

**THE
TWENTY-FOURTH LEGISLATURE
STATE OF HAWAII
SECOND SPECIAL SESSION OF 2007
JOURNAL OF THE HOUSE**

FIRST DAY

Wednesday, October 24, 2007

In accordance with the provisions of Section 10 of Article III of the Constitution of the State of Hawaii, and the Proclamation issued by Governor Linda Lingle on October 23, 2007, the House of Representatives of the Twenty-Fourth Legislature of the State of Hawaii convened in Special Session on Wednesday, October 24, 2007.

The Honorable Calvin K.Y. Say, member of the Twentieth District, having been elected Speaker of the House of Representatives on the Opening Day of the Twenty-Fourth Legislature and retaining that position under the provision of Rule 1.5 of the Rules of the House of Representatives, called the House to order at 9:09 o'clock a.m.

The Chair then called upon the Clerk who read the Governor's Proclamation as contained in Gov. Msg. No. 1.

GOVERNOR'S MESSAGE

Gov. Msg. No. 1, Second Special Session, transmitting a Proclamation convening the Twenty-Fourth Legislature of the State of Hawaii in a special session on Wednesday, October 24, 2007, at 9:00 a.m., as follows:

"October 23, 2007

The Honorable Calvin K.Y. Say, Speaker
and Members of the House of Representatives
Twenty-Fourth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear Mr. Speaker and Members of the House:

Transmitted herewith is the proclamation convening the Twenty-fourth Legislature of the State of Hawaii in special session on Wednesday, October 24, 2007, at 9:00 a.m.

Sincerely,

/s/
LINDA LINGLE

Enclosure"

"PROCLAMATION

WHEREAS, under Section 10 of Article III of the Constitution of the State of Hawaii, the Governor may convene both house of the Legislature or the Senate alone in special session; and

WHEREAS, the Hawaii Supreme Court has determined that chapter 343, Hawaii Revised Statutes, requires that an environmental assessment be performed with respect to certain improvements at Kahului Harbor intended for and to be used by a large capacity inter-island ferry; and

WHEREAS, the immediate operation of a large capacity inter-island ferry is in the public interest and proposed legislation to allow its operation and harbor improvements to continue to be constructed, while environmental reviews are conducted, require immediate action by the Legislature; and

WHEREAS, the United States Supreme Court and the Hawaii Supreme Court have ruled unconstitutional certain of Hawaii's extended term sentencing laws, leaving the State without the ability to impose extended terms of imprisonment upon certain convicted persons whose incarceration is necessary for the protection of the public; and

WHEREAS, the amendment of Hawaii's extended term sentencing statutes to enable the imposition of extended terms of imprisonment is in the public interest and proposed legislation to allow such amendments require immediate action by the Legislature;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, pursuant to the power vested in me by Section 10 of Article III of the Constitution of the State of Hawaii, do hereby convene both houses of the Twenty-Fourth Legislature of the State of Hawaii in special session Wednesday, October 24, 2007, at 9 o'clock a.m., primarily for the consideration of legislation to allow the immediate commencement of operation of a large capacity inter-island ferry and to enable the imposition of extended terms of imprisonment.

DONE at the State Capitol, Honolulu, State of Hawaii
this 23rd day of October, 2007.

/s/
LINDA LINGLE
Governor of Hawaii

APPROVED AS TO FORM:

/s/
Mark J. Bennett
Attorney General"

The invocation was then delivered by Representative James Kunane Tokioka, after which the Roll was called showing all members present with the exception of Representatives Cabanilla, Marumoto and Takumi, who were excused.

At 9:16 o'clock a.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 9:45 o'clock a.m.

HOUSE COMMUNICATION

The following communication was received, announced and read in part, by the Clerk.

House Communication No. 1, Second Special Session, dated October 19, 2007, from Representative Jon Riki Karamatsu, as follows:

"October 19, 2007

The Honorable Calvin K.Y. Say
Speaker of the House
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear Mr. Speaker,

In the early morning of Tuesday, October 16th, I made a serious error in judgment which I believe has brought embarrassment to this body. For that I offer my sincerest and most heartfelt apologies.

I realize I am very fortunate not to have caused physical harm to myself or to others. I take full responsibility for what I have done, and will use my experience to educate the public on the dangers of drinking and driving. I am deeply grateful for the opportunity I have been given to learn from my mistake and continue with my life, wiser for the experience.

However, I feel that my continued presence as a part of House leadership would be a disruptive influence, and I do not wish to be a cause of disorder, concern, or distraction. I therefore offer my resignation from my position as Vice Speaker of the House of Representatives.

I hope I will be able to regain the trust of my family, friends, constituents, and colleagues. I pledge to work very hard to do so.

Very truly yours,

/s/
JON RIKI KARAMATSU
State Representative
Forty-First District"

The Chair then announced:

"Members of the House, at this time the Chair wishes to announce that effective immediately, Representative Karamatsu is relieved of his duties and responsibilities related to his assignment as Vice Speaker of this Chamber. The duties of the Vice Speaker will be assumed temporarily by Majority Leader Kirk Caldwell immediately and continued through Opening Day of 2008

"Although Representative Karamatsu will no longer serve as Vice Speaker, I am confident that he will continue to faithfully serve his constituents in District 41.

"Also, Members of the House, on another matter, to preserve the integrity of this Chamber and the presiding officer's podium, the Chair will temporarily relinquish this responsibility of presiding over House Chamber sessions during the Special Session as long as H.B. No. 1 of this Special Session, or any other companion subject matter bill received by the Senate is pending before this body.

"Representative Caldwell, do you assume responsibility for the presiding officer's rostrum temporarily as previously set forth?"

Representative Caldwell responded, stating:

"Mr. Speaker, I respectfully decline the offer, although I appreciate it very much. As leader of the Majority Caucus, Mr. Speaker, I wish to reserve the right to participate in all floor debates as they arise on the floor, both on the Superferry bill and the extended sentencing bill. So I respectfully decline, but appreciate the offer. Thank you."

The Chair then stated:

"Thank you very much. In our House Rules, the next individual to become the presiding officer during the Special Session is Representative Blake Oshiro. Will you assume the responsibility for the presiding officer's rostrum, temporarily as previously set forth?"

Representative B. Oshiro responded:

"Mr. Speaker, it is with honor that I accept the responsibility for the Chamber rostrum, temporarily."

At this time, Speaker Say called upon Representative B. Oshiro to step forward and assume the rostrum as Temporary Chair.

INTRODUCTIONS

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

Representative Awana introduced Montana State Representative Shannon Augare, a member of the NCSL Native American Caucus.

ORDER OF THE DAY

COMMITTEE ASSIGNMENTS

The following bills were referred to committee by the Speaker:

H.B.
Nos.

Referred to:

- | | |
|---|---|
| 1 | Jointly to the Committee on Transportation and the Committee on Finance |
| 2 | Committee on Judiciary |
| 3 | Jointly to the Committee on Transportation and the Committee on Finance |

At 9:50 o'clock a.m., Representative Say requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 9:50 o'clock a.m.

At this time, Representative Say rose to disclose a potential conflict of interest, stating:

"Thank you very much, Mr. Speaker. May I have a ruling on a potential conflict of interest? My son formerly worked for the Superferry," and the Chair ruled, "no conflict."

INTRODUCTION OF BILLS

On motion by Representative Caldwell, seconded by Representative Meyer and carried, the following bills (H.B. Nos. 1 through 3) passed First Reading by title and were referred to Printing: (Representatives Cabanilla, Marumoto and Takumi were excused.)

H. B.
Nos.

1 "A BILL FOR AN ACT RELATING TO TRANSPORTATION."

Introduced by: Representatives Say, Caldwell and B. Oshiro.

2 "A BILL FOR AN ACT RELATING TO SENTENCING."

Introduced by: Representative Waters.

3 "A BILL FOR AN ACT RELATING TO TRANSPORTATION."

Introduced by: Representative Belatti

At this time, the Chair then announced that H.B. Nos. 1 and 3 would be referred jointly to the Committee on Transportation and the Committee on Finance; and H.B. No. 2 would be referred to the Committee on Judiciary.

Representative Morita rose to appeal the decision of the Chair in referring H.B. No. 1 jointly to the Committee on Transportation and the Committee on Finance, stating:

"Thank you, Mr. Speaker. I would like to appeal the decision to refer H.B. No. 1 to the Joint Committees on Transportation and Finance, and ask that the joint referral include the Committee on Energy and Environmental Protection."

The Chair announced:

"Members, there is an appeal asking for a re-referral of the bill. Is here any discussion?"

At 9:51 o'clock a.m., Representative Caldwell requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 9:53 o'clock a.m.

Representative Morita rose to speak in support of the appeal, stating:

"Thank you, Mr. Speaker. As many of the Members know, I personally have strong feelings about the Hawaii Superferry situation. However this bill deals with important environmental and energy issues which are within the purview of the Committee on Energy and Environmental Protection.

"As I said, I do have strong feelings, but as the Committee Chair, I also want to protect, the integrity of Chapter 343 and the Environmental Review process, as well as the integrity of this body.

"So I ask that you favorably consider this appeal and I move that the referral of H.B. No. 1 include the Committee on Energy and Environmental Protection jointly with the Committee on Transportation and the Committee on Finance in hearing this bill.

"At this time, I would also like to ask for a roll call vote."

Representative Caldwell rose to speak in opposition to the appeal, stating:

"Mr. Speaker, I would like to speak against the re-referral request. Mr. Speaker, we've had many discussions on the issue of the Superferry bill. We believe what we have come up with is a balanced and fair bill that addresses environmental concerns. Our concern at this point is to move the bill through expeditiously. We

believe we will have a fair hearing in the Transportation and Finance Committees.

"Mr. Speaker, we also believe it puts the Chair of EEP in an awkward position, as Chair, moving such a bill forward. And we believe that there are numerous members on the Committee who would also be placed in the same awkward position, and therefore we believe it makes much better sense at this point to have the bill referred to both Transportation and Finance. Thank you very much."

Representative Saiki rose to speak in support of the appeal, stating:

"Mr. Speaker, I rise in support of the motion to re-refer for three reasons. First, it will comply with our House Rules which create the Committee on Energy and Environmental Protection. The House Rules state on page 13 that the Committee on EEP, whose scope shall be those programs relating to energy resources and the development of alternative energy resources, environmental quality control and protection, and environmental health.

"The second reason is that this bill really only deals with environmental issues. The only reference to any statutory changes in this measure are references to Chapter 343 which is the EIS provision. There are no other statutes that are directly impacted in this entire document. Chapter 343 is within the purview of the Committee on EEP according to our House Rules.

"The third reason is that there is precedence for this bill to be referred to EEP. HB 702 was introduced in the last Regular Session and it dealt with the requirement for an EIS to be conducted for the Superferry, and that was referred to EEP, TRN, FIN. Also, the Senate passed over a bill in the last Session, SB 1276, SD 3, which also required an EIS for the Superferry, and that bill was referred to the following House Committee: TRN, EEP, FIN.

"There's precedence for this bill to be referred to the Committee on EEP. EEP is really the only Committee that has the expertise to deal with these issues. The Chair has experience. She has integrity. She is qualified to look at these issues very carefully to scrutinize them so that we have the best legislation in this very hurried Special Session. Thank you, very much."

Representative Morita rose to respond, stating:

"Thank you. I just wanted to respond to the Majority Leader's statement. You need not worry about this Chair being in an awkward position. I think the rest of the Committees will find themselves in an awkward position in hearing this type of legislation.

"Again, in protecting the integrity of this institution, a voice of dissent should not be quelled during this unprecedented special legislation. It's probably what got the Administration in trouble in the first place by quelling dissention. I think it provides for more healthy debate on this matter.

"I would like to amend my motion to also include re-referral of H.B. No. 3, which deals with the same subject matter. Thank you."

Representative Caldwell then called for the previous question and requested a roll call vote.

The Chair then stated:

"A roll call vote has already been requested. I would like to take a short recess to check on the amendment of the motion."

At 9:59 o'clock a.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 10:03 o'clock a.m.

The Chair then announced:

"First let me clarify that although it was a motion to request a re-referral, it is actually an appeal and that is why a second is not necessary under our House Rules. So we will just proceed. Is there any other discussion?"

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

Representative Finnegan's written remarks are as follows:

"Mr. Speaker, I rise in opposition to the appeal of the Chair's decision to refer HB 1 and HB 3 to the Committees on Transportation and Finance.

"We all came into Special Session for different reasons. Some because they support the Superferry being able to operate while the State does an EIS. Some because they wanted to investigate what happened along the way. Some did not want to come back at all. Some for a combination of these reasons. I have done a lot of research, reading, and listening prior to coming into Special Session. I came back into Special Session to work to get the Superferry operating while obtaining an EIS. I've observed that every one of us has a tipping point. I am willing to support legislation that has specific conditions that protect our environment, but I cannot support individual conditions that stop the Superferry from operating.

"It seems like the fight for preserving our environment has pinned the Superferry as the culprit killing whales and spreading invasive species. All environmental and "no growth" hands on deck to fight the Superferry. The irony is that without an EIS, the Hawaii Superferry already volunteered to do, as they have already publicly stated both verbally and in writing, more than any other vessel regarding these environmental issues. Yes, this means that the other boats will continue to operate with a higher probability of hitting whales and spreading invasive species.

"I would like to see the opponents of the Superferry in the legislature introduce a bill next Session to make the conditions that the Superferry must operate under the same for all vessels. Because the reality for situations like these is that the higher costs for the operators will be placed upon Neighbor Island residents. These residents will also then have to come to their own tipping point when their own economic viability could come against preserving the environment. These are real situations.

"Democracy is a constant balancing act Mr. Speaker. I respect the opposition for their views and their fight. And I believe in this process in the long run even when things do not go my way. I believe in democracy."

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

Representative Morita's written remarks are as follows:

"Mr. Speaker, I would like to thank the Representative from Makiki/McCully for his support and educating members of the referral history of previous bills regarding environmental review of the Hawaii Superferry in past sessions. Again, Mr. Speaker, I do not believe this body benefits from cutting off dissenting views of Committee Chairs who have purview over a particular subject matter. The integrity of this body is being keenly watched and questioned. This action is a great disservice to our communities and this institution."

The request for a roll call vote was put to vote by the Chair and upon a show of hands, the roll call was approved.

The appeal of the decision of the Chair in referring H.B. Nos. 1 and 3 jointly to the Committee on Transportation and the Committee on Finance, to include referral to the Committee on Energy and Environmental Protection was put to vote by the Chair and failed to carry on the following show of Noes and Ayes:

Noes, 29: Representatives Awana, Caldwell, Chang, Chong, Evans, Finnegan, Har, Herkes, Ito, Karamatsu, Lee, Magaoay, Manahan, Meyer, Mizuno, Nakasone, B. Oshiro, M. Oshiro, Pine, Rhoads, Sagum, Say, Souki, Tokioka, Tsuji, Ward, Waters, Yamane, and Yamashita.

Ayes, 17: Representatives Belatti, Berg, Bertram, Brower, Carroll, Ching, Hanohano, Luke, Morita, Nishimoto, Saiki, Shimabukuro, Sonson, Takai, Takamine, Thielen and Wakai.

Excused, 5: Representatives Cabanilla, Green, Marumoto, McKelvey and Takumi.

ANNOUNCEMENTS

Representative Souki: "Yes, Mr. Speaker. I would like to alert the Members that the House Committees on Transportation and Finance will be holding a public hearing on H.B. No. 1, tomorrow morning at 9:00 a.m. in the Capitol Auditorium, with decision making to follow. Public notification in anticipation of this joint hearing was posted and distributed on Tuesday, October 23rd. In addition, the bill was made available for inspection and review on that same date."

Representative Waters: "Thank you, Mr. Speaker. The House Committee on Judiciary will be holding a public hearing on H.B. No. 2 tomorrow at 4:00 p.m. in Conference Room 325, with decision making to follow. Public notification in anticipation of this hearing was posted and distributed on Tuesday, October 23rd. In addition, the bill was also made available for inspection and review on that same date."

Representative Yamashita: "Mr. Speaker, on a lighter note. One of our colleagues is celebrating his birthday today. It is our Representative from Mililani who is sitting on my right."

ADJOURNMENT

At 10:10 o'clock a.m., on motion by Representative Caldwell, seconded by Representative Meyer and carried, the House of Representatives adjourned until 8:00 o'clock p.m., tomorrow, Thursday, October 25, 2007. (Representatives Cabanilla, Marumoto, Sonson and Takumi were excused.)