

SEVENTEENTH DAY

Tuesday, February 17, 2004

The Senate of the Twenty-Second Legislature of the State of Hawaii, Regular Session of 2004, convened at 11:44 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by Pastor Derald Skinner, Calvary Chapel, Pearl Harbor, after which the Roll was called showing all Senators present with the exception of Senator English who was excused.

The President announced that he had read and approved the Journal of the Sixteenth Day.

At 11:57 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:04 o'clock p.m.

HOUSE COMMUNICATION

Hse. Com. No. 7, transmitting H.B. No. 1797, which passed Third Reading in the House of Representatives on February 13, 2004, was read by the Clerk and was placed on file.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, H.B. No. 1797, entitled: "A BILL FOR AN ACT RELATING TO OPTOMETRY," passed First Reading by title and was deferred.

STANDING COMMITTEE REPORTS

Senator Baker, for the Committee on Health, presented a report (Stand. Com. Rep. No. 2069) recommending that S.B. No. 2575, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Judiciary and Hawaiian Affairs.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the report of the Committee was adopted and S.B. No. 2575, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MEDICAL RECORDS," passed Second Reading and was referred to the Committee on Judiciary and Hawaiian Affairs.

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 2070) recommending that S.B. No. 2928 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the report of the Committee was adopted and S.B. No. 2928, entitled: "A BILL FOR AN ACT RELATING TO THE RENTAL HOUSING TRUST FUND ADVISORY COMMISSION," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 2071) recommending that S.B. No. 3126, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the report of the Committee was adopted and S.B. No. 3126, S.D. 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR THE DWELLING UNIT REVOLVING FUND," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Kanno, for the Committee on Labor, presented a report (Stand. Com. Rep. No. 2072) recommending that S.B. No. 214, as amended in S.D. 1, pass Second Reading and be recommitted to the Committee on Labor.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the report of the Committee was adopted and S.B. No. 214, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO WORKFORCE DEVELOPMENT," passed Second Reading and was recommitted to the Committee on Labor.

Senator Sakamoto, for the Committee on Education, presented a report (Stand. Com. Rep. No. 2073) recommending that S.B. No. 3238, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the report of the Committee was adopted and S.B. No. 3238, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," passed Second Reading and was referred to the Committee on Ways and Means.

ORDER OF THE DAY

THIRD READING

S.B. No. 1000, S.D. 1:

On motion by Senator Fukunaga, seconded by Senator Chun Oakland and carried, S.B. No. 1000, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CHILD ABUSE," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (English).

S.B. No. 2003, S.D. 1:

Senator Kawamoto moved that S.B. No. 2003, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Espero.

Senator Whalen rose to speak in opposition to the measure and stated:

"Mr. President, I rise in opposition to the bill, and I'll make it very brief.

"Most people, especially on Oahu, aren't aware that on the neighbor islands we have large families with usually just one vehicle. And taking away the exemption, if you have more kids than you have seat belts, you have to either leave them at home and risk child endangerment or make two trips. The law is already there to put them in seat belts. As far as I know, they get tickets. If you don't, it's being enforced. But, to say that you have to leave kids at home or you can't go on trips and stuff because your car isn't big enough and you don't have enough seat belts in your car, I just think we're going too far in our zeal to wrap everyone in bubble wrap.

"Thank you."

Senator Kawamoto rose to speak in favor of the measure as follows:

"Mr. President, I rise to speak in favor of the bill.

“Mr. President, I realize that it’s an inconvenience, but we’re talking about safety. It’s difficult to have a mother or someone responsible for children in the back seat having to choose which child will not be restrained and the possibility of getting the effects of an accident or something that would happen to them. This is an impossible task.

“We had that exemption a long time ago when we had older cars and it was impossible to put seat belts in the back, but now we have the capability of doing it. So, therefore, Mr. President, I urge all my colleagues, in the interest of safety, to pass this bill.”

The motion was put by the Chair and carried, S.B. No. 2003, S.D. 1, entitled: “A BILL FOR AN ACT RELATING TO PASSENGER RESTRAINT DEVICES,” having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 17. Noes, 7 (Hogue, Ige, Inouye, Kim, Slom, Trimble, Whalen). Excused, 1 (English).

S.B. No. 2015:

Senator Kawamoto moved that S.B. No. 2015, having been read throughout, pass Third Reading, seconded by Senator Espero.

Senators Hogue and Tsutsui requested their votes be cast “aye, with reservations,” and the Chair so ordered.

The motion was put by the Chair and carried, S.B. No. 2015, entitled: “A BILL FOR AN ACT RELATING TO ABANDONED VEHICLES,” having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (English).

S.B. No. 2021, S.D. 1:

On motion by Senator Kawamoto, seconded by Senator Espero and carried, S.B. No. 2021, S.D. 1, entitled: “A BILL FOR AN ACT RELATING TO STREET ROD VEHICLES,” having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (English).

S.B. No. 2022:

Senator Kawamoto moved that S.B. No. 2022, having been read throughout, pass Third Reading, seconded by Senator Espero.

Senator Kim requested her vote be cast “aye, with reservations,” and the Chair so ordered.

The motion was put by the Chair and carried, S.B. No. 2022, entitled: “A BILL FOR AN ACT RELATING TO DUNE BUGGIES,” having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, 2 (Inouye, Tsutsui). Excused, 1 (English).

S.B. No. 2034:

Senator Kawamoto moved that S.B. No. 2034, having been read throughout, pass Third Reading, seconded by Senator Espero.

Senator Ihara rose to speak in opposition to the measure as follows:

“Mr. President, I rise in opposition to S.B. No. 2034.

“Mr. President, this bill relates to the Hawaii Procurement Code and attempts to exempt from the disbarment process, contractors who violate state campaign laws. For the members’ information, disbarment means that a contractor is not allowed to bid on a state contract because they have either been convicted of violating state law, including campaign spending laws, or have violated a contract with state government.

“Mr. President, I believe that a government contractor that’s fined hundreds of thousands of dollars for a large number of campaign donation violations, which has happened, should be subject to the process of disbarment. Mr. President, this means being subject to the process of disbarment does not mean that they are automatically disbarred. There is a lengthy process where there is a notification procedure. There’s a procedure for reviewing and appealing, and notice of disbarment, etc.

“With all due respect to the bill’s promoters, I believe it is unwise for the Legislature to statutorily override procurement code rules to allow the most egregious violators of state campaign laws to be exempt from this process, and therefore be allowed to get government contracts, even those that have been fined several hundreds of thousands of dollars due to violations of state campaign laws.

“Thank you.”

Senator Kawamoto rose to speak in favor of the measure and said:

“Mr. President, I rise in favor of this bill.

“Mr. President, the concern out there is not what the law is. The concern is the vagueness, the fairness, and a clear definition of what disbarment is all about. This bill provides that capability.

“Mr. President, I urge all my colleagues in fairness and ensuring that our policies are clearly defined. Thank you.”

Senator Slom rose to speak in opposition to the measure and stated:

“Mr. President, I rise in opposition to the bill.

“Mr. President, this is a thinly veiled attempt to undo the modicum of brief reform that we enacted prior. I think with the actions that have been taken by the campaign spending commission – the indictments, the convictions – we have seen that there is a definite pattern of abuse of public contracts. And in the committee report, the committee report says, quote, ‘administrative action does not rise to the level of the serious deviation from the standards of honesty, such as would warrant debarment or suspension from bidding on government contracts,’ unquote. I strenuously disagree with that. I think the whole question is about honesty and the appearance of honesty. We’ve had too many instances already. We have instances still continuing.

“So, if anything, the contract by anyone that had been cited should be put in abeyance. This does give discretion to the office of procurement; it does not mandate that they do that. It’s interesting, however, that the state’s procurement officer testified in opposition to this bill, and so, I’ll be voting ‘no’ and urge my colleagues to do the same.

“Thank you.”

Senator Sakamoto rose in support of the measure and stated:

“Mr. President, I rise in support of the measure.

“There’s no question that we need good people administrating our rules. There’s no question that things rise to a point where certain professionals should be debarred. Our current laws includes some of those things that the Legislature has deemed wise – criminal offense, embezzlement, etc., antitrust. But it’s a different thing to say, let’s administratively do something, and if the Legislature feels that some of the previously mentioned items rise to a point that they feel they need to put that in statute, that would be a wiser move than to just say well let’s administratively take care of things that perhaps may rise to a level of debarment.

“Debarment is not a simple thing. Perhaps one would say that a business should be debarred from doing business administratively because somebody in DCCA said they’ve violated some law or some rule. I don’t think the Senator from Hawaii Kai, for his proponents, to support small business, would want an administrative action to prevent any business from operating solely administratively.

“So, I think things do rise to debarment. Let’s let the important things rise there, but let’s not administratively handle something that could really be the demise of a business, many employees and customers just based on an administrative procedure.

“Thank you, Mr. President.”

At 12:14 o’clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:26 o’clock p.m.

Senator Kawamoto rose and said:

“Mr. President, although I believe in this bill, I also believe what the Senator from Moanalua and Aiea indicated. Also, I believe that sometimes, administratively, due process is not given to the people that are being charged.

“Mr. President, in the interest of the Body, I move that we recommit this bill.”

Senator Kawamoto then moved that S.B. No. 2034 be recommitted to the Committee on Transportation, Military Affairs, and Government Operations.

By unanimous consent, S.B. No. 2034, entitled: “A BILL FOR AN ACT RELATING TO HAWAII PUBLIC PROCUREMENT CODE,” was recommitted to the Committee on Transportation, Military Affairs, and Government Operations.

S.B. No. 2344, S.D. 1:

On motion by Senator Kawamoto, seconded by Senator Espero and carried, S.B. No. 2344, S.D. 1, entitled: “A BILL FOR AN ACT RELATING TO HIGHWAY SAFETY,” having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (English, Whalen).

REFERRAL OF SENATE CONCURRENT RESOLUTIONS

The President made the following committee assignments of concurrent resolutions that were offered on Tuesday, February 10, 2004:

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| Senate
Concurrent
Resolution | Referred to: |
| No. 27 | Jointly to the Committee on Commerce,
Consumer Protection and Housing and the Committee on
Health |
| No. 28 | Jointly to the Committee on Science,
Arts, and Technology and the Committee on Tourism |
| No. 29 | Jointly to the Committee on Commerce,
Consumer Protection and Housing and the Committee on
Science, Arts, and Technology |
| No. 30 | Jointly to the Committee on Economic
Development and the Committee on Transportation, Military
Affairs, and Government Operations |

REFERRAL OF SENATE RESOLUTIONS

The President made the following committee assignments of resolutions that were offered on Tuesday, February 10, 2004:

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| Senate
Resolution | Referred to: |
| No. 14 | Jointly to the Committee on Science,
Arts, and Technology and the Committee on Transportation,
Military Affairs, and Government Operations |
| No. 15 | Jointly to the Committee on Labor and
the Committee on Transportation, Military Affairs, and
Government Operations |
| No. 16 | Jointly to the Committee on Science,
Arts, and Technology and the Committee on Tourism |
| No. 17 | Jointly to the Committee on Commerce,
Consumer Protection and Housing and the Committee on
Science, Arts, and Technology |
| No. 18 | Jointly to the Committee on Economic
Development and the Committee on Transportation, Military
Affairs, and Government Operations |

RE-REFERRAL OF SENATE BILLS

The Chair re-referred the following Senate bills that were introduced:

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| Senate Bill | Referred to: |
| No. 214, S.D. 1 | Jointly to the Committee on Labor and
the Committee on Education, then to the Committee on Ways
and Means |
| No. 2077 | Jointly to the Committee on Economic
Development and the Committee on Transportation, Military
Affairs, and Government Operations, then jointly to the
Committee on Ways and Means and the Committee on Water,
Land, and Agriculture |

No. 2884 Jointly to the Committee on Commerce, Consumer Protection and Housing, the Committee on Judiciary and Hawaiian Affairs and the Committee on Labor, then to the Committee on Ways and Means

REFERRAL OF HOUSE BILLS

**MATTERS DEFERRED FROM
FRIDAY, FEBRUARY 13, 2004**

The President made the following committee assignments of House bills received on Wednesday, February 11, 2004, and Friday, February 13, 2004:

House Bill Referred to:

No. 1819 Jointly to the Committee on Commerce, Consumer Protection and Housing and the Committee on Transportation, Military Affairs, and Government Operations

No. 2340 Committee on Water, Land, and Agriculture

ADJOURNMENT

At 12:29 o'clock p.m., on motion by Senator Kawamoto, seconded by Senator Hogue and carried, the Senate adjourned until 11:30 o'clock a.m., Wednesday, February 18, 2004.

Respectfully submitted,

Clerk of the Senate

Approved:

President of the Senate