



DAVID Y. IGE
GOVERNOR

Governor Ige announces Intent to Veto list

FOR IMMEDIATE RELEASE

June 27, 2022

HONOLULU – Gov. David Ige notified legislative leaders and key lawmakers of his intent to veto 30 of the 343 bills passed by the Hawai'i State Legislature during the 2022 session. A complete list of bills on the Intent to Veto List submitted to the Legislature follows.

Gov. Ige is not required to veto every bill on this list, and he cannot veto any bills that are not on this list. He has until July 12 to make his final decisions on vetoes. Measures that are not vetoed by this date will become law with or without the governor's signature.

"Several factors went into my decision making, including legal considerations, program effectiveness, and compliance issues," said Gov. Ige.

Two bills are being considered for line-item vetoes:

HB1600: RELATING TO THE STATE BUDGET

Bill Description: Adjusts and requests appropriations for fiscal biennium 2021-2023 funding requirements for operations and capital improvement projects of executive branch agencies and programs.

SB2076: RELATING TO BROADBAND SERVICE INFRASTRUCTURE

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Bill Description: Requires the University of Hawai'i and the Hawai'i Broadband and Digital Equity Office (Office) to convene a working group to determine the appropriate governance structure to operate, maintain, and oversee broadband assets. Appropriates funds for three full-time positions for the office and a statewide broadband initiative to be administered by the University of Hawai'i.

Veto Rationale: These bills are being considered for line-item vetoes of specific appropriations, including the over-appropriation of federal funds. In addition, the State must operate within the federal Maintenance of Effort (MOE) requirements contained in the American Rescue Plan Act.

The other 28 bills being submitted to the Legislature today are:

HB1147: RELATING TO THE STATE BUDGET

Bill Description: Appropriates funds for fiscal biennium 2021–2023. This bill appropriates funds to the Hawai'i Tourism Authority, the Convention Center special fund, the State Office of Planning, and the University of Hawai'i.

Veto Rationale: This bill was originally introduced in the 2021 Legislative Session and contained appropriations for CIP projects for the State. This year, the conference committee removed the CIP projects, and operating appropriations for various state agencies for FY23 were inserted without public input. The amendment of the bill in conference could be subject to constitutional challenge for making a non-germane amendment to the bill (“gut and replace”) without allowing an opportunity for the Legislature or the public to sufficiently consider the bill. Because the bill provides needed funding for Hawai'i Tourism Authority, I am looking at other ways we can continue to support HTA operations without the risk of a court challenge.

SB1297: RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS TO ASSIST MAUIGROWN COFFEE, INC.

Bill Description: Extends the authorization to issue special purpose revenue bonds to assist MauiGrown Coffee, Inc., with the operation and expansion of its farm and mill.

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Veto Rationale: This bill is defective because it attempts to extend the bond authorization lapse date beyond five years in violation of section 39A-317, Hawai'i Revised Statutes.

HB1567: RELATING TO CRIMINAL PRETRIAL REFORM

Bill Description: Eliminates the use of monetary bail and requires defendants to be released on their own recognizance for certain nonviolent offenses, subject to certain exclusions. Requires the department of public safety to take steps to provide videoconferencing to a defendant who chooses to participate in a bail report interview via videoconference.

Veto Rationale: There has not been sufficient time since the Legislature made changes to the State's criminal pretrial system by Act 179, Session Laws of Hawai'i 2019, to fully assess the effect of the changes. The bill does not adequately address several important issues, including the need to secure the appearance of defendants and it deprives judges of the ability to exercise discretion on a case-by-case basis. The bill would mandate the automatic release of defendants that are charged with class C felonies that pose significant risks to public safety, such as felon in possession (firearm), burglaries in the second degree, arson in the third degree, riot, cruelty to animals, promoting a controlled substance in, on, or near schools, and extortion in the second degree.

HB1570: RELATING TO THE YOUTH VAPING EPIDEMIC

Bill Description: Bans the sale of certain flavored tobacco products and mislabeled e-liquid products. Establishes fines.

Veto Rationale: There was a late amendment to the definition of "flavored tobacco product" in this bill which exempted certain FDA approved tobacco products. This amendment essentially renders the bill ineffective since very few products would actually be included in this ban. In addition, the bill contains subjects that may go beyond its title in violation of the Hawai'i State Constitution.

HB1705: RELATING TO AGRICULTURAL PARK LEASES

Bill Description: Allows the Department of Agriculture to extend the agricultural park lease of any lessee who holds a lease with a remaining term of 15 years or less; provided that the land covered by the lease is 25 acres or less and located in a county with a population of less than 500,000.

Veto Rationale: The agricultural park program is meant to be a start-up program for new farmers and other small farm operations to become commercially established. This program is not meant to be a permanent space for lessees but rather a temporary environment to support new and expanding businesses. Many of the current lessees have had leases for close to 55 years, and there is a current wait list of over 200 applicants for new leases. This bill extends old leases by another 30 years and that extension can be repeated indefinitely. The largest hurdle that young farmers face is access to available and appropriately sized agricultural lands. Expanding opportunities for more farmers is important for our food security and allowing them equal access to this agricultural park program is one of the critical ways we can ensure growth in the agricultural industry.

HB1789: RELATING TO COLLECTIVE BARGAINING

Bill Description: Requires the representative of labor on the Hawai'i Labor Relations Board to be a person whose name has been selected by a simple majority of the exclusive representatives of the collective bargaining units and submitted to the governor for appointment. Requires the governor to submit the name of the nominee to the Senate for advice and consent no later than twenty days after exclusive representatives' submittal of the nominee's name to the Governor, and if the governor fails to do so, requires the exclusive representatives who recommended the nominee to transmit the nominee's name directly to the Senate for confirmation.

Veto Rationale: This bill diminishes the Governor's authority in appointing nominees to the Hawai'i Labor Relations Board. It would compel the governor to appoint a single individual selected by the exclusive representative of the

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collective bargaining units. The current practice is for the governor to make an appointment from a list of three nominees.

HB1980: RELATING TO TELEPHONIC SERVICES

Bill Description: Permits, but does not require or prohibit, Medicaid, health insurers, mutual benefit societies, and health maintenance organizations to cover telephonic behavioral health services under certain circumstances. Clarifies that telephonic services do not constitute telehealth.

Veto Rationale: While the intent of this bill is appreciated, its wording is vague and may allow insurance providers to restrict access to telephonic services. The vague wording can be construed to either restrict when a health plan may voluntarily provide coverage or provide purely permissive authority for health plans to provide coverage. This may prompt health insurance plans to restrict or exclude coverage for telephonic services due to concerns of compliance with this bill. This could especially impact patients in rural and underserved areas, those with limited digital skills, or those with limited access to reliable internet service.

SB2032: RELATING TO GENETIC INFORMATION PRIVACY

Bill Description: Establishes the Hawai'i Genetic Information Privacy Act. Requires direct-to-consumer genetic testing companies to adhere to certain requirements pertaining to the collection, use, and disclosure of genetic data. Establishes fines for violations. Allows the Office of Consumer Protection to bring civil action against violators.

Veto Rationale: The Office of Consumer Protection's (OCP) independent authority as consumer counsel for the people of Hawai'i should be preserved. While the bill's purpose to protect the consumers' privacy and confidentiality is admirable, the enforcement mechanism provided in the bill appears to be problematic. Specifically, the bill requires OCP to bring actions to enforce violations through the Attorney General, thereby depriving OCP of its primary purpose under section 487-5, Hawai'i Revised Statutes (HRS), to initiate actions for the violation of laws enacted for the purpose of consumer protection. In addition, it is not clear

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whether that a consumer would retain the right to file a claim for an unfair and deceptive trade practice under chapter 480, HRS, for a violation of the prohibitions or requirements set forth in the bill. The lack of clarity may inadvertently and undesirably deter consumers from filing their own claims against direct-to-consumer genetic testing companies under chapter 480, HRS.

SB2091: RELATING TO EXECUTIVE PARDONS

Bill Description: Establishes a comprehensive application process for executive pardons.

Veto Rationale: This bill requires the county prosecutors to provide relevant information or materials to the pardon applicant's packet. The increased amount of information would require additional staff time and resources to review, causing delays to the current pardon process which was recently streamlined by the Hawai'i Paroling Authority.

SB2142: RELATING TO COMPUTER SCIENCE

Bill Description: Allows Department of Education students to fulfill graduation requirements by taking world language, fine arts, career and technical education, or computer science courses. Establishes a scholarship at the University of Hawai'i to encourage students majoring in education to take a computer science course. Requires the University of Hawai'i to establish computer science pathways for students majoring in education. Requires teacher licensing and certification to include computer science. Appropriates funds.

Veto Rationale: This bill diminishes the power of the Board of Education to formulate statewide educational policy, as established by Section 3 of Article X of the Hawai'i State Constitution. While adding Computer Science as a graduation requirement is a good idea, it is a decision best left to the expertise and constitutional authority of the Board of Education. More concerning is the additional admissions requirements for the University of Hawai'i system, which would be applicable to all campuses. Community colleges have an open admissions policy and do not have academic-based admissions requirements. This

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bill could result in barriers to education that would impact non-traditional and disadvantaged people who seek higher education.

SB2347: RELATING TO CONSTITUTIONAL AMENDMENTS

Bill Description: Requires the language and meaning of any proposed constitutional amendment and ratification question to be simple, concise, and direct to the extent practicable. Allows the presiding officers of the Legislature to request a written opinion of the supreme court regarding the legality of a proposed constitutional amendment and ratification question.

Veto Rationale: This bill requires the Supreme Court to issue written opinions within fifteen days on the legality of a proposed constitutional amendment or ratification question when requested by the presiding officers of the Legislature. The bill provides that the court's written opinion is not appealable, which limits further judicial review, especially by those who were not allowed to participate in the court's consideration of the issue. Advisory opinions generally do not have a detailed factual record or the benefit of prior legal analysis or advocacy from adverse interests regarding the issues that a proposed constitutional amendment often presents. Therefore, this bill can undermine the informed judicial decision-making process.

HB2424: RELATING TO CHILD WELFARE SERVICES

Bill Description: Expands the investigative authority of the Department of Human Services (DHS) to include families with foster children with a pending adoption decree or for whom an adoption decree has been issued but adoption has not yet taken place, children who are placed into legal guardianship and who receive permanency assistance payments, and adopted children who receive adoption assistance payments, and against whom a complaint has been filed with DHS at any time. Requires DHS to analyze and report on the impact of expanding home visits to families receiving adoption assistance or legal guardianship assistance. Establishes the Malama Ohana working group to seek, design, and recommend transformative changes to the State's child welfare system. Appropriates funds to increase the procurement of contracted services to provide additional support,

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resources, and monitoring of families receiving benefits from the State's adoption assistance and permanency assistance programs.

Veto Rationale: This bill seeks to require the Department of Human Services to monitor and surveil families that have adopted or taken guardianship of former foster children, so that the families can never live free of government intrusion in their lives, a right which all other families take for granted. Although the trauma experienced by the community over the loss of a former foster child is real and cannot be dismissed, the solution cannot be to violate the constitutional privacy rights and basic dignity of every family that has taken in and provided love and stability to a former foster child. For example, the expanded authority to Department of Human Services could be used by a child's abusive biological parent to initiate repeated investigations of the child's new family, in an effort to disrupt the child's adoptive home, thereby preventing the child from ever feeling safe and stable in their new home.

In addition, the bill was amended in conference committee, without notice to the public or an opportunity for input from the public, including adoptive families and former foster children. I urge the Legislature to propose legislation in a new form next session to give the community an opportunity to testify and comment on all portions of the bill. As a community, we have an obligation to every child to provide a safe, stable, and loving home and I am hopeful that the legislature will work towards meeting that obligation.

HB2466: RELATING TO TARO

Bill Description: Exempts the gross proceeds or income received from the sale of any product resulting from the cultivation and production of unprocessed taro from the general excise tax. Repeals 6/30/2027.

Veto Rationale: The intent of the bill was to provide a GET exemption that is only available to taro farmers. Taro farmers are generally subject to GET at the wholesale rate of one-half of one percent. The bill is not consistent with bill's intent because it also allows the GET exemption to be claimed by certain retail sellers, not just taro farmers. As written, retail sellers such as drug stores, convenience stores, and restaurants would qualify for the GET exemption if they

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sold items in which the primarily ingredient is taro, such as poi or taro chips. This would make the exemption very difficult to administer for the Department of Taxation and confusing for the retailers.

SB2510: RELATING TO RENEWABLE ENERGY

Bill Description: Establishes a state energy policy that requires at least 33.33 per cent of renewable energy to be generated by firm renewable energy. Establishes requirements for the State to maintain a diversified renewable energy portfolio. Amends statutory provisions to achieve firm renewable energy generation for each island. Excepts geothermal energy production from limitations on energy production from a single renewable energy source. Prohibits fossil fuel generation after December 31, 2045, except in circumstances where unavailability of renewable fuels would require limited use of fossil fuels to maintain grid reliability. Requires the Office of Planning and Sustainable Development to update the energy state functional plan. Requires the Hawai'i Natural Energy Institute to conduct a study on the minimum percentage of firm renewable energy. Appropriates funds. (CD1)

Veto Rationale: This bill could prevent our achieving the goal of generating power from 100% renewable, clean energy sources by 2045. This bill mandates a minimum "firm" renewable energy based on a flawed understanding of energy reliability but leaves open to interpretation how to address evolving, hybrid technologies and how to calculate the percentage. Yet, depending on how the percentage is calculated, some islands would immediately be out of compliance. Each interpretation results in different percentages, leaving open to interpretation how much more "firm" renewable energy would be needed to satisfy the minimum requirement. This bill does not account for the natural resources or the physical, technical, social, or economic constraints each island has. In the case of Oahu, there is limited land for bioenergy, limited hydropower opportunities, and unproven geothermal resources, making it unclear whether O'ahu can provide the minimum percentage as defined by the bill. This means that some form of renewable fuel would likely need to be imported at higher cost, and contrary to our goals to increase energy independence and security. This bill potentially shuts down all current renewable energy projects for homeowners, businesses, utilities, and independent power producers. Because this bill requires

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a minimum of 33.33% "firm" renewable energy, and until an island meets that percentage, no other renewables may be allowed, unless OPSD issues a waiver for it or OPSD's opposition to a waiver overruled by the governor.

This bill changes the State Planning Act from general guidance to singling out energy for special oversight by the Office of Planning and Sustainable Development (OPSD) and ultimately the governor. This overrides the expertise of energy agencies by substituting the functional agency lead, the State Energy Office, and the regulatory agency lead, the PUC, with OPSD. This bill compromises the independence and integrity of the Public Utilities Commission by giving OPSD and the governor the ability to overrule PUC decisions.

SB2511: RELATING TO TAXATION

Bill Description: Expands the renewable energy technologies income tax credit to include firm renewable energy systems and long-duration renewable energy storage systems. Caps the amount of credit that may be claimed by a taxpayer and the total amount of tax credits for certain firm renewable energy systems and long-duration renewable energy storage systems that may be claimed in a taxable year. Specifies that the income tax credit is available for eligible systems that are placed in service before 1/1/2046.

Veto Rationale: This bill has a significant administrative flaw in that it creates an aggregate \$20 million cap without designating a certifying agency to ensure that the aggregate cap is not exceeded. Further, the bill requires tax credits to be prorated if the cap is exceeded, but because the tax credits are processed when received, taxpayer's claims for credit after the cap is exceeded will have to be denied, prorated, or adjusted, and those taxpayers may incur a tax liability with penalties and interest. The uncertainty about whether a credit will actually be available when claimed could have a chilling effect on the willingness of the public to install new renewable energy systems.

SB2623: RELATING TO THE HAWAIIAN HOMES COMMISSION ACT

Bill Description: Excludes from any waiting list maintained by the department of Hawaiian Home Lands any lessee or successor who sells or transfers their lease on a tract of Hawaiian Home Lands for personal gain.

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Veto Rationale: There is already a system in place for DHHL to prioritize new lessees and minimize the problem this bill purports to solve. The bill therefore would not have appreciable impact on other waiting list applicants' ability to receive homestead lease awards.

SB2707: RELATING TO COLLECTIVE BARGAINING

Bill Description: Requires the employer to initiate negotiations on repricing of classes within a bargaining unit within thirty days of the employer's receipt of the exclusive representative's written request to negotiate. Establishes that the employer's failure to initiate the negotiation within such time frame or the parties' failure to reach an agreement within ninety days of the exclusive representative's written request to negotiate or by January 31 of a year in which the collective bargaining agreement is due to expire, whichever is earlier, constitutes an impasse to which the impasse procedures in section 89-11, Hawai'i Revised Statutes, shall apply. Effective 7/1/2022.

Veto Rationale: The mandates of the bill will undermine the current classification and pricing system and could result in claims of unequal pay or discrimination. Repricing requires a technical analysis, including knowledge about the subject class and training in factors that determine pricing. There would no longer be a consistent application of criteria if multiple arbitration panels make repricing determinations. Furthermore, the existing negotiated repricing process already provides the unions with opportunity to submit negotiated repricing requests.

SB2824: RELATING TO THE BOARD OF EDUCATION

Bill Description: Amends the minimum qualifications for Board of Education members.

Veto Rationale: The bill requires the BOE to collectively have knowledge, experience, and proven expertise for thirteen areas, where only eleven positions are available. Education is only one of the thirteen areas listed in the bill; the other twelve areas of expertise are corporate-focused and unrelated to the

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oversight of a statewide public education system. Compliance with this bill would virtually guarantee that educational experts will be far outnumbered in the BOE's composition and could be excluded from consideration for appointment altogether.

SB2989: RELATING TO AGRICULTURE

Bill Description: Requires the Department of Agriculture to establish a Healthy Soils Program. Appropriates funds.

Veto Rationale: This bill requires expansive resources to operate a responsible, transparent and effective statewide program. This bill does not provide the resources or guidance to create what would amount to a new division within the Department of Agriculture. A similar bill, SB2056, which also passed this session requires the Office of Planning and Sustainable Development along with the Department of Agriculture to undertake a soil classification study for the future regulation of agricultural lands.

SB3089: RELATING TO EMERGENCY MANAGEMENT

Bill Description: Clarifies that powers granted for emergency purposes shall not be inconsistent with the State Constitution. Provides for greater clarity and specificity regarding the scope of suspensions of law. Authorizes the governor to require counties to obtain approval before issuing any emergency order, rule, or proclamation. Clarifies the legal framework governing the extension and termination of emergency periods. Allows the Legislature to terminate a state of emergency. Clarifies that the governor may re-declare a state of emergency that has been terminated. Specifies when certain prohibitions during an emergency or a severe warning expire. Defines "severe warning".

Veto Rationale: This bill would interfere with the Governor's duties and legal obligations to provide for the public health, safety, and welfare by limiting his ability to determine the duration of an emergency. It could also jeopardize counties' ability to get disaster relief through the Federal Emergency Management Authority if the state of emergency is terminated prematurely. A

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premature termination of a state of emergency will create an impossible situation where county mayors will have to rely on their limited emergency powers to respond to an emergency without State assistance. This latter situation, if allowed, could jeopardize federal assistance, which generally requires the State to provide assistance before counties receive federal assistance. Additionally, because the county mayors lack the authority to suspend state laws, their emergency responses during a local state of emergency are still confined by state laws, including the laws that regulate driver's license expiration dates and gun registration deadlines. A gubernatorial state of emergency needs to be in place to suspend state laws that may affect counties' ability to effectively respond to emergencies. A premature termination of a state of emergency may significantly impede counties' emergency management capabilities.

SB3172: RELATING TO PUBLIC AGENCY MEETINGS

Bill Description: Requires that any electronic audio or video recording of a board meeting be maintained as a public record, regardless of whether the written minutes of the board meeting have been posted. Amends the information that must be included as part of the written minutes of board meetings to include, among other things, time stamps linked to the recording, if the meeting was recorded. Repeals the option for boards to provide recorded minutes accompanied by written summaries as an alternative to written minutes of board meetings.

Veto Rationale: This bill will place unmanageable burdens on boards, particularly small boards that have no staff and rely entirely upon volunteers. The current option for boards to provide a recording of the meeting with a time-stamped summary of the meeting instead of detailed written minutes allows the public to learn what occurred at the meeting faster than if this bill becomes law.

SB3179: RELATING TO THE DEPARTMENT OF LAND AND NATURAL RESOURCES

Bill Description: Requires the Department of Land and Natural Resources' Division of Forestry and Wildlife to adopt rules and issue funds to licensed hunters at a per unit rate for feral axis deer herd management.

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Veto Rationale: Bounty programs to manage feral animal populations have been found to be ineffective and invite problems of fraud and trespass. The Department of Land and Natural Resources is already working on this issue and has a task force to reduce the axis deer populations in Maui County.

SB3201: RELATING TO NON-PROFIT ORGANIZATIONS

Bill Description: Clarifies the application of the general excise tax law with regard to gross income derived from unrelated trade or business activities of nonprofit organizations.

Veto Rationale: Qualifying nonprofit organizations are currently subject to GET for fundraising activities. The intent of the measure was to change current law to exempt GET on fundraising activities. Unfortunately, the measure will have the unintended consequence of making certain types of income currently exempt from the GET subject to tax. Thus, this measure will affect some nonprofit organizations unexpectedly and negatively.

SB3229: RELATING TO GEOTHERMAL ROYALTIES

Bill Description: Caps the amount of royalties from geothermal resources that are to be paid to the State and to the county in which the geothermal resources are located. Deposits royalties into the University Innovation and Commercialization Initiative Special Fund, to be expended by the Hawai'i Groundwater and Geothermal Resources Center, to further the discovery and development of geothermal resources. Requires the entities that received geothermal royalties to submit an annual report to the Legislature.

Veto Rationale: The Department of Land and Natural Resources is required to manage the programs that regulate certain aspects of geothermal development and energy. This bill includes a proposed cap that diverts funds from critical DLNR programs that regulate geothermal development and energy. The cap is insufficient to cover the operating costs of these programs.

SB3252: RELATING TO PUBLIC RECORDS

Bill Description: Beginning 7/1/2023, imposes a cap on the costs charged for the reproduction of certain government records; waives the cost of duplication of government records provided to requestors in an electronic format; imposes a cap on costs charged for searching for, reviewing, and segregating records; and provides for a waiver of fees when the public interest is served by a record's disclosure. Appropriates funds for positions.

Veto Rationale: This bill will have a significant adverse impact on government agency operations. The full waiver of search, review, and segregation fees for virtually all records requests, acts as a disincentive for records requesters to narrow the scope of their requests, thus resulting in overbroad requests. Agencies do not have dedicated personnel to respond to these requests and many will be unable to comply without paying for overtime or more staff. There may be more UIPA lawsuits, which will increase costs to government agencies through awards of attorneys' fees and costs to plaintiffs filing those lawsuits. As a result, agencies may be forced to choose between responding to records requests and performing their regular jobs.

SB3272: RELATING TO TRANSPORTATION

Bill Description: Requires the Director of Transportation to adopt rules to require tour aircraft operations to report details of each flight taken by the tour aircraft operation on a monthly basis. Establishes the Air Noise and Safety Task Force.

Veto Rationale: Because of federal preemption, the Department of Transportation has no authority to impose or enforce regulations regarding air space and aircraft operations under the jurisdiction of the Federal Aviation Administration. Therefore, the actions of the Department of Transportation can take based on the additional reports and disclosures will be limited and unlikely to produce the bill's desired results.

SB3311: RELATING TO TRANSPORTATION

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Bill Description: Establishes long-term goals for zero emissions transportation in Hawai'i and abroad to reduce and eliminate transportation emissions. Establishes the interisland transportation working group. Establishes the electric vehicle sales growth working group. Requires annual reports to the Legislature.

Veto Rationale: The bill's intent is already being fulfilled through current collaboration between state agencies and industry and public stakeholders. The bill establishes two working groups, both of whose work would duplicate current initiatives to support clean transportation and to achieve Hawaii's clean energy goals. There is also no funding allocated in the Department of Transportation to lead these working groups, support their work, and produce annual reports to the Hawai'i Climate Change Mitigation and Adaptation Commission and Legislature.

SB3335: RELATING TO THE CIVIL AIR PATROL

Bill Description: Appropriates funds for operational expenses of the Hawai'i Wing of the Civil Air Patrol.

Veto Rationale: It is unclear whether these funds would be provided through a contract or grant but both pose challenges. The Hawai'i Wing of the Civil Air Patrol is not registered in good standing with the Department of Commerce and Consumer Affairs. In addition, CAP has not applied for a grant-in-aid this year. Allowing the Legislature to provide funds to private entities without complying with the standards for the award of grants in chapter 42F, Hawai'i Revised Statutes, is prohibited by the Hawai'i State Constitution.

Governor Ige also announced today that he signed 105 more bills into law bringing the total number signed so far this year to 220.

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