

## FIFTEENTH DAY

**Thursday, February 10, 2005**

The Senate of the Twenty-Third Legislature of the State of Hawaii, Regular Session of 2005, convened at 11:40 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by the Reverend Adwin Meekins, The Way of Truth Church, Waipahu, after which the Roll was called showing all Senators present.

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

At 11:47 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:51 o'clock a.m.

## STANDING COMMITTEE REPORTS

Senator Chun Oakland, for the majority of the Committee on Human Services, presented a report (Stand. Com. Rep. No. 9) recommending that S.B. No. 14, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Hee, seconded by Senator Hogue and carried, the report of the majority of the Committee was adopted and S.B. No. 14, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HUMAN SERVICES," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Chun Oakland, for the majority of the Committee on Human Services, presented a report (Stand. Com. Rep. No. 10) recommending that S.B. No. 24, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Hee, seconded by Senator Hogue and carried, the report of the majority of the Committee was adopted and S.B. No. 24, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE DEPARTMENT OF HUMAN SERVICES," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Chun Oakland, for the majority of the Committee on Human Services, presented a report (Stand. Com. Rep. No. 11) recommending that S.B. No. 112, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Hee, seconded by Senator Hogue and carried, the report of the majority of the Committee was adopted and S.B. No. 112, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HUMAN SERVICES," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Chun Oakland, for the Committee on Human Services, presented a report (Stand. Com. Rep. No. 12) recommending that S.B. No. 27 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Hee, seconded by Senator Hogue and carried, the report of the Committee was adopted and S.B. No. 27, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR THE KAPIOLANI CHILD AT-RISK

EVALUATION PROGRAM," 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. 13) recommending that S.B. No. 742 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Hee, seconded by Senator Hogue and carried, the report of the Committee was adopted and S.B. No. 742, entitled: "A BILL FOR AN ACT RELATING TO FEES," 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. 14) recommending that S.B. No. 1135 pass Second Reading and be referred to the Committee on Judiciary and Hawaiian Affairs.

On motion by Senator Hee, seconded by Senator Hogue and carried, the report of the Committee was adopted and S.B. No. 1135, entitled: "A BILL FOR AN ACT RELATING TO INTEREST AND USURY," passed Second Reading and was referred to the Committee on Judiciary and Hawaiian Affairs.

Senator Baker, for the Committee on Health, presented a report (Stand. Com. Rep. No. 15) recommending that S.B. No. 792 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Hee, seconded by Senator Hogue and carried, the report of the Committee was adopted and S.B. No. 792, entitled: "A BILL FOR AN ACT MAKING AN EMERGENCY APPROPRIATION TO THE DEPARTMENT OF HEALTH FOR THE ADULT MENTAL HEALTH DIVISION," passed Second Reading and was referred to the Committee on Ways and Means.

## ORDER OF THE DAY

REFERRAL OF  
SENATE CONCURRENT RESOLUTION

The President made the following committee assignment of a concurrent resolution that was offered on Friday, February 4, 2005:

Senate Concurrent Resolution	Referred to:
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No. 36	Committee on Health, then to the Committee on Commerce, Consumer Protection and Housing
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## RE-REFERRAL OF SENATE BILL

The Chair re-referred the following Senate bill that was introduced:

Senate Bill	Referred to:
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No. 1861	Committee on Transportation and Government Operations, then to the Committee on Ways and Means
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## ADVISE AND CONSENT

Stand. Com. Rep. No. 7 (Gov. Msg. No. 78):

Senator Hanabusa moved that Stand. Com. Rep. No. 7 be received and placed on file, seconded by Senator Hee and carried.

Senator Hanabusa then moved that the Senate advise and consent to the nomination of ELIZABETH ANN STRANCE to the office of Judge, Circuit Court of the Third Circuit, for a term of ten years, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, seconded by Senator Hee.

Senator Hanabusa rose in support of the nominee and said:

“Mr. President, I rise in support of Gov. Msg. No. 78.

“Mr. President, Gov. Msg. No. 78 submits to this Body for consideration and consent the gubernatorial nominee Elizabeth Ann Strance for a term of 10 years. This is of course to the Circuit Court of the Third Circuit of the State of Hawaii.

“Mr. President, Ms. Strance comes with very high recommendations. She actually came through the State Bar Association with flying colors, having found her ‘highly qualified.’ Mr. President, if I may just digress here a little, I’d like the Body to realize that in the three years that I have chaired Judiciary and Hawaiian Affairs, this is only the second time that a woman has been ‘highly qualified’ by the Hawaii Bar Association.

“Ms. Strance received her Bachelor of Science degree from Willamette University and she earned her Juris Doctorate degree from Northwestern School of Law which is part of the Lewis and Clark College in Portland, Oregon. She’s been licensed in the State of Hawaii since 1988 and she has been an associate in many of the firms in town, including the very large firm of Goodwill, Anderson, Quinn and Stifel. In addition to that, she now sits as a per diem judge in the Third Circuit in the Family Court and she is a partner in the firm of Strance and Nakoia. Her practice, Mr. President, has run the whole gamut. She’s done civil, traffic, divorce and so forth, and of course her experience as a per diem judge gives her all the other necessary experiences that she would have. She has the experience of representing both large and small clients.

“Mr. President, it is very rare that I would defer to someone else’s words in describing themselves, but she said it so well that I’d like to read this into the record. She said, ‘I have also worked for large and small law firms, represented large and small clients, and represented plaintiffs and defendants. This varied background has been particularly helpful as a per diem judge. In my experience, there were times when knowledge of the rules of court has been less valuable than the understanding of the context of the dispute or the understanding of the pressures on the participants. Although my background has not affected the substantive outcome of any legal matter, it has instilled in me a level of empathy. In addition, it has assisted me to resolve matters in a dispassionate manner and on occasion offer observations for resolution that parties involved in the heart of the dispute were unable to see.’ Mr. President, this is the basic sentiment that we had throughout our hearing from those who testified on her behalf. It really came down to her compassion, yet her legal skill and her ability, her real ability to see the true issues and to bring people together.

“There were people who came and they all said the same thing about Ms. Strance – she is respectful of defendants, their attorneys, and anyone that comes before her.

“She has an interesting statement here that also tells a lot about Ms. Strance. She said, ‘I am curious about the law. I want to fully understand the disputes before me. That natural curiosity has kept me motivated and engaged in my cases.’ Mr. President, there are some of us who believe, and this is not to sound sexist, this just explains it, law is an extremely jealous mistress – you can never turn your back on it. I think what Ms. Strance is saying here is exactly that. She is saying that you have to stay engaged, you have to stay just fascinated by the process, and that’s how I believe she ranks as one of the best lawyers that we do have and we’ve seen come before us.

“On another note, Mr. President, and this is because this just caught everyone’s attention and I would like to read this primarily because the person who is the subject of this is here with her mother. This was submitted by Collette Miura Matsunaga. She says, ‘I’m in the eighth grade, 13-years old at Konawaena Middle School in Kealahou, Hawaii. I have known Betsy Strance, I call her Auntie Betsy, ever since I was a little girl. She is a good lawyer. She is dedicated and honest. By the way her son Keawe acts, I can tell you she is disciplined but kind. Keawe is more well-behaved than my three-year old sister Janna. They live close to our house in Captain Cook.’ And then she said, ‘I don’t have school tomorrow. If my mom can get a reservation for me (not too expensive) she said I can testify at her hearing.’ The problem then was that we were told that Collette did not want to come because she didn’t want to be questioned by the good Senator from Kahaluu. (Laughter.) But we can all understand that and empathize with her.

“Mr. President, the other persons who should be recognized who came were people like Craig Kahui who submitted testimony and he is the bailiff of the Third Circuit Court. When people like bailiffs bring it upon themselves to come forward, because they watch us in all our glory and all our misery and everything else, and when they come out singing praises of this nominee, you know that this nominee is someone that we should be proud to confirm. As I stated earlier, she is ‘highly-qualified’ and there is no question in my mind that she will be an excellent judge for the Third Circuit.

“Mr. President, I ask you and my colleagues in joining me in confirming Elizabeth Ann Strance for the Third Circuit of the Circuit Court of the State of Hawaii. Thank you very much.”

Senator Inouye rose to speak in support of the nominee as follows:

“Mr. President, I speak in strong support of Gov. Msg. No. 68, Ms. Elizabeth Ann Strance, the judicial nominee to the Circuit Court of the Big Island based in Kona.

“As you all know by now, I have expressed by opinions loud and clear to the Governor, as well as in the Ways and Means hearings to the CJ about parity in the court system particularly on the Big Island. As you know, we lost the only two women judges several years ago which was very controversial and I’m really thankful that the Governor and the CJ have seen fit, but only because Ms. Strance has already proven herself, as our Chair of our Judiciary Committee has said.

“And so, I urge my colleagues as well to strongly support our nominee here, Ms. Elizabeth Strance. Thank you very much.”

Senator Hee rose in support of the nominee and stated:

“Mr. President, I stand in support of the nominee with a few remarks.

"I had the privilege 16 years ago to Chair the Judiciary Committee, and I realize how difficult a job it can be during the confirmation process. In fact, it's no secret that we, as the Senate, and the Committee in particular are going through a protracted discussion at the moment with Mr. Bissen.

"I want to say that the process is such a difficult one because when a person becomes a judge, society recognizes that person as distinctly different from all others. Besides the physical presence of having a black robe, sitting at an elevated level, and having attorneys refer to that person as 'your honor' and asking the questions even to approach the bench, clearly society has looked upon this person as one that we can rely on to dispense fairness and equity to all people. And when you look at the nominee's resume and listen to her testify, there's no question in my mind that she epitomizes fairness.

"When you look at her community service, what caught my eye was her volunteer work for Hospice Hawaii, her volunteer work for the AIDS Foundation, her volunteer work for the various community organizations, and these are the things that in my opinion round off this individual.

"You know, Betsy Strance is the kind of person that makes the Hawaii Bar Association look good, frankly. I think she is the kind of person that the bar association can look to and say this is the kind of person or this person is one that is highly recommended. That's to the bar's advantage. It's really not to Betsy Strance's advantage, because as we're finding out and as we'll go on further with other nominees to the bench, the qualification and the process of qualifying or putting a qualification on a person is dependent by this Body on institutions like the Hawaii Bar Association. There's no doubt in my mind that a complete overhaul is necessary. There's no doubt in my mind that new leadership is necessary. There is no doubt in my mind that whatever procedures, as secret as they may be, need to be revisited so that we as the Senate and all others can view and evaluate their recommendation in a more transparent and a more fair and open proceeding.

"Circling the wagons does nothing, Mr. President, by the bar to protect one of their own. What it does is call into question the integrity not only of the person that they circle their wagons around but the integrity of the process by which they have rendered a decision.

"Betsy Strance has come through this process. She makes the bar look good, and I am pleased and would encourage the members to adopt her as the next judge.

"On one final note, Mr. President, I want to state for the record, clarity – and that is, Collette Matsunaga asked me by e-mail, if she came, could she testify? And I said by e-mail, I am absolutely certain that if you asked the Chair, she will allow you to testify.

"Thank you, Mr. President."

Senator Whalen rose to speak in favor of the nominee and said:

"Mr. President, I rise in favor of the motion.

"I'm not as articulate as our good Chair of the Judiciary or the Vice Chair, but I think I have the rare honor of anyone here of actually being before Ms. Strance in a couple of minor matters. And I'm happy to say as a resident of Kona, one of my constituents, that the community in mass came out in support for her. I don't recall anything negative or even the slightest hint of any sort of doubt about her ability. In fact, it was overwhelmingly in support and everyone to the person praised

her in her ability to do a good job, to be prepared, to know what she's talking about, and when those issues arise that are unfamiliar, she does her homework and gets it done. And that's what we need in our judges – that desire and the commitment to find out about an issue, to learn what needs to be learned so that they can make a fair and just decision.

"I rise to encourage my colleagues, which I'm sure there will be a unanimous vote, not to vote for her because she is a woman or because she is the only one left or because she is from the Big Island, but because of her as a person that she has done such a wonderful job as a per diem judge and representing her clients that she is more than capable of doing this job. I would ask everyone again to cast your vote in favor of this nominee.

"One last point. I spoke with some of the people in the interview process. What impressed them about her was not just the fairness, but the balanced approach that there has to be consequences. And for a drug court judge, that is such an essential element for people to realize that the choices they make have consequences to them. I don't think I'm spilling any beans here or anything, but of her many qualifications, that was one that really showed out for those people who choose her, that she has that deep-rooted belief or commitment to the fact that when we make choices there are consequences and you have to live them out to learn and improve and to go forward from there. And for this position, that is extremely essential to the job. Again, I just want to say congratulations and look forward to many years of having you on the bench."

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

At this time, Senator Hanabusa introduced Judge Strance to the members of the Senate. (Judge Strance, who was seated in the gallery with members of her family, rose to be recognized.)

At 12:07 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:13 o'clock p.m.

## REFERRAL OF HOUSE BILLS

### MATTERS DEFERRED FROM WEDNESDAY, FEBRUARY 9, 2005

The President made the following committee assignments of House bills received on Tuesday, February 8, 2005 and Wednesday, February 9, 2005:

House Bill	Referred to:
No. 161, H.D. 1	Committee on Commerce, Consumer Protection and Housing
No. 214, H.D. 1	Committee on Commerce, Consumer Protection and Housing
No. 515	Jointly to the Committee on Transportation and Government Operations, the Committee on Intergovernmental Affairs and the Committee on Media, Arts, Science and Technology
No. 644, H.D. 1	Committee on Commerce, Consumer Protection and Housing

Senator Trimble rose on a point of personal privilege and said:

“Mr. President, I rise on a point of personal privilege.

“Yesterday when I rose to apologize to some Committee Chairs, I inadvertently perhaps created a misimpression. I did not want to imply that the reason why I attended Higher Education was because it was more dynamic and exciting than the other two Committees. (Laughter.)

“Last year I talked about the strength of this Body being its diversity and that we took advantage of our diversity through collective collaboration and discussion. Today, unfortunately, I again have to report that yesterday while I did make two of my three committee hearings, there was not a sufficient number of members at the end of the hearing to have decision-making.

“The reason why I’m bringing this to our collective attention is that there were people that waited and waited and waited to either testify or to listen for some words in terms of what direction the Committee was going. Not only when scheduling problems do not allow us to collaborate, perhaps we are paying disrespect to the public that takes off from employment giving up of their time to come down and give us the benefit of their thoughts only to address one or two members of the Committee, they may be left with the impression that somehow their voice doesn’t matter. I hope this is not the impression we are intending to convey.

“Thank you, Mr. President.”

#### ADJOURNMENT

At 12:16 o’clock p.m., on motion by Senator Hee, seconded by Senator Hogue and carried, the Senate adjourned until 11:30 o’clock a.m., Friday, February 11, 2005.

Respectfully submitted,

Clerk of the Senate

Approved:

President of the Senate