

FIFTY-THIRD DAY

Friday, April 20, 2007

The House of Representatives of the Twenty-Fourth Legislature of the State of Hawaii, Regular Session of 2007, convened at 12:06 o'clock p.m., with the Speaker presiding.

The invocation was delivered by Ms. Mandie Pearson, legislative aide of Representative Kirk Caldwell, after which the Roll was called showing all members present with the exception of Representatives Cabanilla, Green, Souki, Takai, Takamine, Takumi and Thielen, who were excused.

By unanimous consent, reading and approval of the Journal of the House of Representatives of the Fifty-Second Day was deferred.

GOVERNOR'S MESSAGES

The following messages from the Governor (Gov. Msg. Nos. 343 through 345) were received and announced by the Clerk and were placed on file:

Gov. Msg. No. 343, dated April 16, 2007, transmitting the Hawaii Brownfields Cleanup Revolving Loan Fund Annual Report.

Gov. Msg. No. 344, informing the House that on April 19, 2007, the following bill was signed into law:

H.B. No. 1376, entitled: "A BILL FOR AN ACT RELATING TO PETROLEUM-CONTAMINATED SOIL." (ACT 025)

Gov. Msg. No. 345, informing the House that on April 19, 2007, the following bill was signed into law:

H.B. No. 1294, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND." (ACT 026)

SENATE COMMUNICATIONS

The following communications from the Senate (Sen. Com. Nos. 835 through 838) were received and announced by the Clerk:

Sen. Com. No. 835, dated April 19, 2007, informing the House that the Senate has made the following changes to Senate Conferee assignments for the following bills:

H.B. No. 1931, Senator Menor added as a Co-Chair.
SD 1

Sen. Com. No. 836, dated April 19, 2007, informing the House that the Senate has made the following changes to Senate Conferee assignments for the following bills:

S.B. No. 750, Senator Trimble discharged as conferee.
SD 3, HD 2 Senator Hemmings added as conferee.

Sen. Com. No. 837, transmitting H.C.R. No. 291, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE WORLD HEALTH ORGANIZATION TO CONFER "OBSERVER STATUS" UPON TAIWAN IN ORDER TO PERMIT TAIWAN'S PARTICIPATION IN THE WORLD HEALTH ORGANIZATION'S PROGRAMS AND ACTIVITIES," which was adopted by the Senate on April 19, 2007.

Sen. Com. No. 838, dated April 19, 2007, informing the House that the Senate has made the following changes to Senate Conferee assignments for the following bill:

H.B. No. 1630, Senator Sakamoto added as conferee.
HD 2, SD 2

INTRODUCTIONS

The following introductions were made to the members of the House:

Representative Marumoto, on behalf of Representative Nishimoto and herself, introduced 5th grade students of King Liholiho Elementary School, and their teachers, Mr. Alan Wong, Ms. Sharon Harauchi and Mr. Ryan Towata.

Representative Mizuno introduced his friend, Mr. John Shaw, Worker's Compensation Hearings Officer with the Department of Labor and Industrial Relations. Mr. Shaw was accompanied by Representative Mizuno's legislative aide, Ms. Ashley Malabey.

Representative Lee introduced Mrs. Mary Ng of Mindoro City and Pasig City in the Phillipines. She is an expert on Phillipine textile and author of the book, *Natidado Binwag Weaves the Bongo*.

Representative Chang, on behalf of Representative Tsuji and himself, introduced Mr. Larry Nakayama of Hilo.

Representative Berg introduced Mrs. Chowdhury, wife of UN Undersecretary General Anwarul K. Chowdhury; Mr. Hiro Sakurai, Soka Gakkai International representative to the United Nations; Mr. Danny Hall, Chair of SGI-USA Youth Peace Committee; Ms. Joanne Tachibana, President of the United Nations Association of Hawaii; and Ms. Tammy Makizuru-Higa, member of the United Nations Association of Hawaii. They were accompanied by Representative Berg's Committee Clerk, Ms. Liz Labby.

Representative Berg then introduced Ambassador, Anwarul Chowdhury, of Bangladesh, United Nations Undersecretary General who was seated on the floor of the House.

At this time, the Chair invited Ambassador Chowdhury to the rostrum, and the Ambassador addressed the House of Representatives as follows:

"Mr. Speaker, distinguished Representatives and the young children over there, I am absolutely delighted to be present in this House of the people in Hawaii. Hawaii has a rich history of living in harmony. In harmony with nature, in harmony amongst its diverse mix of ethnic backgrounds, in harmony with the environment and now a wonderful harmony of distinguished representatives and the younger generation in this House. I am absolutely delighted to be here.

"I'm here to speak tomorrow at the Aloha Peace Forum on an event which is titled, "Building a Culture of Peace and Ensuring their Right to Human Security". The concept of security is transiting through a great change. It's no longer security of territories, but it is about security of people. It is security of individuals, rather than security of nations. It is security achieved through development, rather than through armaments. It is security for all people everywhere: in our streets, in our homes, in our schools, in our jobs, in our living environment. And that is what we are emphasizing tomorrow as we talk about the right to human security. Our nations can be all powerful, but if each one of us felt insecure in our own environment, we will not achieve the quality of life that we are all seeking for everybody.

"The quest of human security is individual and it is global. Insecurity anywhere is insecurity for all of us, and I believe it is very important that we need also to understand that poverty creates a serious challenge to security. That is what I do on a daily basis as a

representative of the United Nations; to work for the poorest, the weakest and the most vulnerable countries of the world.

"And I believe that this is a challenge, which probably doesn't stop at national boundaries. There are problems which create insecurity for all of us. Drugs, terrorism, trafficking of human beings, this is what we need to ensure that these problems without passports need to be addressed by all of us together. At the heart of this effort should be the young people, and we believe that the present generation, we the adults, have somehow failed to make the world more secure, but we should not fail our future generations. If the present generation does not prepare the world for the future, neither the future nor the present will be secure.

"So it is very important for us and I'm very happy that at least the young people, the fifth graders are able to listen to this. We need to involve them more in our work. Sometimes we say they are our future leaders. I believe that they are our present leaders. The decisions that we make, that you make in your legislative assemblies affect all of them so they should be part of this process, they should be involved.

"I must pay tribute to you for your position on the Convention on the Rights of the Child, and for the Global Youth Center that you have just approved, and for all the support that you have provided to the Earth Charter. We are delighted, as representing the United Nations my felicitation to you, each one of you, for supporting these very commendable initiatives in the world.

"I would also like to propose that you please include education for peace in your curriculum, in the curriculum at all levels, at the elementary to the university. Everywhere, peace studies should be part of growing up. And I believe that way we can make the world a better place. Thank you very much."

ORDER OF THE DAY

COMMITTEE REASSIGNMENTS

The following bills were re-referred to committee by the Speaker:

<u>H.B.</u> <u>Nos.</u>	<u>Re-referred to:</u>
1270, HD2, SD2	Committee on Economic Development & Business Concerns, then to the Committee on Legislative Management, then to the Committee on Judiciary, then to the Committee on Water, Land, Ocean Resources & Hawaiian Affairs, then to the Committee on Finance
1277, HD2, SD3	Committee on Economic Development & Business Concerns, then to the Committee on Tourism & Culture, then to the Committee on Human Services & Housing, then to the Committee on Finance

The following concurrent resolutions were re-referred to committee by the Speaker:

<u>S.C.R.</u> <u>Nos.</u>	<u>Re-referred to:</u>
31, SD1	Committee on Judiciary
73, SD1	Jointly to the Committee on Higher Education and the Committee on Labor & Public Employment
98, SD1	Committee on Transportation

173 Committee on International Affairs

STANDING COMMITTEE REPORTS

Representative Souki, for the Committee on Transportation presented a report (Stand. Com. Rep. No. 2084), recommending that S.C.R. No. 155, SD 1, be referred to the Committee on Finance.

On motion by Representative Caldwell, seconded by Representative B. Oshiro and carried, the report of the Committee was adopted and S.C.R. No. 155, SD 1, entitled: "SENATE CONCURRENT RESOLUTION ESTABLISHING A KAPAA QUARRY ROAD SAFETY TASK FORCE TO CONDUCT A STUDY TO DEVELOP AND RECOMMEND TRAFFIC SAFETY MEASURES FOR KAPAA QUARRY ROAD IN ORDER TO ALLEVIATE DANGEROUS ROAD CONDITIONS AND REDUCE HAZARDOUS DRIVING PRACTICES," was referred to the Committee on Finance with Representatives Berg, Cabanilla, Green, Souki, Takai, Takamine, Takumi and Thielen being excused.

Representative Chang, for the Committee on Higher Education presented a report (Stand. Com. Rep. No. 2085), recommending that S.C.R. No. 137, be referred to the Committee on Finance.

On motion by Representative Caldwell, seconded by Representative B. Oshiro and carried, the report of the Committee was adopted and S.C.R. No. 137, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE UNIVERSITY OF HAWAII TO DESIGN A LONG-TERM COMPREHENSIVE FINANCIAL PLAN," was referred to the Committee on Finance with Representatives Berg, Cabanilla, Green, Souki, Takai, Takamine, Takumi and Thielen being excused.

Representative Shimabukuro, for the Committee on Human Services & Housing presented a report (Stand. Com. Rep. No. 2086), recommending that S.C.R. No. 91, SD 1, be referred to the Committee on Finance.

Representative Caldwell moved that the report of the Committee be adopted, and that S.C.R. No. 91, SD 1, be referred to the Committee on Finance, seconded by Representative B. Oshiro.

Representative Lee rose in support of the measure and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Lee's written remarks are as follows:

"Mr. Speaker, I am in support of this measure. Mr. Speaker, the U.S. is not only the leader of the democratic world, but the organizations found within its borders also take the lead among similar organizations in other countries. These countries look to U.S. organizations for leadership and methodologies. No where can this be more prevalent than in Hawaii; the link between East and West.

"Mr. Speaker, this Resolution asks the Hawaii State Commission on the Status of Women, which is mandated to act as a central clearinghouse and coordinating body for governmental and nongovernmental activities and information relating to the status of women, to convene a network of organizations for the support and development of local and international organizations addressing domestic violence and sex assault issues. It also requests that the Commission report back to the Legislature on the success of the network and the international training, including recommendations for further training and international networking opportunities to address issues of domestic violence and sex assault.

"This Resolution will not only help the people of Hawaii, but will help organizations dealing with domestic violence and sex assault in other countries. I urge my colleagues to support this Resolution. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.C.R. No. 91, SD 1, entitled: "SENATE CONCURRENT RESOLUTION CONVENING AN INTERNATIONAL NETWORK ADDRESSING DOMESTIC VIOLENCE AND SEX ASSAULT," was referred to the Committee on Finance with Representatives Berg, Cabanilla, Green, Souki, Takai, Takamine, Takumi and Thielen being excused.

Representative Shimabukuro, for the Committee on Human Services & Housing presented a report (Stand. Com. Rep. No. 2087), recommending that S.C.R. No. 147, SD 2, be referred to the Committee on Finance.

On motion by Representative Caldwell, seconded by Representative B. Oshiro and carried, the report of the Committee was adopted and S.C.R. No. 147, SD 2, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE HAWAII PUBLIC HOUSING AUTHORITY TO REPORT ON PROJECT SPENDING," was referred to the Committee on Finance with Representatives Berg, Cabanilla, Green, Souki, Takai, Takamine, Takumi and Thielen being excused.

Representative Shimabukuro, for the Committee on Human Services & Housing presented a report (Stand. Com. Rep. No. 2088), recommending that S.C.R. No. 220, SD 1, be referred to the Committee on Finance.

Representative Caldwell moved that the report of the Committee be adopted, and that S.C.R. No. 220, SD 1, be referred to the Committee on Finance, seconded by Representative B. Oshiro.

Representative Lee rose to speak in support of the measure, stating:

"Mr. Speaker, I'd like to submit written comments in support and also support the amendments that were made in the Resolution because I think they're very good."

Representative Lee's written remarks are as follows:

"Mr. Speaker, I am in support of this measure. Mr. Speaker, human trafficking is a problem that plagues our world. Every year we hear of more people who have been taken from their families and homes and forced to go to places where they are used and abused. Fortunately, there is help for these people in the United States, but the process to get help takes too much time for some.

"Because certification often requires a considerable length of time to process, typically six months, there is the need for pre-certification victim services from the time that individuals are identified as trafficked persons until they are certified by federal law enforcement. It is during this time trafficked persons may experience the greatest need for services.

"This Resolution requests the Department of Human Services to conduct a statewide needs assessment of non-citizen victims of human trafficking. In completing the needs assessment, the Department of Human Services should collaborate with the task force that was established, to determine how Hawaii can best combat and deter human trafficking, identify existing obstacles, in statute, rule, or policy, that limit or deny benefits to non-citizen victims of human trafficking, and identify appropriate social, financial, and other services for victims of human trafficking, in general, including gaps in the services offered by state, county, and private agencies for victims of human trafficking.

"This Resolution is an important piece of a comprehensive approach our State is taking in compliment to the Anti-Trafficking Task Force and an eventual Human Trafficking Act to stop trafficking in our islands. I urge my colleagues to support this Resolution. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.C.R. No. 220, SD 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF HUMAN SERVICES TO CONDUCT A STATEWIDE NEEDS ASSESSMENT OF NON-CITIZEN VICTIMS OF HUMAN TRAFFICKING," was referred to the Committee on Finance with Representatives Berg, Cabanilla, Green, Souki, Takai, Takamine, Takumi and Thielen being excused.

Representative Shimabukuro, for the Committee on Human Services & Housing presented a report (Stand. Com. Rep. No. 2089), recommending that S.C.R. No. 81, be referred to the Committee on Legislative Management.

Representative Caldwell moved that the report of the Committee be adopted, and that S.C.R. No. 81, be referred to the Committee on Legislative Management, seconded by Representative B. Oshiro.

Representative Bertram rose to speak in opposition to the measure, stating:

"Mr. Speaker, I rise in opposition to this one. We heard much testimony both for and against, and really, most of the testimony, there was no evidence of any kind of wrongdoing or financial mismanagement or even program mismanagement. Just some disgruntled people. So it really, it goes beyond what needs to be done and just seems to be an overreaction, so I rise in opposition."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.C.R. No. 81, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE AUDITOR TO CONDUCT A FINANCIAL AND PROGRAM AUDIT OF HAWAII'S INDEPENDENT LIVING CENTER," was referred to the Committee on Legislative Management with Representative Bertram voting no, and with Representatives Berg, Cabanilla, Green, Souki, Takai, Takamine, Takumi and Thielen being excused.

Representative Shimabukuro, for the Committee on Human Services & Housing presented a report (Stand. Com. Rep. No. 2090) recommending that S.C.R. No. 122, SD 1, be adopted.

Representative Caldwell moved that the report of the Committee be adopted, and that S.C.R. No. 122, SD 1, be adopted, seconded by Representative B. Oshiro.

Representative Lee rose to speak in support of the measure, stating:

"I have remarks in support, and I'd also like your permission to submit into the record the bill from the State of New York that contains the Breastfeeding Bill of Rights," and the Chair "so ordered."

Representative Lee's written remarks are as follows:

"Mr. Speaker, I am in support of this measure. Mr. Speaker, studies have shown that breastfed infants are healthier than bottle-fed babies. We also know that it is cheaper to breastfeed than it is to buy formula. In fact, a United States Department of Agriculture analysis estimates that at least \$3,600,000,000 could be saved nationally if only fifty per cent of mothers breastfed their infants until they were at least six months old. Furthermore, women who receive appropriate, culturally sensitive information and support about breastfeeding during and immediately following their childbirth delivery are eight times more likely to continue breastfeeding for at least six weeks compared to women who received little or no post delivery support about breastfeeding.

"It is therefore important for information about breastfeeding to be available to women. This resolution supports Senate Bill No. 1674 and Assembly Bill No. 3782 of the New York State Legislature, which proposes to codify every woman's right to be informed about

the benefits of breastfeeding and to have an environment that is conducive to what all pediatricians agree to be the safest and healthiest choice for newborn and infant feeding. These bills propose adoption of a statement of rights, known as the breastfeeding mothers' bill of rights, to: provide mothers with basic breastfeeding-related rights before, during and after the birth of their baby; require that the statement of rights be conspicuously posted in a public place in maternal health care facilities, nurseries, maternity floors, and post-delivery recovery rooms; and require assistance from lactation specialists in the hospital and after discharge.

"This is an important statement and I urge my colleagues to support this Resolution. Thank you."

RETRIEVE BILL

Page 2 of 3

S. 1674

1 feedings and have a warm, inviting environment in the maternal health
2 care facility which will encourage nursing and make it easy. A woman has
3 the right to make her own choice about breastfeeding. If you do not
4 understand or need help understanding these rights, the maternal health
5 care provider MUST help you and even provide an interpreter, if neces-
6 sary. These rights are yours regardless of your race, creed, national
7 origin or who is paying for your healthcare.
8 (1) Before You Deliver:
9 You have the right to receive information that is free of commercial
10 interests and includes:
11 * The nutritional, medical and psychological benefits of breastfeed-
12 ing;
13 * The steps necessary to prepare yourself and your baby for breast-
14 feeding;
15 * An explanation of some of the problems you may encounter and how to
16 avoid or solve them.
17 (2) In The Maternal Health Care Facility:
18 * You have the right to have your baby stay with you right after he or
19 she is born so that you can begin breastfeeding right away.
20 * You have the right to have someone with specialized training in
21 breastfeeding help you whenever you need help.
22 * You have the right to insist that your baby not receive any bottle
23 feeding or pacifiers.
24 * You have the right to be informed about and refuse any drugs that
25 may dry up your milk.
26 * You have the right to have your baby with you 24 hours a day.
27 * You have the right to breastfeed your baby at any time day or night.
28 * You have the right to know if your doctor has advised against
29 breastfeeding your baby and the reasons for the decision.
30 * You have the right to have a sign on your baby's crib clearly stat-
31 ing that your baby is breastfeeding and that no bottle feeding of any
32 type is to be offered.
33 * You have the right to be told by the health care provider staff how
34 they think you are doing and if necessary how to improve your feeding
35 technique.
36 * You have the right to breastfeed your baby in the neonatal intensive
37 care unit or if nursing is not possible, have your baby receive your
38 pumped or expressed milk.
39 * You have the right to breastfeed should you or your baby need to be
40 re-hospitalized after the initial delivery stay. In this instance the
41 hospital will provide hospital grade electric pumps, rooming-in facili-
42 ties and a staff member with specialized training in breastfeeding to
43 help you.
44 * You have the right to have a support person (family member or
45 friend) receive breastfeeding information from a specially trained staff
46 member.
47 (3) When You Leave The Maternal Health Care Facility:
48 * You have the right to printed breastfeeding information free of
49 commercial interests.
50 * You have the right to be discharged from the maternal healthcare
51 facility without advertisements, coupons or free samples intended to
52 promote or induce purchase of baby-related products, unless specifically
53 requested by you.
54 * You have the right to receive information about breastfeeding
55 resources in your community including information on availability of
56 breast pumps.

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RETRIEVE BILL

Page 1 of 3

BILL TEXT:

STATE OF NEW YORK

1674

2007-2008 Regular Sessions

IN SENATE

January 24, 2007

Introduced by Sens. KRUGGER, ADAMS, CONNOR, DIAZ, DORNE, PARKER, SAMP-
SON, SCHNEIDERMAN -- read twice and ordered printed, and when printed
to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to breastfeeding
mothers' bill of rights

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. The public health law is amended by adding a new section
2 2505-a to read as follows:
3 § 2505-a. Rights of breastfeeding parents. 1. The principles enun-
4 ciated in subdivision three of this section are declared to be the public
5 policy of the state and a copy of such statement of rights shall be
6 posted conspicuously in a public place in each maternal health care
7 provider's office, treatment room, ward or facility. For purposes of
8 this section, "maternal health care provider" means a physician or other
9 authorized practitioner attending a pregnant woman, and "maternal health
10 care facility" includes, but is not limited to, a maternal health care
11 provider's office, a birthing center, a maternity ward or hospital.
12 2. The commissioner shall make available to every maternal health care
13 provider, a maternal health care facility, or to any person upon
14 request, a copy of the statement of rights provided in subdivision three
15 of this section, and shall adopt any rules and regulations necessary to
16 ensure that such patients are treated in accordance with the provisions
17 of such statement.
18 3. The statement of rights shall consist of the following:
19 "Breastfeeding Mothers Bill of Rights
20 Choosing the way you will feed your new baby is the most important
21 decision you will make in preparing for your infant's arrival. Pedia-
22 tricians all agree breastfeeding is the safest and most healthy choice.
23 It is every woman's right to be informed about the benefits of breast-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LB06459-02-7

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RETRIEVE BILL

Page 3 of 3

S. 1674

1 * You have the right to have the maternal health care facility make an
2 appointment for you with a healthcare provider for follow-up care for
3 when your baby is 3-5 days old.
4 * You have the right to receive information about safely collecting
5 and storing your breast milk.
6 * You have the right to breastfeed your baby in any location, public
7 or private, where you are otherwise authorized to be, whether or not the
8 nipple of your breast is covered at anytime during the breastfeeding
9 process.
10 All the above are your rights. If the maternal health care facility does
11 not honor these rights you can seek assistance by contacting
12
13 * Administered by the New York State Department of Health. Prior to
14 effective date the department will establish a toll-free number for
15 complaints.
16 4. Each maternal health care provider shall give a copy of the state-
17 ment to each patient at or prior to the medically appropriate time or
18 time of admission to a maternal health care facility, or to the
19 appointed personal representative at the time of appointment and to each
20 member of the medical provider's staff.
21 5. Each maternal health care provider shall prepare a written plan and
22 provide appropriate staff training to implement the patient's rights
23 included in the statement.
24 § 2. This act shall take effect May 13, 2008; provided, however, that
25 effective immediately, the addition, amendment and/or repeal of any rule
26 or regulation necessary for the implementation of this act on its effec-
27 tive date are authorized and directed to be made and completed on or
28 before such effective date.

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The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.C.R. No. 122, SD 1, entitled: "SENATE CONCURRENT RESOLUTION SUPPORTING THE BREASTFEEDING MOTHERS' BILL OF RIGHTS OFFERED AS SENATE BILL NO. 1674 AND ASSEMBLY BILL NO. 3782 IN THE NEW YORK STATE LEGISLATURE," was adopted, with Representatives Berg, Cabanilla, Green, Souki, Takai, Takamine, Takumi and Thielen being excused.

Representative Shimabukuro, for the Committee on Human Services & Housing presented a report (Stand. Com. Rep. No. 2091) recommending that S.C.R. No. 136, SD 1, be adopted.

On motion by Representative Caldwell, seconded by Representative B. Oshiro and carried, the report of the Committee was adopted and S.C.R. No. 136, SD 1, entitled: "SENATE CONCURRENT RESOLUTION URGING THE GOVERNOR TO APPOINT AN INTERIM DIRECTOR FOR THE EXECUTIVE OFFICE ON AGING UNTIL A PERMANENT DIRECTOR IS APPOINTED," was adopted, with Representatives Berg, Cabanilla, Green, Souki, Takai, Takamine, Takumi and Thielen being excused.

SUSPENSION OF RULES

Representative Caldwell moved that the rules of the House be suspended for the purpose of considering certain bills on Final Reading on the basis of a modified consent calendar, seconded by Representative B. Oshiro and carried. (Representatives Berg, Cabanilla, Green, Souki, Takai, Takamine, Takumi and Thielen were excused.)

FINAL READING

The following bills were taken from the Clerk's desk and the following action taken:

Representative Caldwell then moved to agree to the amendments proposed by the Senate to the following House bills, seconded by Representative B. Oshiro and carried. (Representatives Berg, Cabanilla, Green, Souki, Takai, Takamine, Takumi and Thielen were excused.)

H.B. No. 1414, HD 1, SD 2
H.B. No. 1818, HD 2, SD 1

H.B. No. 1414, H.D. 1, S.D. 2:

On motion by Representative Caldwell, seconded by Representative B. Oshiro and carried, the House agreed to the amendments proposed by the Senate to H.B. No. 1414, H.D. 1 and H.B. No. 1414, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT MAKING AN EMERGENCY APPROPRIATION FOR DEPARTMENT OF TAXATION COUNTY SURCHARGE IMPLEMENTATION COSTS.," passed Final Reading by a vote of 44 ayes, with Representatives Cabanilla, Green, Souki, Takai, Takamine, Takumi and Thielen being excused.

H.B. No. 1818, H.D. 2, S.D. 1:

Representative Caldwell moved that H.B. No. 1818, HD 2, SD 1, pass Final Reading, seconded by Representative B. Oshiro.

Representative Finnegan rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. In opposition with written comments and just a short comment. Mr. Speaker, this bill is quite different. In fact, it's a 'gut and replace' from when we last saw it, I believe, and I really did like the House version. Thank you."

Representative Finnegan's written remarks are as follows:

"Mr. Speaker, I am in opposition to this bill. This bill supposedly clarifies what happens when the term of a single executive expires without a renomination or nomination of a person to fill that office by the Governor. In other words, what happens to a holdover?"

"I say supposedly clarifies because even if the intent of this measure may be clear, the consequences are not. This legislation calls for "the highest ranking and most senior officer in a civil service position" to perform the duties of the vacant office until the Governor makes a nomination of grants a commission to fill the vacancy.

"Let's paint a clearer picture. The Director of Labor and Industrial Relations is in this position now. The Governor has not named a replacement. Indeed, they are undertaking all due diligence to find a replacement. To date, she has been unable to find someone willing to accept this appointment.

"Under this bill, a civil servant will assume the duties of the vacant office until the Governor remedies the matter. That is fairly clear. What is not clear are the legal ramifications of this bill.

"There is case law that states that a worker can assume the duties of a higher office as long as they are compensated accordingly. The more important issue appears to be that case law and the laws of other jurisdictions are unclear on whether the individual leaves their civil service position and becomes an at-will employee in this situation.

"I am wary of this. When a civil service worker assumes the pay and duties of management, in this case, the highest management position in a department, they are no longer labor. They are management. And under chapter 26 of the Hawaii Revised Statutes, the Governor has the ability to remove a single executive from office at any time. In other words, this bill creates a mechanism whereby senior civil servants can be fired.

"Worse, carried further, by continued inaction, the Governor could turn this situation into a conveyor belt, allowing senior civil servants to assume the role and pay of the single executive and firing them. The result would be turnover on a grand scale in the office of the single executive, and the positions vacated below the executive.

"This would be the consequence of this legislation. To think otherwise is to sanction the potential improprieties that a person serving in this dual role could perpetrate. For example, the senior civil servant assumes the duties of the Director. As Director, this person could authorize appropriations, leave, and travel requests for their civil service position that they could "return" to.

"There could be conflicts of interests, commingling of funds, unauthorized activity, or decisions on promotions and discipline, and all this could be done without accountability because this person serves in two roles, one being the director, the other being the civil servant. That cannot be, and is not, the intent of this Legislature.

"Because of the creation of a process that would allow the firing of senior civil servants, I remain in opposition."

Representative Meyer rose in opposition to the measure, and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Meyer's written remarks are as follows:

"Mr. Speaker, I am in opposition. First, I would like to incorporate the words of the Minority Leader as my own. While this legislation attempts to solve a problem with holdovers, it also creates a situation where senior civil servants can be subjected to the termination at the will of the Governor. That is a bad policy and contrary to the principles of civil service.

"I also agree that it is not the intent of this Legislature to create a situation where a civil servant could straddle the line between management and labor and allow for various wrongdoings.

"I would like to bring up another issue, and that is the vagueness of parts of this legislation. Namely, on page 3, lines 8 & 9, the person selected to perform the duties of the vacant office, other than the Department of the Attorney General or the Department of Defense is "the highest ranking and most senior officer in a civil service position."

"There is a possibility that the highest ranking civil servant is not the most senior officer. How is a civil servant selected in this situation? Does seniority trump rank? Does rank trump seniority? There is no case law in this area.

"There is also no discretion in this bill. What if the highest ranking and most senior officer in a civil service position refuses to perform the duties of the vacant office? Especially in light of the possibility of being fired by the Governor. What is the recourse? Suspending the civil servant? For what? Wanting to do their job? I cannot support this."

Representative Pine rose in opposition to the measure, and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Pine's written remarks are as follows:

"Mr. Speaker, I am in opposition to HB1818, HD2, SD1. This bill is another thinly veiled attempt to usurp the responsibilities of the Governor. Under this proposed law, the Senate could reject all the Governor's nominees and appoint their own department directors. Given the ridiculous machinations and "kabuki-esque" drama that has played out in this year's confirmation hearings, it is questionable whether any nominees would be approved if the Democrat majority is given the license that this bill provides.

"Our State constitution is modeled after the US Constitution. In drafting this incredible document, the Founding Fathers created a system that spread power among three branches of government. This keeps a rein on those that would run rampant over those with an opposing view point. This system of checks and balances was termed "essential to the preservation of liberty" by the writers of the Federalist Papers¹. It goes on to state, "that each department should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others."² The Founding Fathers knew the mischief that could be made if members of one branch over-meddled in the selection of the members of the other. "Were the executive magistrate, or the judges, not independent of the legislature in this particular, their independence in every other would be merely nominal."³

"Mr. Speaker, the State constitution charges the Governor with the responsibility to nominate and appoint the directors of each department. As stated, "Each principal department shall be under the supervision of the governor and, unless otherwise provided in this constitution or by law, shall be headed by a single executive. Such single executive shall be nominated and, by and with the advice and consent of the senate, appointed by the Governor."⁴

"Mr. Speaker, if passed, this bill would take this power away from the executive branch and shake the very foundation of our state constitution. In the most recent election, the people of Hawaii gave

their overwhelming approval to this Governor. Why does the Legislature seek to handcuff her?"

Representative Ching rose and asked that the Clerk record a no vote for her, and the Chair "so ordered."

Representative Ward rose in opposition to the measure, and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Ward's written remarks are as follows:

"Mr. Speaker, I am in opposition. I would like the words of the Minority Leader, Minority Floor Leader, and Assistant Minority Leader incorporated as if they were my own. I am very troubled by the process we are legislating today, a process that can be used to eliminate our highest ranking and most senior civil servants. In the interests of time, I will not reiterate that which has been said.

"However, Mr. Speaker, looking at the concerns of the Minority Floor Leader, there are many loose ends to this legislation, and there are some bad consequences. This was sloppy work by the Senate, and we should have sent this bill to Conference Committee to work out the flaws. But that is not what we have decided to do today.

"Mr. Speaker, the Senate may have been sloppy, but we are being negligent in agreeing to this sloppiness. I cannot be a party to this. I continue to be in opposition."

The motion was put to vote by the Chair and carried, and the House agreed to the amendments proposed by the Senate to H.B. No. 1818, H.D. 2 and H.B. No. 1818, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO GOVERNMENT EMPLOYEES," passed Final Reading by a vote of 37 ayes to 7 noes, with Representatives Awana, Ching, Finnegan, Marumoto, Meyer, Pine and Ward voting no, and with Representatives Cabanilla, Green, Souki, Takai, Takamine, Takumi and Thielen being excused.

At 12:25 o'clock p.m., the Chair noted that the following bills passed Final Reading:

H.B. No. 1414, HD 1, SD 2
H.B. No. 1818, HD 2, SD 1

At 12:26 o'clock p.m., Representative Ward requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 12:28 o'clock p.m.

ANNOUNCEMENTS

Representative Nishimoto for the Committee on Transportation requested a waiver of the 48-hour advanced notice requirement to hear SCR 98, relating to sunrise review for bail agents, today at 3:00 p.m. in Conference Room 224, and the Chair "so ordered."

Representative Waters: "Thank you, Mr. Speaker. On this Friday, April 20th, I'd like to send a sincere mahalo to Neal Shigemura, Roger Tyau and Tat Ming Woo."

Speaker Say: "Thank you very much. They're all from the Accounting Office. They take care of all of your per diem checks and pay the bills."

Representative Marumoto: "Thank you, Mr. Speaker. Colleagues, today is April 20th and it's Earth Day. Please celebrate by visiting Saunders Hall on the UH Manoa campus today between 3:00 and 7:00 p.m. You might have seen a write up on the festivities in today's *Honolulu Advertiser*. Students have formed, HUB, Help Us Bridge, to make Saunders Hall a 'green building'. They're seeking

¹ *The Federalist Papers* (accessed April 22, 2007); available from <http://www.foundingfathers.info/federalistpapers/fed51.htm>.

² *Ibid*.

³ *Ibid*.

⁴ *The State Constitution* (accessed April 24, 2007); available from <http://www.hawaii.gov/lrb/con/conart5.html>.

State funds for a photovoltaic roof, low water toilets and lighting changes to save resources. With a mantra to: Recycle, Reduce and Reuse, please show your support for their efforts by visiting Saunders Hall this afternoon. Mahalo."

Representative Ward: "Mr. Speaker, this has been quite a week. It began with presentation of the Hawaii Medal for those families who lost members in Iraq. Virginia Tech took place this week. And we just learned that a graduate of our high schools, Punahou and Kalaheo, a Peace Corps volunteer, Julia Campbell, who I would consider a colleague, has been killed in the Philippines. I would ask this body with your permission, if we could have a moment silence for the young lady, Ms. Campbell who was killed."

Representative Caldwell: "Mr. Speaker, along the same lines as mentioned, the Representative of Waianae earlier this week did very eloquently talk about the tragedy at Virginia Tech. Today is a national day of mourning across our country for those who have not only been killed, but those wounded, and their families, friends and the larger community. And therefore when we do have our moment silence, also request that there be a moment of silence for what occurred at Virginia Tech University."

Speaker Say: "Members of the House, after the motion to adjourn is made, we will all rise to signify one's concurrence for a moment of silence in memory of the victims of the tragedy at Virginia Tech University, and also the young woman who died or was murdered as a Peace Corps volunteer in the Philippines."

ADJOURNMENT

Representative B. Oshiro moved that the House of Representatives adjourn until 12:00 o'clock noon, Monday, April 23, 2007, seconded by Representative Meyer.

The motion to adjourn was put to vote by the Chair on a vote by standing for a moment of silence in memory of the victims of the Virginia Tech University campus incident, and Ms. Julia Campbell, Peace Corps volunteer, who lost her life in the Philippines.

At 12:31 o'clock p.m., the House of Representatives adjourned until 12:00 o'clock noon, Monday, April 23, 2007. (Representatives Cabanilla, Chang, Green, Saiki, Souki, Takai, Takamine, Takumi and Thielen were excused.)

HOUSE COMMUNICATION

House Communication dated April 20, 2007, from Patricia Mau-Shimizu, Chief Clerk of the House of Representatives, to the Honorable President and Members of the Senate, informing the Senate that the House has this day, agreed to the amendments and passed the following House Bills on Final Reading:

H.B. No. 1414, HD 1, SD 2

H.B. No. 1818, HD 2, SD 1