sunsetted, but was strong-armed once again through the Illinois Legislature in November 2008.

The second bill earned notoriety after transcripts were released by the U.S. Attorney's office late last year. The 2008 legislation is alleged to be one of the pay-to-play schemes constructed by Rod Blagojevich, the scandalized former governor. He has been accused of trading his support for the bill for campaign donations from the racetrack industry.

However they feel about the gambling industry, each and every taxpayer ought to be concerned over this kind of arbitrary and

politically tainted policymaking. If taxes can be used simply as transfer mechanisms from unpopular industries or companies to popular ones, there is no limit to the economic mischief that public officials could make. America's tax system is already complex enough, much of it due to laws enacted out of political rather than fiscal or economic considerations.

According to a National Taxpayers Union study conducted last year, the cost for compliance with the federal tax system by corporations is \$156.5 billion. To put that figure into perspective, it represents 44 percent of the \$353.9 billion of corporate income taxes collected in FY 2006. Small business owners, meanwhile, face huge compliance burdens of their own. An IRS estimate published last year determined that self-employed taxpay-

ers who file Form 1040 and associated schedules toil the equivalent of a two-week paid vacation – over 80 hours in all – working for the IRS to satisfy the requirements of the tax laws.

Imagine how much worse this problem would be if the kind of blatant tax favor-trading embodied in the Illinois statute were allowed to take root across the country. Fortunately, taxpayer advocates are fighting back. After see-sawing back and forth through the Illinois judiciary system, a lawsuit against the tax by the casinos against the State Treasurer (Empress Casino Joliet Corp. v Giannoulis) may reach the door of the U.S. Supreme Court. Should the nation's highest court decide to hear the case, Illinois' odious tax and the flawed motivation behind it could

Continued on page 12.

Short Sales — Yet Again?

By **Walt Harvey** (R), East Oahu Realty



This is the fifth or sixth time I've written about short sales and the reason is that they are front page news across the nation including here in Hawaii! A recent story in Pacific Business News (Honolulu) dated 3/5/2009: "Report: 11 percent of homeowners delinquent or in foreclosure".

The story goes on to say that "the number of borrowers at least one month behind in their payments-but not in foreclosure-rose to nearly 8 percent during the fourth quarter of 2008. That is the highest rate of delinquency ever recorded by the survey, which began in 1972". This story comes the day after one in the same publication dated 3/4/2008: "Report: 6.2% of Hawaii homeowners 'underwater.'" This means their mortgage loan balances are greater than their property is worth. For a homeowner needing to sell, this can be a short sale situation.

For those who missed my last articles, a short sale is a situation where a seller needs to sell and the sale proceeds are not sufficient to pay off the existing mortgage and the selling costs.

A homeowner does not necessarily need to be behind on their mortgage for a lender to approve a short sale. We recently sold a property for a mainland seller that had to relocate due to a hardship, yet kept their mortgage payments current on the first and second as well as the homeowner association dues. The bank reduced the payoff amount over \$100,000 in approving the sale. The key, however, was the hardship!

Lenders are reluctant to reduce their payoffs just because the borrower wants out from underneath a loan that exceeds the property's value. If there is a true hardship, however, the lenders are more understanding.

Always remember, time is the biggest enemy when a property is in default. If you need to sell and are upside down, call an experienced Realtor immediately for a consultation. Don't delay! Waiting to see what temporary measures Congress or our State Legislature may enact could cost you your home and your credit.

Walt Harvey is a real estate broker with East Oahu Realty and is Quality Service Certified®. Walt partners with his wife Arla and together they specialize in residential, commercial and investment real estate. You can reach them on their website: www.coastalhawaii.com or call 375-8959 or toll free at 866-773-3351.

SmartBusiness Hawaii & Goodwill: Symbiosis

By **Crystal Allen**, Goodwill Industries of Hawaii

In science, symbiotic relationships often describe close, mutually beneficial, long term interactions between two different biological species. Both functioning in the same ecosystem of Hawaii, so to speak, are SmartBusiness Hawaii and Goodwill Industries of Hawaii. How can SmartBusiness Hawaii, a group of small business owners who strengthen Hawaii's economy, and Goodwill Industries of Hawaii, a non-profit organization getting Hawaii's residents back to work, possibly have a symbiotic relationship?

Goodwill Industries of Hawaii has helped people find employment since 1959. Last year, Goodwill served over 9,400 people through its career development, employment services, and education/training programs statewide and helped 1,800 individuals find employment in our community. Now, these individuals who would otherwise be dependent on government assistance or community services are attaining the self-sufficiency, dignity and confidence that work and a steady paycheck bring.

One specific program housed by Goodwill Industries of Hawaii is the SEE (Supporting Employment Empowerment) Program. This State of Hawaii initiative helps struggling families secure paid work experience with long-term employment prospects. By employing SEE program participants (who must pass a screening/application process), small business owners can give second chances to local members of our community.

How is the SEE program mutually beneficial and what benefits

would small business owners gain? Employers will be reimbursed the current Hawaii State Minimum Wage plus \$.50 for each additional \$1.00 per hour paid over the minimum wage for up to 40 hours per week. Employers will also be reimbursed an additional fourteen percent (14%) of the subsidized wages to cover training and employment related expenses, such as Unemployment Insurance, Workers Compensation and FICA. Reimbursement can be provided for up to 12 months, allowing the SEE employee to learn all facets of the job. Medical insurance for SEE employees may also be provided by the State for the SEE employee for the length of the agreement. Employers who assist the SEE employee with transportation to and from work can additionally be reimbursed up to \$200.00 per month.

As well as the above mentioned benefits, SEE employees are very loyal. Giving people second chances boosts their morale, productivity, performance, work ethic, and makes them more willing to be flexible on the job. Many SEE employees have been noted to work as hard as if the business were their own; because of the opportunity they've been given, SEE employees are very motivated to help the employer succeed. Talk about mutually beneficial relationship to make a difference, SmartBusiness Hawaii and Goodwill Industries of Hawaii, a symbiosis in Hawaii's economic ecosystem.

Crystal Allen is the Communications & Development Manager for Goodwill Industries of Hawaii, Inc., 2610 Kilihau Street, Honolulu, HI 96819. You may reach her at 808.792.8566.

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SMALL BUSINESS NEWS

April 2009

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Hall of Fame Honorees



Junior Achievement of Hawaii inducted three new laureates to the Hawaii Business Hall of Fame. They are shown holding Senate Certificates (left to right) Susanna F. Cheung of Hele-mano Plantation, Inc.; H. "Monty" Richards, Kahua Ranch, Ltd., and Dean Okimoto of Nalo Farms Inc. They are shown with Senators Robert Bunda, Fred Hemmings, Sam Slom, their associates and family. Junior Achievement of Hawaii has been in the islands for 52 years and has a mission to ensure that every child has a fundamental understanding of free enterprise.

What's Up With This?

Due to changing requirements mandated by the United States Postal Service, the mailing information section of this newsletter had to be changed by moving it to the top. Hopefully this allows the snail mail to get to you faster. Don't hold your breath!

Amicus Brief

Continued from page 10.

be stopped dead in its tracks.

That's where National Taxpayers Union, Grassroot Institute of Hawaii, Hawaiian Values, and Small Business Hawaii come in. These four organizations have joined with six other citizen groups and think tanks from across the country in filing a Friend of the Court, or amicus, brief urging the nine Justices to take up *Empress v. Giannoulis*.

The amici assert that a law forcing one segment of an industry to directly support another industry imposes a taking without just compensation in contravention to the Fifth Amendment of the U.S. Constitution. Furthermore, the brief argues, if the law at issue is not subjected to scrutiny under Amendment V's "Takings Clause," states everywhere (including Hawaii) may be inclined to enact similar subsidies – and with them a corrupt, undemocratic process that the Framers of the Constitution would have abhorred.

Taxpayers cannot afford to take a gamble with unethical political practices such as these. Unless the Supreme Court intervenes, the trend of levying discriminatory taxes will worsen, and taxpayers everywhere will suffer. And the disease will be harder to cure than even the common cold.