

THIRTY-FOURTH DAY

Monday, March 19, 2007

The Senate of the Twenty-Fourth Legislature of the State of Hawai'i, Regular Session of 2007, convened at 11:37 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by Nā Keiki o Pūnana Leo o Kawaiaha'o, after which the Roll was called showing all Senators present with the exception of Senators Bunda and Whalen who were excused.

The President announced that she had read and approved the Journal of the Thirty-Third Day.

Senators Sakamoto, Tokuda and Menor introduced the following individuals in recognition of the 50th Anniversary of the Hawai'i State Science and Engineering Fair: Dr. Celia Smith, President of the Hawai'i Academy of Science; Dr. Irvin King, Education Director of the Hawai'i Academy of Science; Dr. Robert Campbell, Fair volunteer and past President of the Hawai'i Academy of Science; and Philip and Lucia Mocz, first and second place winners in last year's competition.

Senator Fukunaga, with the assistance of Senators Hemmings, Inouye, English, Tsutsui, Ihara, Trimble, Taniguchi, Kokubun, Chun Oakland and Slom introduced and congratulated the following United States Small Business Administration's 2007 State of Hawai'i Awardees:

Dr. Tin Myaing Thein, Minority Small Business Champion of the Year Award;

Brian Iwata, Financial Services Champion of the Year Award;

Alii Chang, Lani Weigert, and Marseu Simpson, Home-Based Business Champion of the Year Award;

Alvin Makimoto, Family Owned Small Business of the Year Award;

Tony Yamada, David Inouye and Michael Inouye, Young Entrepreneur of the Year Award;

Nobuo and Teruko Kuniyuki, Small Business Exporter of the Year Award;

Evan and Kari Leong, Small Business Journalist of the Year Award;

Barbara Hastings and Barbra Pleadwell, Women in Business Champion of the Year Award; and

Malcom Koga and Glenn Nohara, Small Business Persons of the Year Award.

At 12:13 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:21 o'clock p.m.

STANDING COMMITTEE REPORTS

Senator Sakamoto, for the Committee on Education, presented a report (Stand. Com. Rep. No. 1066) recommending that H.B. No. 13, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Ige, seconded by Senator Gabbard and carried, the report of the Committee was adopted and H.B. No. 13, H.D. 1, 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.

Senator Sakamoto, for the Committee on Education, presented a report (Stand. Com. Rep. No. 1067) recommending that H.B. No. 18, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Ige, seconded by Senator Gabbard and carried, the report of the Committee was adopted and H.B. No. 18, H.D. 1, 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.

Senator Fukunaga, for the Committee on Economic Development and Taxation, presented a report (Stand. Com. Rep. No. 1068) recommending that H.B. No. 1411, H.D. 2, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Ige, seconded by Senator Gabbard and carried, the report of the Committee was adopted and H.B. No. 1411, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CONFORMITY OF THE HAWAII INCOME TAX LAW TO THE INTERNAL REVENUE CODE," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Fukunaga, for the majority of the Committee on Economic Development and Taxation, presented a report (Stand. Com. Rep. No. 1069) recommending that H.B. No. 1414, H.D. 1, as amended in S.D. 1, be referred to the Committee on Ways and Means.

On motion by Senator Ige, seconded by Senator Gabbard and carried, the report of the majority of the Committee was adopted and H.B. No. 1414, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT MAKING AN EMERGENCY APPROPRIATION FOR DEPARTMENT OF TAXATION COUNTY SURCHARGE IMPLEMENTATION COSTS," was referred to the Committee on Ways and Means.

Senators Kokubun and Inouye, for the Committee on Water, Land, Agriculture and Hawaiian Affairs and the Committee on Intergovernmental and Military Affairs, presented a joint report (Stand. Com. Rep. No. 1070) recommending that H.B. No. 38, H.D. 2, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Judiciary and Labor.

On motion by Senator Ige, seconded by Senator Gabbard and carried, the joint report of the Committees was adopted and H.B. No. 38, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO LIABILITY OF STATE AND COUNTY GOVERNMENTS," passed Second Reading and was referred to the Committee on Judiciary and Labor.

Senator Kokubun, for the Committee on Water, Land, Agriculture and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 1071) recommending that H.B. No. 400, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Ige, seconded by Senator Gabbard and carried, the report of the Committee was adopted and H.B. No. 400, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT

RELATING TO AGRICULTURE,” passed Second Reading and was referred to the Committee on Ways and Means.

Senator Menor, for the Committee on Energy and Environment, presented a report (Stand. Com. Rep. No. 1072) recommending that H.B. No. 506, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Economic Development and Taxation.

On motion by Senator Ige, seconded by Senator Gabbard and carried, the report of the Committee was adopted and H.B. No. 506, H.D. 1, S.D. 1, entitled: “A BILL FOR AN ACT RELATING TO ETHANOL,” passed Second Reading and was referred to the Committee on Economic Development and Taxation.

Senator Menor, for the Committee on Energy and Environment, presented a report (Stand. Com. Rep. No. 1073) recommending that H.B. No. 871, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Economic Development and Taxation.

On motion by Senator Ige, seconded by Senator Gabbard and carried, the report of the Committee was adopted and H.B. No. 871, H.D. 1, S.D. 1, entitled: “A BILL FOR AN ACT RELATING TO SEAWATER AIR CONDITIONING DISTRICT COOLING SYSTEMS,” passed Second Reading and was referred to the Committee on Economic Development and Taxation.

Senator Menor, for the Committee on Energy and Environment, presented a report (Stand. Com. Rep. No. 1074) recommending that H.B. No. 1289, H.D. 2, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Economic Development and Taxation.

On motion by Senator Ige, seconded by Senator Gabbard and carried, the report of the Committee was adopted and H.B. No. 1289, H.D. 2, S.D. 1, entitled: “A BILL FOR AN ACT RELATING TO RENEWABLE ENERGY,” passed Second Reading and was referred to the Committee on Economic Development and Taxation.

Senators Fukunaga and Inouye, for the Committee on Economic Development and Taxation and the Committee on Intergovernmental and Military Affairs, presented a joint report (Stand. Com. Rep. No. 1075) recommending that H.B. No. 1256, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Judiciary and Labor.

On motion by Senator Ige, seconded by Senator Gabbard and carried, the joint report of the Committees was adopted and H.B. No. 1256, H.D. 1, S.D. 1, entitled: “A BILL FOR AN ACT RELATING TO THE PERFECTION OF APPEALS TO THE TAX APPEAL COURT,” passed Second Reading and was referred to the Committee on Judiciary and Labor.

ORDER OF THE DAY

RE-REFERRAL OF HOUSE BILLS

The Chair re-referred the following House bills that were received:

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| House Bill | Referred to: |
| No. 154, H.D. 1 | Committee on Judiciary and Labor |
| No. 1003, H.D. 3 | Jointly to the Committee on Energy and Environment and the Committee on Education, then to the Committee on Ways and Means |

No. 1140, H.D. 1 Committee on Tourism and Government Operations, then to the Committee on Ways and Means

No. 1171, H.D. 1 Jointly to the Committee on Tourism and Government Operations and the Committee on Judiciary and Labor, then to the Committee on Ways and Means

No. 1440, H.D. 3 Committee on Public Safety, then jointly to the Committee on Judiciary and Labor and the Committee on Ways and Means

No. 1750, H.D. 2 Committee on Judiciary and Labor

Senator Fukunaga, Chair of the Committee on Economic Development and Taxation, requested a waiver of the notice requirement pursuant to Senate Rule 21 for the following House Bills:

- H.B. No. 317;
- H.B. No. 1277; and
- H.B. No. 1755.

Senator Fukunaga noted:

“Madam President, the hearing notice for these measures was prepared on Friday afternoon, and in the hustle-and-bustle of the day, they were not able to be filed in time before the Clerk’s Office closed.”

The Chair then granted the waiver.

Senator Hemmings rose on a point of personal privilege and stated:

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

“Madam President, colleagues, one of the great blessings bestowed upon us by our predecessors generations ago is the freedoms of democracy, and one of the great geniuses of our system is that we can reinvent ourselves to our betterment. Our ability to recognize our shortcomings and make the amendments and changes necessary to do that is so important to our success. I was so proud of this Senate Body on Friday the way things happened here on the Floor and the way that we arrived at our conclusions on that vote for Glenn Kim. But we cannot let, as happened in Committee, anyone’s pursuits, biases, or vindictiveness damage the reputation of this Senate.

“This same situation happened in Congress over 50 years ago at the national level. Particulars were revealed in a 2003 document sequestered for 50 years. The document indicted a U.S. Congressman for flouting the rights of individuals, smearing their reputations, as well as other legislative improprieties, including the misuse of subpoena process and hearsay testimony. That incident in Congress spawned a new term in the vernacular of politics – it’s called ‘McCarthyism.’

“Here in Hawaii under the current system, some could say we recently experienced shopping for adverse testimony and possibly the misuse of the subpoena process. Madam President, I only offer these comments because I sincerely want us to be better than what we just experienced, and I think we can, Madam President. And so, what I’d like to do is offer two rule changes for the Majority to consider, and that number one rule would be that we issue subpoenas with the approval of the Committee that’s seeking it. And then with your consent, Madam President, I think this would help protect the democratic process, but also protect your office Madam President; and that secondly, we institute a rule that would simply preempt anonymous testimony. If something needs to be pursued, it

should not be pursued publicly based on anonymous testimony. I offer these rule changes in the spirit of cooperation and in hopes that we can improve the process for the benefit of everybody concerned.

"I want to close on a very positive note. I think this Senate can stand very proud under your leadership, Madam President, because of what happened Friday. We debated on the Floor, openly and honestly, an issue and everybody voted their conscience, and when that's done, as it was done Friday, no matter which way you voted, I think we all can be proud.

"Thank you, Madam President."

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

"Madam President, I rise on a point of personal privilege in brief rebuttal.

"Madam President, I want to also compliment you on your leadership on Friday, and I think the process went well. It was open, fair, and deliberative, and I'd like to just offer a few comments, a few remarks about the subpoena process and make it clear that the way the process is now is within our Rules, and though our fundamental constitutional responsibility is to offer advise and consent – and that is our obligation, it's our responsibility – we need to do that in the manner that our constituents expect of us. We need to dig deep on these matters, but we also have a responsibility, I think, Madam President, to protect those that would like to offer testimony on these issues but are afraid.

"I believe that that's really why we're here today, and I think that's a fundamental question why we're here today – that people are afraid to offer testimony critical of the Governor's nominees. And when members, committee chairmen, and others receive anonymous testimony or anonymous phone calls, faxes, or personal communications – I know in my personal situation when I receive those kinds of communications, especially when they're people known to me, and when those allegations or those communications are credible, or when many, many people come with the same allegations, the same charges, the same concerns – I believe that puts us in a dilemma as public policymakers. How are we to do our jobs when we're faced with this information from credible sources, but people are afraid to come forward and testify? I think that's really the issue – how do we do our jobs properly in the face of this fear? And I have to add, too, that there are many, many nominations that pass through without question or with minimal question, minimal opposition. But in a few cases, yes, there seems to be repeated concerns, repeated allegations, both anonymous and not.

"I think the Committee Chairs and some members of the committee often receive these same anonymous telephone calls. Fortunately, though, when asked, some of these witnesses are willing to testify before the Committee and to do so openly, but only if they receive the protection of the Senate. To protect these people that want to testify but are afraid to do so, the Senate Rules allow the Senate President to issue subpoenas. If this was done otherwise in Committee, the reality is that there would be much additional pressure on these people to change their mind or to pull back. It would be exposing them to undue pressure.

"Our existing Rules allow the Senate President to issue subpoenas in a way that would provide the needed protection from witnesses from repercussions and reprisals and prevent the witness from being unduly pressured into withdrawing or changing his or her mind, and to allow the Senate to properly

perform its constitutional duties to advise and consent. It's clear that we're within our legal purview and the big question of concern again is not about our authority to subpoena, but it's why we're even having this discussion. People are afraid to come forward unless we offer them the protection and I believe that when the allegations are serious and credible, it is our responsibility and our duty to follow-up to offer these protections and to investigate and to do our due diligence properly prior to offering advise and consent.

"I thank you for the opportunity to offer these comments."

Senator Sakamoto rose and said:

"Madam President, I'd just like a clarification from the previous speaker. He has used the term 'anonymous' as perhaps the speaker before him. At least for myself, I received two types of sometimes 'negative' or 'with concerns' testimony. One type is that there is no signature, there is no return address, and there is no way to know who sent it, which I, myself, would say that was anonymous. We do receive other types where the person wishes their name, or their identification, or their position not to be revealed for fear of retaliation either by the nominee or by others who seem to be advocating. So, I wanted clarification in your use of the word 'anonymous.' Was it the former where nothing is said, or was it where people fear the retaliation either by the nominee or by other parties who seem to be supporting the nominee?"

Senator Hooser rose to respond as follows:

"Madam President, a brief response. My response is the second one – it's people that are afraid and fearful, but who are perhaps known to me or known to other people, but just afraid of retribution or consequences as a result of that testimony. Thank you."

Senator Hemmings rose in response as follows:

"Madam President, healthy discussion, my response please.

"I think both are problematic in the fact that the accused – in this case, some innocent person that wants to give up much in their private life to serve the public – is being accosted anonymously without the opportunity to face their accuser. And unfortunately in the criminal justice system or even in the civil system, in the court of law, that is one of the fundamental rights of an American, and I think it should be a fundamental right of anyone standing before this Committee for advise and consent to know who their accusers are and have the right for their testimony against them to be weighted and have an opportunity for them to rebuke that testimony if need be. And so, anonymous testimony should not be tolerated under either circumstance.

"Thank you, Madam President."

ADJOURNMENT

At 12:33 o'clock p.m., on motion by Senator Ige, seconded by Senator Gabbard and carried, the Senate adjourned until 11:30 o'clock a.m., Tuesday, March 20, 2007.