

FIFTY-FIFTH DAY

Tuesday, April 27, 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 Chaplain Bonnie Holcombe, Women's Community Correctional Center, after which the Roll was called showing all Senators present.

The President announced that he had read and approved the Journal of the Fifty-Fourth Day.

At 11:46 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:48 o'clock a.m.

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 494 and 495) were read by the Clerk and were placed on file:

Gov. Msg. No. 494, dated March 23, 2004, transmitting a Report Requesting the Establishment of a Task Force on Graduated Parenting, prepared by the Department of Health, pursuant to S.C.R. No. 12 (2003).

Gov. Msg. No. 495, dated April 21, 2004, transmitting the Small Business Regulatory Review Board's Annual Report for Fiscal Year Ending June 30, 2003, prepared by the Department of Business, Economic Development and Tourism, Business Support Division, pursuant to Act 202, HRS 2002, codified as Chapter 201M, HRS.

HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 644 to 676) were read by the Clerk and were disposed of as follows:

Hse. Com. No. 644, returning S.C.R. No. 5, which was adopted by the House of Representatives on April 26, 2004, was placed on file.

Hse. Com. No. 645, returning S.C.R. No. 7, which was adopted by the House of Representatives on April 26, 2004, was placed on file.

Hse. Com. No. 646, returning S.C.R. No. 8, which was adopted by the House of Representatives on April 26, 2004, was placed on file.

Hse. Com. No. 647, returning S.C.R. No. 12, S.D. 1, which was adopted by the House of Representatives on April 26, 2004, was placed on file.

Hse. Com. No. 648, returning S.C.R. No. 18, which was adopted by the House of Representatives on April 26, 2004, was placed on file.

Hse. Com. No. 649, returning S.C.R. No. 20, which was adopted by the House of Representatives on April 26, 2004, was placed on file.

Hse. Com. No. 650, returning S.C.R. No. 37, which was adopted by the House of Representatives on April 26, 2004, was placed on file.

Hse. Com. No. 651, returning S.C.R. No. 81, S.D. 1, which was adopted by the House of Representatives on April 26, 2004, was placed on file.

Hse. Com. No. 652, returning S.C.R. No. 106, S.D. 1, which was adopted by the House of Representatives on April 26, 2004, was placed on file.

Hse. Com. No. 653, returning S.C.R. No. 115, which was adopted by the House of Representatives on April 26, 2004, was placed on file.

Hse. Com. No. 654, returning S.C.R. No. 135, S.D. 1, which was adopted by the House of Representatives on April 26, 2004, was placed on file.

Hse. Com. No. 655, returning S.C.R. No. 149, which was adopted by the House of Representatives on April 26, 2004, was placed on file.

Hse. Com. No. 656, returning S.C.R. No. 164, which was adopted by the House of Representatives on April 26, 2004, was placed on file.

Hse. Com. No. 657, returning S.C.R. No. 169, which was adopted by the House of Representatives on April 26, 2004, was placed on file.

Hse. Com. No. 658, returning S.C.R. No. 175, S.D. 1, which was adopted by the House of Representatives on April 26, 2004, was placed on file.

Hse. Com. No. 659, returning S.C.R. No. 185, S.D. 1, which was adopted by the House of Representatives on April 26, 2004, was placed on file.

Hse. Com. No. 660, returning S.C.R. No. 189, which was adopted by the House of Representatives on April 26, 2004, was placed on file.

Hse. Com. No. 661, returning S.C.R. No. 79, S.D. 1, which was adopted by the House of Representatives on April 26, 2004, in an amended form, was placed on file.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the Senate disagreed to the amendments proposed by the House to S.C.R. No. 79, S.D. 1, and requested a conference on the subject matter thereof.

Hse. Com. No. 662, returning S.C.R. No. 101, S.D. 1, which was adopted by the House of Representatives on April 26, 2004, in an amended form, was placed on file.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the Senate disagreed to the amendments proposed by the House to S.C.R. No. 101, S.D. 1, and requested a conference on the subject matter thereof.

Hse. Com. No. 663, returning S.C.R. No. 118, S.D. 1, which was adopted by the House of Representatives on April 26, 2004, in an amended form, was placed on file.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the Senate disagreed to the amendments proposed by the House to S.C.R. No. 118, S.D. 1, and requested a conference on the subject matter thereof.

Hse. Com. No. 664, returning S.C.R. No. 119, S.D. 1, which was adopted by the House of Representatives on April 26, 2004, in an amended form, was placed on file.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the Senate disagreed to the amendments proposed by the House to S.C.R. No. 119, S.D. 1, and requested a conference on the subject matter thereof.

Hse. Com. No. 665, returning S.C.R. No. 127, S.D. 1, which was adopted by the House of Representatives on April 26, 2004, in an amended form, was placed on file.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the Senate disagreed to the amendments proposed by the House to S.C.R. No. 127, S.D. 1, and requested a conference on the subject matter thereof.

Hse. Com. No. 666, returning S.C.R. No. 129, S.D. 1, which was adopted by the House of Representatives on April 26, 2004, in an amended form, was placed on file.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the Senate disagreed to the amendments proposed by the House to S.C.R. No. 129, S.D. 1, and requested a conference on the subject matter thereof.

Hse. Com. No. 667, returning S.C.R. No. 156, S.D. 1, which was adopted by the House of Representatives on April 26, 2004, in an amended form, was placed on file.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the Senate disagreed to the amendments proposed by the House to S.C.R. No. 156, S.D. 1, and requested a conference on the subject matter thereof.

Hse. Com. No. 668, returning S.C.R. No. 180, S.D. 1, which was adopted by the House of Representatives on April 26, 2004, in an amended form, was placed on file.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the Senate disagreed to the amendments proposed by the House to S.C.R. No. 180, S.D. 1, and requested a conference on the subject matter thereof.

Hse. Com. No. 669, returning S.C.R. No. 199, which was adopted by the House of Representatives on April 26, 2004, in an amended form, was placed on file.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the Senate disagreed to the amendments proposed by the House to S.C.R. No. 199, and requested a conference on the subject matter thereof.

Hse. Com. No. 670, informing the Senate that the House has agreed to the amendments proposed by the Senate to H.B. No. 2789, H.D. 1, and H.B. No. 2789, H.D. 1, S.D. 1, passed Final Reading in the House of Representatives on April 26, 2004, was placed on file.

Hse. Com. No. 671, informing the Senate that the House has agreed to the amendments proposed by the Senate to the following House bills and said bills passed Final Reading in the House on April 26, 2004:

H.B. No. 1560, H.D. 1, S.D. 1;
H.B. No. 2048, H.D. 1, S.D. 1;
H.B. No. 2292, H.D. 1, S.D. 1;
H.B. No. 2385, H.D. 1, S.D. 1;
H.B. No. 2798, H.D. 1, S.D. 2; and
H.B. No. 2859, H.D. 2, S.D. 2,

was placed on file.

Hse. Com. No. 672, informing the Senate that the following bills passed Final Reading in the House of Representatives on April 19, 2004:

H.B. No. 1294, S.D. 1, C.D. 1; and
H.B. No. 2061, H.D. 2, S.D. 1, C.D. 1,

was placed on file.

Hse. Com. No. 673, informing the Senate that the following bills passed Final Reading in the House of Representatives on April 26, 2004:

H.B. No. 1793, H.D. 2, S.D. 1, C.D. 1;
H.B. No. 1840, H.D. 1, S.D. 1, C.D. 1; and
S.B. No. 3135, S.D. 1, H.D. 1, C.D. 1,

was placed on file.

Hse. Com. No. 674, informing the Senate that the House reconsidered its actions taken on April 15, 2004, in disagreeing to the amendments proposed by the Senate to the following House bills:

H.B. No. 1944, H.D. 1, (S.D. 1);
H.B. No. 2250, H.D. 2, (S.D. 2);
H.B. No. 2297, H.D. 1, (S.D. 2); and
H.B. No. 2740, H.D. 1, (S.D. 1),

was placed on file.

Hse. Com. No. 675, informing the Senate that the House reconsidered its action taken on March 30, 2004, in disagreeing to the amendments proposed by the Senate to H.B. No. 2337, H.D. 1 (S.D. 1), was placed on file.

Hse. Com. No. 676, informing the Senate that the Speaker on April 27, 2004, appointed Representatives Takamine, chair, Karamatsu, Waters, Meyer as managers on the part of the House for the consideration of amendments proposed by the House to S.B. No. 2469, S.D. 2 (H.D. 1), was placed on file.

CONFERENCE COMMITTEE REPORTS

Senator Chun Oakland, for the Committee on Conference on the disagreeing vote of the House to the amendments proposed by the Senate to H.B. No. 1860, H.D. 1, presented a report (Conf. Com. Rep. No. 20-04) recommending that H.B. No. 1860, H.D. 1, S.D. 2, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15, of the Constitution of the State of Hawaii, action on Conf. Com. Rep. No. 20-04 and H.B. No. 1860, H.D. 1, S.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CHILD ABUSE AND NEGLECT," was deferred for a period of 48 hours.

Senator Kanno, for the Committee on Conference on the disagreeing vote of the House to the amendments proposed by the Senate to H.B. No. 1774, H.D. 2, presented a report (Conf. Com. Rep. No. 21-04) recommending that H.B. No. 1774, H.D. 2, S.D. 2, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15, of the Constitution of the State of Hawaii, action on Conf. Com. Rep. No. 21-04 and H.B. No. 1774, H.D. 2, S.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO UNEMPLOYMENT BENEFITS," was deferred for a period of 48 hours.

Senator Taniguchi, for the Committee on Conference on the disagreeing vote of the House to the amendments proposed by the Senate to H.B. No. 2741, H.D. 1, presented a report (Conf. Com. Rep. No. 22-04) recommending that H.B. No. 2741, H.D. 1, S.D. 1, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15, of the Constitution of the State of Hawaii, action on Conf. Com. Rep. No. 22-04 and H.B. No. 2741, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EXECUTIVE DEPARTMENTS," was deferred for a period of 48 hours.

STANDING COMMITTEE REPORTS

Senator Kim, for the Committee on Tourism, presented a report (Stand. Com. Rep. No. 3495) recommending that the Senate advise and consent to the nominations to the Board of Directors of the Hawai'i Tourism Authority of the following:

VERNON F.L. CHAR, in accordance with Gov. Msg. No. 163;

JOHN J. TONER, in accordance with Gov. Msg. No. 164; and

KYOKO Y. KIMURA, in accordance with Gov. Msg. No. 409.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3495 and Gov. Msg. Nos. 163, 164 and 409 was deferred until Wednesday, April 28, 2004.

Senator Kawamoto, for the Committee on Transportation, Military Affairs, and Government Operations, presented a report (Stand. Com. Rep. No. 3496) recommending that the Senate advise and consent to the nomination of MYRON N. DOBASHI (RET) to the Civil Defense Advisory Council, in accordance with Gov. Msg. No. 448.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3496 and Gov. Msg. No. 448 was deferred until Wednesday, April 28, 2004.

Senator Kawamoto, for the Committee on Transportation, Military Affairs, and Government Operations, presented a report (Stand. Com. Rep. No. 3497) recommending that H.C.R. No. 250 be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 3497 and H.C.R. No. 250, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE PRESIDENT OF THE UNITED STATES AND THE UNITED STATES CONGRESS TO SUPPORT H.R. 677 EXTENDING VETERANS' BENEFITS TO FILIPINO VETERANS," was deferred until Wednesday, April 28, 2004.

Senator Kawamoto, for the Committee on Transportation, Military Affairs, and Government Operations, presented a report (Stand. Com. Rep. No. 3498) recommending that H.C.R. No. 36, H.D. 1, be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 3498 and H.C.R. No. 36, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION AUTHORIZING AND REQUESTING THE GOVERNOR TO ESTABLISH A SISTER-STATE RELATIONSHIP BETWEEN THE STATE OF HAWAII OF THE UNITED STATES AND THE STATE OF RABAT-SALÉ-ZEMMOUR-ZAËR OF THE KINGDOM OF MOROCCO," was deferred until Wednesday, April 28, 2004.

Senator Kawamoto, for the Committee on Transportation, Military Affairs, and Government Operations, presented a report (Stand. Com. Rep. No. 3499) recommending that H.C.R. No. 171 be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 3499 and H.C.R. No. 171, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE DIRECTOR OF TRANSPORTATION TO STUDY THE ADVISABILITY OF TRANSFERRING THE VANPOOL PROGRAM TO THE COUNTIES," was deferred until Wednesday, April 28, 2004.

Senator Kawamoto, for the Committee on Transportation, Military Affairs, and Government Operations, presented a report (Stand. Com. Rep. No. 3500) recommending that H.C.R. No. 258 be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 3500 and H.C.R. No. 258, entitled: "HOUSE CONCURRENT RESOLUTION URGING THE UNITED STATES CONGRESS TO SUPPORT THE PASSAGE OF S. 68, RELATING TO IMPROVING BENEFITS FOR FILIPINO VETERANS OF WORLD WAR II," was deferred until Wednesday, April 28, 2004.

ORDER OF THE DAY

FINAL READING

MATTERS DEFERRED FROM MONDAY, APRIL 26, 2004

S.B. No. 2842, S.D. 1, H.D. 4:

On motion by Senator Hanabusa, seconded by Senator Chun Oakland and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 2842, S.D. 1, and S.B. No. 2842, S.D. 1, H.D. 4, entitled: "A BILL FOR AN ACT RELATING TO CHAPTER 846E, HAWAII REVISED STATUTES," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

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

S.B. No. 2843, S.D. 1, H.D. 2:

On motion by Senator Hanabusa, seconded by Senator Chun Oakland and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 2843, S.D. 1, and S.B. No. 2843, S.D. 1, H.D. 2, entitled: "A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF THE STATE OF HAWAII," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

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

S.B. No. 2846, S.D. 1, H.D. 2:

On motion by Senator Hanabusa, seconded by Senator Chun Oakland and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 2846, S.D. 1, and S.B. No. 2846, S.D. 1, H.D. 2, entitled: "A BILL FOR AN ACT PROPOSING AMENDMENTS TO ARTICLE I, SECTION 14, OF THE HAWAII CONSTITUTION," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

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

**RE-REFERRAL OF
SENATE RESOLUTION**

The Chair re-referred the following Senate resolution that was offered:

Senate Resolution Referred to:
No. 40 Jointly to the Committee on Human Services and the Committee on Judiciary and Hawaiian Affairs

RECONSIDERATION OF ACTIONS TAKEN

S.B. No. 2899, S.D. 2 (H.D. 1):

Senator Baker moved that the Senate reconsider its action taken on April 8, 2004, in disagreeing to the amendments proposed by the House to S.B. No. 2899, S.D. 2, seconded by Senator Menor and carried.

In accordance with the Conference Committee Procedures agreed upon by the Senate and the House of Representatives, the managers on the part of the Senate recommended that the Senate agree to the amendments proposed by the House to S.B. No. 2899, S.D. 2, on the following showing of Ayes and Noes:

Ayes, 4 (Baker, Menor, Chun Oakland, Kim). Noes, none.

Senator Baker moved that the Senate agree to the amendments proposed by the House to S.B. No. 2899, S.D. 2, seconded by Senator Menor.

Senator Baker noted:

“Mr. President, there was a one word difference in this bill. The Senate used the very famous word ‘shall,’ and the House used ‘may.’ In the final analysis we agreed with the House to go with ‘may’ and give discretion to the board of nursing.

“Thank you.”

The motion was put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 2899, S.D. 2, and S.B. No. 2899, S.D. 2, H.D. 1, entitled: “A BILL FOR AN ACT RELATING TO NURSES,” was placed on the calendar for Final Reading on Wednesday, April 28, 2004.

S.C.R. No. 9, S.D. 1 (H.D. 1):

Senator Inouye moved that the Senate reconsider its action taken on April 21, 2004, in disagreeing to the amendments proposed by the House to S.C.R. No. 9, S.D. 1, seconded by Senator Espero and carried.

Senator Inouye moved that the Senate agree to the amendments proposed by the House to S.C.R. No. 9, S.D. 1, seconded by Senator Espero.

Senator Inouye noted:

“Mr. President, the House made the following amendments: (1) Incorporated the representations of DLNR and Maui Land and Pineapple; (2) Made the approval subject to the use restrictions and requiring the restrictions to be incorporate into exchange deed; (3) Provided that BLNR may amend or waive the use restrictions only if Maui Land and Pineapple pays the State the difference between the fair market value of the land based upon its restricted use the fair market value of the land with the restrictive conditions amended or waived; (4)

Requested DLNR to notify the Senate President and the Speaker of the House of Representatives of any request by Maui Land and Pineapple to amend or waive the restrictions and to provide pertinent details including appraisal values and payment adjustments; and (5) Provide for the transmittal of this measure to the BLNR and Maui Land and Pineapple.

“I initially had some concerns regarding this land exchange, but after speaking to the stakeholders, I believe the House resolved most of my issues. As a result, I believe the Senate should move to agree to the House language.”

The motion was put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.C.R. No. 9, S.D. 1, and S.C.R. No. 9, S.D. 1, H.D. 1, entitled: “SENATE CONCURRENT RESOLUTION SUBMITTING TO THE LEGISLATURE OF THE STATE OF HAWAII FOR REVIEW OF ACTION TAKEN BY THE BOARD OF LAND AND NATURAL RESOURCES ON LAND EXCHANGES,” was placed on the calendar for Final Adoption on Wednesday, April 28, 2004.

S.C.R. No. 17 (H.D. 1):

Senator Baker moved that the Senate reconsider its action taken on April 26, 2004, in disagreeing to the amendments proposed by the House to S.C.R. No. 17, seconded by Senator Chun Oakland and carried.

Senator Baker moved that the Senate agree to the amendments proposed by the House to S.C.R. No. 17, seconded by Senator Chun Oakland.

Senator Baker noted:

“Mr. President, this measure has changed considerably since it left the Senate but it comes back to us in a form that really affirms a bill that we heard and passed out of the Senate Health Committee and that is to make the Capitol a smoke-free area to set the kind of example that would be exemplary to our children and to visitors to this unique structure and the hall of government in our state, and noting that secondhand smoke is as much a carcinogen to humans as firsthand smoke.

“So I believe that this would be good policy to have this considered and to have the current ban enforced. Thank you, Mr. President.”

The motion was put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.C.R. No. 17, and S.C.R. No. 17, H.D. 1, entitled: “SENATE CONCURRENT RESOLUTION URGING THE SETTING OF AN EXAMPLE TO OUR CHILDREN AND OUT-OF-STATE VISITORS BY DESIGNATING ALL AREAS OF THE STATE CAPITOL SMOKE-FREE,” was placed on the calendar for Final Adoption on Wednesday, April 28, 2004.

Senator Inouye, Chair of the Committee on Water, Land, and Agriculture, requested a waiver of the notice requirement pursuant to Senate Rule 21 for Gov. Msg. No. 468.

Senator Inouye noted:

“Mr. President, for the members’ information, this is the governor’s nominee to the Board of Land and Natural Resources.”

The Chair then granted the waiver.

At 11:58 o’clock a.m., the Senate stood in recess subject to the call of the Chair.

ADJOURNMENT

The Senate reconvened at 12:07 o'clock p.m.

Senator Hanabusa, requested a waiver of the notice requirement pursuant to the 2004 Committee on Conference Procedures for S.B. No. 2748.

Senator Hanabusa noted:

“Mr. President, your Committee on Conference scheduled this bill for an initial conference meeting this afternoon at 5:00 p.m., and proper notice of at least 24 hours was given. Your conferees would like to reschedule this measure to 2:00 p.m. since we are meeting with the House on several other measures at that time.”

The Chair then granted the waiver.

APPOINTMENT OF CONFEREES

S.B. No. 1491, S.D. 1 (H.D. 1):

The President appointed Senator Taniguchi as an additional co-chair and Senators Kim and Tsutsui as additional managers on the part of the Senate at the conference to be held for the consideration of amendments proposed by the House to S.B. No. 1491, S.D. 1.

S.B. No. 1611 (H.D. 2):

In accordance with the disagreement of the Senate to the amendments proposed by the House to S.B. No. 1611, and the request for a conference on the subject matter thereof, the President appointed Senators English, Kokubun, co-chairs; Hooser, Kim, Hemmings as managers on the part of the Senate at such conference.

S.B. No. 2355, S.D. 2 (H.D. 2):

The President appointed Senators Kawamoto, Kim and Tsutsui as additional managers on the part of the Senate at the conference to be held for the consideration of amendments proposed by the House to S.B. No. 2355, S.D. 2.

H.B. No. 2049, H.D. 1 (S.D. 2):

In accordance with the disagreement of the House to the amendments proposed by the Senate to H.B. No. 2049, H.D. 1, and the request for a conference on the subject matter thereof, the President appointed Senators English, Ige, co-chairs; Espero, Menor, Slom as managers on the part of the Senate at such conference.

H.B. No. 2291, H.D. 2 (S.D. 2):

In accordance with the disagreement of the House to the amendments proposed by the Senate to H.B. No. 2291, H.D. 2, and the request for a conference on the subject matter thereof, the President appointed Senators Kawamoto, Kim, Taniguchi, co-chairs; Whalen as managers on the part of the Senate at such conference.

H.B. No. 2645, H.D. 2 (S.D. 2):

In accordance with the disagreement of the House to the amendments proposed by the Senate to H.B. No. 2645, H.D. 2, and the request for a conference on the subject matter thereof, the President appointed Senators Sakamoto, Taniguchi, co-chairs; Hooser, Hogue as managers on the part of the Senate at such conference.

At 12:08 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, April 28, 2004.

Respectfully submitted,

Clerk of the Senate

Approved:

President of the Senate