

## FIFTY-THIRD DAY

Friday, April 18, 2008

The Senate of the Twenty-Fourth Legislature of the State of Hawai'i, Regular Session of 2008, convened at 11:40 a.m. with the President in the Chair.

The Divine Blessing was invoked by Rabbi Peter Schaktman, Tempe Emanu-El, after which the Roll was called showing all Senators present with the exception of Senators English, Hooser, Kim and Menor who were excused.

The President announced that she had read and approved the Journal of the Fifty-Second Day.

## MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 639 to 643) were read by the Clerk and were placed on file:

Gov. Msg. No. 639, letter dated April 16, 2008, transmitting proposed changes to the General Appropriations Act for the Department of Education.

Gov. Msg. No. 640, dated April 14, 2008, transmitting the 2007 Annual Report of the State of Hawaii Overseas Offices, prepared by the Department of Business, Economic Development and Tourism pursuant to Act 201, Section 201-84, HRS.

Gov. Msg. No. 641, informing the Senate that on April 17, 2008, the Lt. Gov. signed into law House Bill No. 2467 as Act 18, entitled: "RELATING TO FIRE PROTECTION."

Gov. Msg. No. 642, informing the Senate that on April 17, 2008, the Lt. Gov. signed into law Senate Bill No. 2402 as Act 19, entitled: "MAKING VARIOUS HOUSEKEEPING AMENDMENTS TO VOLUME 11 OF THE HAWAII REVISED STATUTES FOR THE PURPOSE OF CORRECTING ERRORS AND REFERENCES, AND CLARIFYING LANGUAGE."

Gov. Msg. No. 643, dated April 17, 2008, transmitting her statement of objections to Senate Bill No. 1805 which she has returned to the Senate without her approval and which reads as follows:

"EXECUTIVE CHAMBERS  
HONOLULU

April 17, 2008

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 1805

Honorable Members  
Twenty-Fourth Legislature  
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 1805, entitled 'A Bill for an Act Relating to Genetic Counselors.'

The purpose of this bill is to require the Department of Health to establish a licensure program for genetic counselors, in order to ensure access to high quality genetic counseling services.

This bill is objectionable because the State Auditor conducted a sunrise analysis of a similar bill in 2006 and found that the licensing of genetic counselors is not necessary and does not meet the criteria for regulation under the Hawaii Regulatory Reform Act. The Auditor's analysis stated that establishing a licensing program is largely about title protection.

It gives licensed individuals the ability to use the title but does not prohibit the practice by non-licensed practitioners. The Auditor considered cases of harm cited by supporters of licensing but noted, however, that the harm cited stemmed from those outside regulation. As a result, the Auditor concluded that licensing would have 'no bearing on direct, commercial marketing of DNA testing and counseling, especially at-home genetic self testing, which is a burgeoning industry.'

There is no question that qualified genetic counselors can provide positive services to individuals with significant health issues. The argument, however, that licensing genetic counselors will protect those seeking services from incompetent or unscrupulous persons is not valid. The bill prohibits unlicensed individuals from using the title genetic counselor but it would not prohibit them from offering services. Should an individual in need of services seek additional knowledge about a counselor's qualifications, they could consult the American Board of Genetic Counseling which serves as the credentialing organization for the genetic counseling profession in the U.S. and Canada. Although well-intentioned, the licensing of genetic counselors by the State warrants more study and analysis by the Auditor as provided under Chapter 26H, Hawaii Revised Statutes. Finally, procedural flaws under Sections 15 and 16 of Article III of the State Constitution appear to have occurred in the passage of this bill.

For the foregoing reasons, I am returning Senate Bill No. 1805 without my approval.

Respectfully,

/s/ James R. Aiona Jr.  
ACTING GOVERNOR  
for LINDA LINGLE  
Governor of Hawaii"

## DEPARTMENTAL COMMUNICATIONS

The following communications (Dept. Com. Nos. 41 to 43) were read by the Clerk and were placed on file:

Dept. Com. No. 41, from the State Auditor dated April 16, 2008, transmitting a report, "Performance Audit on the State Administration's Actions Exempting Certain Harbor Improvements to Facilitate Large Capacity Ferry Vessels from the Requirements of the Hawai'i Environmental Impact Statements Law: Phase I," (Report No.08-09).

Dept. Com. No. 42, from the State Auditor dated April 16, 2008, transmitting a report, "Financial Review of the Hawaii Health Systems Corporation," (Report No. 08-08).

Dept. Com. No. 43, from the Department of Health dated March 27, 2008, transmitting the "Hawaii Physical Activity and Nutrition Surveillance Report 2008."

## HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 747 to 751) were read by the Clerk and were placed on file:

Hse. Com. No. 747, returning S.C.R. No. 106, S.D. 1, which was adopted by the House of Representatives on April 17, 2008.

Hse. Com. No. 748, informing the Senate that the House reconsidered its action taken on April 17, 2008, in disagreeing to the amendments proposed by the Senate to H.B. No. 3109 (S.D. 1).

Hse. Com. No. 749, informing the Senate that the Speaker on April 17, 2008, made the following changes to the conferees on the following bill:

H.B. No. 2040, S.D. 2:

Representative Yamashita moved to lead Co-Chair.

Hse. Com. No. 750, informing the Senate that the Speaker on April 17, 2008, made the following changes to the conferees on the following bill:

H.B. No. 2245, H.D. 1 (S.D. 2):

Discharged Representative Takai.

H.B. No. 2306, H.D. 2 (S.D. 2):

Discharged Representative Takai.

H.B. No. 2408, H.D. 1 (S.D. 2):

Discharged all House Conferees.

Hse. Com. No. 751, informing the Senate that the Speaker on April 17, 2008, appointed conferees on the part of the House for the consideration of amendments proposed by the Senate to the following House bills:

S.B. No. 2293, S.D. 1 (H.D. 1):

Shimabukuro, Ito, Rhoads, co-chairs; Thielen.

S.B. No. 2294, S.D. 2 (H.D. 1):

Ito, Shimabukuro, Karamatsu, co-chairs; Brower, Rhoads, Thielen.

#### STANDING COMMITTEE REPORTS

Senator Kokubun, for the Committee on Commerce, Consumer Protection and Affordable Housing, presented a report (Stand. Com. Rep. No. 3596) recommending that the Senate advise and consent to the nomination of DAVID A. LAWRENCE to the Board of Directors of the Hawai'i Housing Finance and Development Corporation (HFD), in accordance with Gov. Msg. No. 527.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3596 and Gov. Msg. No. 527 was deferred until Monday, April 21, 2008.

Senator Kokubun, for the Committee on Commerce, Consumer Protection and Affordable Housing, presented a report (Stand. Com. Rep. No. 3597) recommending that the Senate advise and consent to the nomination of AMY STONE MURAI to the State Board of Nursing, in accordance with Gov. Msg. No. 534.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3597 and Gov. Msg. No. 534 was deferred until Monday, April 21, 2008.

Senator Kokubun, for the Committee on Commerce, Consumer Protection and Affordable Housing, presented a report (Stand. Com. Rep. No. 3598) recommending that the Senate advise and consent to the nomination of LAWRENCE K. MAHUNA to the Board of Private Detectives and Guards, in accordance with Gov. Msg. No. 536.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3598 and Gov. Msg. No. 536 was deferred until Monday, April 21, 2008.

Senator Ige, for the Committee on Health, presented a report (Stand. Com. Rep. No. 3599) recommending that the Senate advise and consent to the nominations to the State Council on Developmental Disabilities of the following:

APRIL M. MIRA, in accordance with Gov. Msg. No. 584;

THERESA M. OCTAVIO, in accordance with Gov. Msg. No. 585; and

PAMELA LOUISE RICE, in accordance with Gov. Msg. No. 586.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3599 and Gov. Msg. Nos. 584, 585 and 586 was deferred until Monday, April 21, 2008.

Senator Ige, for the Committee on Health, presented a report (Stand. Com. Rep. No. 3600) recommending that the Senate advise and consent to the nomination of DALLEN K. PALEKA to the Hawai'i Advisory Commission on Drug Abuse and Controlled Substances, in accordance with Gov. Msg. No. 587.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3600 and Gov. Msg. No. 587 was deferred until Monday, April 21, 2008.

Senator Ige, for the Committee on Health, presented a report (Stand. Com. Rep. No. 3601) recommending that the Senate advise and consent to the nominations to the Policy Advisory Board for Elder Affairs of the following:

HYUNG K. CHA, in accordance with Gov. Msg. No. 588;

PETER T. DYER, in accordance with Gov. Msg. No. 589;

PAUL KIM, in accordance with Gov. Msg. No. 590; and

SARA A. TOMPKISON, in accordance with Gov. Msg. No. 591.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3601 and Gov. Msg. Nos. 588, 589, 590 and 591 was deferred until Monday, April 21, 2008.

Senator Ige, for the Committee on Health, presented a report (Stand. Com. Rep. No. 3602) recommending that the Senate advise and consent to the nomination of FREDERICK WILLIAM ROHLFING to the Statewide Health Coordinating Council, in accordance with Gov. Msg. No. 592.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3602 and Gov. Msg. No. 592 was deferred until Monday, April 21, 2008.

Senator Ige, for the Committee on Health, presented a report (Stand. Com. Rep. No. 3603) recommending that the Senate advise and consent to the nominations to the State Council on Mental Health of the following:

MAILE M. DAGUIO, in accordance with Gov. Msg. No. 596;

GORDON M. DURANT, in accordance with Gov. Msg. No. 597; and

CAROL ANN YOUNG, in accordance with Gov. Msg. No. 598.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3603 and Gov. Msg. Nos. 596, 597 and 598 was deferred until Monday, April 21, 2008.

Senator Espero, for the Committee on Public Safety, presented a report (Stand. Com. Rep. No. 3604) recommending that the Senate advise and consent to the nominations to the Wireless Enhanced 911 Board of the following:

JOEL K. MATSUNAGA, in accordance with Gov. Msg. No. 416;

DEXTER J. TAKASHIMA, in accordance with Gov. Msg. No. 417; and

CLAYTON N.Y.W. TOM, in accordance with Gov. Msg. Nos. 418 and 419.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3604 and Gov. Msg. Nos. 416, 417, 418 and 419 was deferred until Monday, April 21, 2008.

Senator Espero, for the Committee on Public Safety, presented a report (Stand. Com. Rep. No. 3605) recommending that the Senate advise and consent to the nominations to the Correctional Industries Advisory Committee of the following:

THEODORE G. M. JUNG, in accordance with Gov. Msg. No. 512; and

DAVID MAKIJI MATSUURA, in accordance with Gov. Msg. No. 599.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3605 and Gov. Msg. Nos. 512 and 599 was deferred until Monday, April 21, 2008.

Senator Nishihara, for the Committee on Tourism and Government Operations, presented a report (Stand. Com. Rep. No. 3606) recommending that H.C.R. No. 245, H.D. 1, as amended in S.D. 1, be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 3606 and H.C.R. No. 245, H.D. 1, S.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE AUDITOR TO CONDUCT AN AUDIT OF THE ALOHA TOWER DEVELOPMENT CORPORATION, PARTICULARLY WITH REGARD TO ITS LAWSUITS RELATING TO ITS DEVELOPMENT CONTRACTS, PROJECTS, AND PROCUREMENT PRACTICES, AND THE JUSTIFICATION FOR ITS EXISTENCE," was deferred until Monday, April 21, 2008.

#### ORDER OF THE DAY

#### AGREE/DISAGREE

#### MATTER DEFERRED FROM THURSDAY, APRIL 17, 2008

S.C.R. No. 52 (H.D. 2):

On motion by Senator Ige, seconded by Senator Whalen and carried, the Senate disagreed to the amendments proposed by the House to S.C.R. No. 52, and requested a conference on the subject matter thereof.

#### ADVISE AND CONSENT

Stand. Com. Rep. No. 3589 (Gov. Msg. No. 317):

Senator Kokubun moved that Stand. Com. Rep. No. 3589 be received and placed on file, seconded by Senator Ige and carried.

Senator Kokubun then moved that the Senate advise and consent to the nomination of MICHAEL H. MCINERNY to the Pest Control Board, term to expire June 30, 2012, seconded by Senator Ige.

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

Ayes, 21. Noes, none. Excused, 4 (English, Hooser, Kim, Menor).

Stand. Com. Rep. No. 3590 (Gov. Msg. No. 298):

Senator Kokubun moved that Stand. Com. Rep. No. 3590 be received and placed on file, seconded by Senator Ige and carried.

Senator Kokubun then moved that the Senate advise and consent to the nomination of HENRY SASAKI to the State

Boxing Commission of Hawai'i, term to expire June 30, 2012, seconded by Senator Ige.

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

Ayes, 21. Noes, none. Excused, 4 (English, Hooser, Kim, Menor).

#### ADOPTION OF RESOLUTIONS

#### MATTERS DEFERRED FROM THURSDAY, APRIL 17, 2008

Stand. Com. Rep. No. 3591 (H.C.R. No. 312, S.D. 1):

On motion by Senator Ige, seconded by Senator Whalen and carried, the joint report of the Committees was adopted and H.C.R. No. 312, S.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION URGING THE UNIVERSITY OF HAWAII TO EXTEND ITS LAND LEASE WITH THE HIGH TECHNOLOGY DEVELOPMENT CORPORATION TO CONTINUE TO OPERATE THE MANOA INNOVATION CENTER," was adopted.

Stand. Com. Rep. No. 3592 (H.C.R. No. 347, S.D. 1):

On motion by Senator Ige, seconded by Senator Whalen and carried, the report of the Committee was adopted and H.C.R. No. 347, S.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION URGING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO PROCEED EXPEDITIOUSLY WITH THE ADOPTION OF RULES TO REGULATE THE ORNAMENTAL REEF FISHERY INDUSTRY IN SOUTH MAUI AND KANEOHE BAY," was adopted.

Stand. Com. Rep. No. 3593 (H.C.R. No. 147, H.D. 1, S.D. 1):

On motion by Senator Ige, seconded by Senator Whalen and carried, the report of the Committee was adopted and H.C.R. No. 147, H.D. 1, S.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION SUPPORTING THE INSTALLATION AND USE OF SMOKE DETECTORS IN EVERY HAWAII HOME BY 2010," was adopted.

Stand. Com. Rep. No. 3594 (H.C.R. No. 116, S.D. 1):

On motion by Senator Ige, seconded by Senator Whalen and carried, the joint report of the Committees was adopted and H.C.R. No. 116, S.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE UNIVERSITY OF HAWAII AGRICULTURAL DIAGNOSTIC SERVICE CENTER, IN CONSULTATION WITH OTHER PUBLIC AND PRIVATE ENTITIES, TO CONDUCT A SURVEY OF THE INFORMATION NEEDS OF HAWAII'S AGRICULTURAL INDUSTRY, AND ASSESS WHETHER THE HAWAII AGRICULTURE INFORMATION CENTER CAN MEET THOSE NEEDS," was adopted.

Stand. Com. Rep. No. 3595 (H.C.R. No. 276, H.D. 1):

On motion by Senator Ige, seconded by Senator Whalen and carried, the joint report of the Committees was adopted and H.C.R. No. 276, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THAT THE UNIVERSITY OF HAWAII SCHOOL OF SOCIAL WORK DEDICATE ITS SCHOOL IN HONOR OF MYRON 'PINKY' THOMPSON, BY CHANGING ITS NAME TO THE 'MYRON THOMPSON SCHOOL OF SOCIAL WORK'," was adopted.

H.C.R. No. 265:

On motion by Senator Ige, seconded by Senator Whalen and carried, H.C.R. No. 265, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF EDUCATION TO EXPLORE THE FEASIBILITY OF AND

TO DEVELOP A PLAN THEREFOR RELOCATING THE KAPAA PUBLIC LIBRARY," was adopted.

**FINAL READING**

S.B. No. 2159, H.D. 1:

On motion by Senator Ige, seconded by Senator Kokubun and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 2159, and S.B. No. 2159, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PROFESSIONS," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, none. Excused, 4 (English, Hooser, Kim, Menor).

**RE-REFERRAL OF HOUSE CONCURRENT RESOLUTIONS**

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

House  
Concurrent  
Resolution

Referred to:

H.C.R. No. 125, H.D. 1 Committee on Commerce,  
Consumer Protection and Affordable Housing

H.C.R. No. 244, H.D. 1 Committee on Agriculture and  
Hawaiian Affairs

Senator Fukunaga, Chair of the Committee on Economic Development and Taxation, requested that the referral of H.C.R. No. 81 to the Committee on Economic Development and Taxation be waived.

The President said:

"The reason for the request."

Senator Fukunaga noted:

"Madam President, sorry, we were not able to schedule this in time for a hearing and we want to keep it alive for further discussion."

The Chair then granted the waiver.

By unanimous consent, the following concurrent resolution was placed on the calendar for Adoption on Monday, April 21, 2008:

H.C.R. No. 81, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION SUPPORTING THE DESIGNATION OF APRIL 6TH OF EVERY YEAR AS TARTAN DAY IN HAWAII."

Senator Hee, Chair of the Committee on Water and Land, requested a waiver of the notice requirement pursuant to Senate Rule 21 for H.C.R. No. 346 and S.R. No. 95.

Senator Hee noted:

"Madam President, the reason for this is the Governor yesterday sent down a resolution for the Legislature's consideration with regard to the Turtle Bay Resort intent to keep Kewelo Bay and Kahuku Point in its present state and not be developed.

These resolutions are a result of a signal from her office that her stated intent will not be complete by the end of session on May 1, but shortly thereafter.

So in order to set the ground work for, to send a strong message from the Legislature, she has requested that the Senate consider the resolution that she has brought forth yesterday."

The Chair granted the waiver.

Senator Slom rose to speak on a point of personal privilege and said:

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

"I'm very distressed about the train wreck that's taken place across the street with the City. And I'm concerned because the train seems to be going nowhere. The Administration is spending millions and millions of dollars on individuals and public relations firms. I'm just wondering, Madam President since we're suspending rules and waiving things. We had a good bill earlier in the Session that said if the City could not get its act together, that the tax would be suspended, and as a matter of fact, would be refunded to the taxpayers. Madam President, I beseech you, I plead with you, is there some way that we can suspend the rules or waive them or gut and replace or do something to energize this very good bill that the Senate had so that we can help out the City Administration that now is threatening to pull the plug—but not the taxes—on the people of this state. Thank you, Madam President."

**APPOINTMENT AND DISCHARGE OF CONFEREES**

S.B. No. 644, S.D. 3 (H.D. 3):

The President discharged Senator Hooser as chair and appointed him as a member and discharged Senator Menor as a member and appointed him as chair 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. 644, S.D. 3.

S.B. No. 2849, S.D. 1 (H.D. 1):

The President discharged Senator Hooser as a co-chair and Senator Menor as a member and appointed him as a co-chair 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. 2849, S.D. 1.

S.B. No. 2850, S.D. 2 (H.D. 2):

The President discharged Senator Hooser as a co-chair and Senator Menor as a member and appointed him as a co-chair 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. 2850, S.D. 2.

H.B. No. 2261, H.D. 2 (S.D. 1):

The President discharged Senator Hooser as a co-chair and Senator Menor as a member and appointed him as chair on the part of the Senate at the conference to be held for the consideration of amendments proposed by the Senate to H.B. No. 2261, H.D. 2.

H.B. No. 2505, H.D. 2 (S.D. 2):

The President discharged Senator Hooser as chair and appointed him as a member and discharged Senator Menor as a member and appointed him as chair on the part of the Senate at the conference to be held for the consideration of amendments proposed by the Senate to H.B. No. 2505, H.D. 2.

H.B. No. 2507, H.D. 1 (S.D. 2):

The President discharged Senator Hooser as chair and appointed him as a member and discharged Senator Menor as a member and appointed him as chair on the part of the Senate at the conference to be held for the consideration of amendments proposed by the Senate to H.B. No. 2507, H.D. 1.

H.B. No. 2550, H.D. 2 (S.D. 2):

The President discharged Senator Hooser as chair and appointed him as a member and discharged Senator Menor as a member and appointed him as chair on the part of the Senate at the conference to be held for the consideration of amendments proposed by the Senate to H.B. No. 2550, H.D. 2.

H.B. No. 2843, H.D. 2 (S.D. 2):

The President discharged Senators Gabbard and Hooser as co-chairs and Senators English and Menor as members and appointed them as co-chairs on the part of the Senate at the conference to be held for the consideration of amendments proposed by the Senate to H.B. No. 2843, H.D. 2.

#### **ADJOURNMENT**

At 11:53 a.m., on motion by Senator Ige, seconded by Senator Whalen and carried, the Senate adjourned until 11:30 a.m., Monday, April 21, 2008.