

## TWENTY-FIRST DAY

**Monday, February 23, 2009**

The Senate of the Twenty-Fifth Legislature of the State of Hawai'i, Regular Session of 2009, convened at 11:46 a.m. with the President in the Chair.

The Divine Blessing was invoked by the Honorable Norman Sakamoto, Hawai'i State Senate, after which the Roll was called showing all Senators present with the exception of Senator English who was excused.

The President announced that she had read and approved the Journal of the Twentieth Day.

**MESSAGE FROM THE GOVERNOR**

The following message from the Governor (Gov. Msg. No. 442) was read by the Clerk and was placed on file:

Gov. Msg. No. 442, dated February 6, 2009, transmitting a Report on High Technology; Incubation Center; Kakaako, prepared by the Department of Business, Economic Development and Tourism, High Technology Development Corporation, pursuant to Act 150, SLH 2007.

**DEPARTMENTAL COMMUNICATION**

The following communication (Dept. Com. No. 61) was read by the Clerk and was placed on file:

Dept. Com. No. 61, from the Hawaii Tourism Authority, dated February 17, 2009, transmitting a report pursuant to Act 158, Section 4, SLH 2008, on the special fund appropriation expended for beach restoration.

**STANDING COMMITTEE REPORT**

Senator Chun Oakland, for the Committee on Human Services, presented a report (Stand. Com. Rep. No. 440) recommending that S.B. No. 190, as amended in S.D. 1, pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 190, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO COMMUNITY CARE FOSTER FAMILY HOME," passed Second Reading and was placed on the calendar for Third Reading on Wednesday, February 25, 2009.

**ORDER OF THE DAY****THIRD READING**

S.B. No. 55, S.D. 1:

On motion by Senator Baker, seconded by Senator Ige and carried, S.B. No. 55, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC ACCOUNTANCY," passed Third Reading on the following showing of Ayes and Noes:

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

S.B. No. 34, S.D. 1:

On motion by Senator Baker, seconded by Senator Ige and carried, S.B. No. 34, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE MORTGAGE RESCUE FRAUD PREVENTION ACT," passed Third Reading on the following showing of Ayes and Noes:

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

S.B. No. 714, S.D. 1:

On motion by Senator Gabbard, seconded by Senator Espero and carried, S.B. No. 714, S.D. 1, entitled: "A BILL FOR AN

ACT RELATING TO HIGH OCCUPANCY VEHICLE LANES," passed Third Reading on the following showing of Ayes and Noes:

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

S.B. No. 639, S.D. 1:

On motion by Senator Hee, seconded by Senator Tokuda and carried, S.B. No. 639, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC LANDS," passed Third Reading on the following showing of Ayes and Noes:

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

S.B. No. 878, S.D. 1:

On motion by Senator Baker, seconded by Senator Ige and carried, S.B. No. 878, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLICATION OF HEARING NOTICES," passed Third Reading on the following showing of Ayes and Noes:

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

S.B. No. 35, S.D. 1:

On motion by Senator Baker, seconded by Senator Ige and carried, S.B. No. 35, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MORTGAGES," passed Third Reading on the following showing of Ayes and Noes:

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

S.B. No. 777, S.D. 1:

Senator Ige moved that S.B. No. 777, S.D. 1 pass Third Reading, seconded by Senator Green.

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

"Seems we have a 'brave new world,' and this bill essentially mandates anybody receiving public assistance in their efforts—oftentimes laudable efforts by charitable and educational institutions—have to have comprehensive sexual education. Our society has experienced a revolution in sexuality in many ways. We saw a great demonstration this weekend on the issue and it obviously has risen to be one of the issues of the day as it was about ten years ago when the people voted on it.

"Nevertheless we've heard from people who testified in favor of this bill and similar bills like it in years gone by, that sex education was going to be the wonderful new thing that would save our society from the ills of sexual exploitation, uninformed decision-making, children having sex out of wedlock and sexually transmitted diseases. Sexual education was going to solve the problem, and old-fashioned virtues like abstinence, modesty and chastity were just that—old-fashioned. We were going to be a much more enlightened society. Well, the great thing we have in this journey through life is that we can look back on and see what these values have wrought us.

"I would submit to you that our hormones haven't changed much from my generation to the present generation, but the terms of engagement in human sexuality have changed tremendously. Under the enlightenment of organizations like the ACLU and other ones listed as testifiers in favor of this bill, it's open season. If it feels good, go for it. Get educated. Teach the children how to put on condoms and have a good time. And those organizations like the Roman Catholic Church and the Department of Health and others who testified in opposition to this bill realized that we should have the freedom to teach modesty, abstinence and values that will not allow for consequences that we don't want.

“Isn’t it ironic, Madam President and colleagues, that since we’ve become so enlightened, that out-of-wedlock births have exploded since the days of my youth, when they were about 6 percent; they’re about 37 percent now. Those people who are highly dependent on government support as a result, it’s up to 67 percent. Isn’t it ironic, since we’re so enlightened now with all this education that the number of abortions have become over a million a year? Isn’t it ironic that since we’re teaching everybody how to be so enlightened and sexually responsible, that sexually transmitted diseases have exploded amongst young people? It is simply not working.

“This bill forces organizations, which may be receiving assistance of some sort from government, to teach a broad curriculum under the guise of communication—when really it’s just ramming down values that could be contrary to their personal beliefs. I don’t think that’s healthy for us. And I got the proof, because the performance in these areas for our society is truly sad. And I would suggest that when we pass bills like this, we take a look at the consequences. The consequences regarding open season on human sexuality is dire, especially for females who oftentimes have to have the burden of the unwanted child, the sexually transmitted disease, or all the problems that come along with it.

“So I’m voting ‘no,’ Madam President and colleagues, and I hope that you will reconsider your vote on it. Thank you.”

Senator Green rose to speak in support of the measure as follows:

“A couple points I’d like to make in, in fact, very strong support. In a generation gone by, if someone didn’t practice safe sex they got chlamydia or gonorrhea, maybe ended up infertile. Now, if they don’t get proper education, they get HIV and they’re dead. They might have time to have their baby and then their baby’s an orphan. So things have changed very greatly.

“I also think that it’s a fallacy to suggest that people who are going to provide sex ed are not going to also encourage abstinence, aren’t going to also encourage good morals. My parents encouraged both of those things, and they also told me to be smart about things so I wouldn’t, God forbid, get HIV or give it to a girlfriend. So I think we should be very smart and protect our children. Thank you, Senate President.”

Senator Sakamoto rose to speak in support of the measure and stated:

“My reservations relate to the issue of there’s some providers that may specialize in dealing with issues of respect or issues of conflict resolution, communication between male and female; others may specialize in the disease part of it, others may specialize in abstinence. I believe when the bill says a provider needs to be all things for everyone, it takes away from the ability for some providers to specialize in one unique part that they may feel very passionately and strongly about. Thank you.”

Senator Hemmings rose in rebuttal and said:

“It’s nice that one or two of us may have some experience contrary to my words, but the facts are that our country is in dire straits with sexuality, with unwanted pregnancies, with sexually transmitted diseases. By the way, the terrible scourge of HIV/AIDS came after everybody became so enlightened with sexual education—after the sexual revolution of the sixties. It seems that being educated didn’t help much in curbing that disease. So, the bottom line is that results speak louder than any of our words on the floor of this Senate.

“I’d like to also comment on the words from the good Senator from Moanalua district. In doing this, we are

oftentimes taking the rights away from people who believe very strongly in values that made the family in this country great. We are taking away their right to teach abstinence without having to open up Pandora’s Box for all the other options that these other organizations are advocating. And those options include, as I mentioned earlier, some things that I’d rather have the family take care of amongst their own values. So this really preempts the values of organizations and the values of individual families who may be sending their children to public schools and other organizations. Thank you, Madam President.”

Senator Baker rose to speak in support of the measure as follows:

“I’m constantly amazed at some of the arguments that are made for providing factually accurate information about one’s sexuality. Clearly, there are a lot of folks in our country, young people and older, that don’t understand, don’t know very much about their body, have never had anybody that they could talk to, to really understand how to prevent a pregnancy or how to make sure that if they are engaging in sex, that it’s safe.

“The statistics that were previously cited simply do not tell the story. The reason you have sexually transmitted diseases, the reason that you have unwanted pregnancies is because there has been a lack of factual information provided to our young people. I cannot believe that I’m standing on the Senate floor trying to understand why people would not want good, solid information and accurate information. The era of the abstinence-only has been an abysmal failure. It has not provided information that people could use to make good judgments and good actions.

“Madam President, this measure has been put forward by the Legislative Women’s Caucus in both the House and the Senate because we want to make sure that there aren’t unwanted pregnancies. We want to make sure that diseases are not transmitted. And the only way to do this is to make sure that our young people who may not be able to get the information from their parents, who may not be able to get the information from another adult, and given to them accurately, have the access to that information. I think it’s so critical as we go forward to make sure that all of us have the opportunity to make informed decisions, and particularly in this particular area. So, I ask all of my colleagues to stand with me and support this measure.”

Senator Ige rose to speak in support of the measure and stated:

“I did want to note: there are two things. One of the problems that the Department is faced with is the fragmentation of the funding sources which provides funds that can only be provided into very targeted areas. And it really does increase the burden on the schools and the principals to try and cobble up a collection of providers who can provide a comprehensive curriculum. And that’s one of the reasons for pursuing this bill—to ensure that any provider would cover all of the subject matters.

“Second, I did want to note for the record that parents can choose to opt out of any portion—the entire program or any portion of the program—that they feel objectionable about. Thank you.”

The motion was put by the Chair and carried, S.B. No. 777, S.D. 1, entitled: “A BILL FOR AN ACT RELATING TO COMPREHENSIVE SEXUALITY HEALTH EDUCATION,” passed Third Reading on the following showing of Ayes and Noes:

Ayes, 21. Ayes with Reservations, 1 (Sakamoto). Noes, 3 (Gabbard, Hemmings, Slom). Excused, 1 (English).

S.B. No. 62, S.D. 1:

Senator Takamine moved that S.B. No. 62, S.D. 1 pass Third Reading, seconded by Senator Taniguchi.

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

“We’ve had this bill several years in a row now, and basically it attacks the Independent Medical Exam process—the IME.

“The committee report talks about the fact that people distrust the process, people are unhappy, there are disgruntled workers, and so forth. That probably is true, but nonetheless this is a process which we have within our workers’ comp process to make sure that the injuries complained of are, in fact, accurate and in some cases, they’ve been found to be even more serious than complained of. The bottom line is that the employer pays for the entire process, and to try to have legislation that says, ‘Well, the employer will still pay for it, but we need to have mutual consent by the employer or the employee.’ The employer has created the job, has created the worksite, has provided all of the benefits, the compensation, and I don’t think it is unreasonable to require that if an IME is sought and the employer must pay for it, that in fact, the results are part of the record. There are, of course, other legal options open to people that still don’t agree with this process. But I find it very difficult—in the committee report—to allege that the physicians may be biased towards employers simply because the employers have paid for this process and have done so for many decades. That’s a lack of understanding of physicians and others and also employers, and I don’t think by passing this bill we’re going to get all of the employees to sing ‘Kumbaya’ with their employers. In any event, it will simply increase the cost and affect possible jobs.

“So, I would urge my colleagues, if they’re concerned about true workers’ compensation and help for injured workers, that we look deeper into Hawai‘i’s workers’ compensation law but not into putting further burdens on employers. Thank you.”

Senator Takamine rose to speak in support of the measure as follows:

“I believe the previous speaker did raise a number of good points with respect to this bill, Madam President. You know, as he indicated, the bill has come before the State Legislature previously and, in fact, was passed by both the House and Senate and was vetoed, and the veto was not overridden.

“It is a measure that attempts to address a specific concern within the workers’ compensation system where there might be imbalance in terms of economic or financial capacity and ability to build a case. In the hearings last year and this year, there were many instances cited of ‘how’ because the insurance company, who’s usually in the shoes of the employer, is in a much stronger economic position that they have been able to generate multiple IME’s that are used to support their position. The employee does not have the same sort of bargaining situation with respect to financial capability.

“In light of the many instances that were cited, that provided the basis for moving forward, this bill creates a mechanism to strike a better balance. It provides that where there isn’t agreement between the parties that a preselected panel decide. The Department of Labor and its director, presumably a third party—an impartial third party, would determine what doctor would do the IME and then become part of the case.

“But I think that is only the beginning point of this measure because I think there were some good points raised by the previous speaker that when you look at the total situation we need to take into account not only the economic strengths of the

party and the purpose for this measure, but also look at the history of workers’ compensation and where we are today. In the past four years, workers’ compensation rates in our state have gone down by 60 percent. Let me say that again: have gone down by 60 percent. Beginning in January of ‘06, the rates decreased by 18 percent. In January ‘07, the rates decreased by another 12 percent. In January of ‘08, it decreased again by another 19 percent. And beginning January 1 of this year, there will be a further decrease of 11.6 percent in the workers’ compensation rates that are assessed against the employers.

“There needs to be some fairness, and that’s the bottom line. I think when you look at the financial circumstances of the parties, this measure has the potential to provide greater fairness and light of the rates and history there, I would submit that it is warranted. For these reasons I will be supporting the bill. Thank you, Madam President.”

Senator Slom rose in rebuttal and said:

“I thank the Labor Chairman for that additional information, and I certainly do acknowledge that some of the rates have come down. I would remind my colleagues that those rates are on average. They do not apply to all businesses and particularly hard-hit have been smaller businesses which make up 98 percent of our business community.

“In addition to that, Hawai‘i had the reputation as the highest costing workers’ compensation rates in the nation, and so the fact that the rates have come down is a good sign but we’re still among the top five in the nation.

“I have a difficult time, though, in justifying a comparison between rates and the IME process, and the good Senator brought up the fact that the process in this bill would require the Department of Labor and Industrial Relations to serve as an independent go-between. I would remind my colleagues that the Department of Labor testified in opposition to this bill, said that it was not needed, and that they really did not want to participate in this process. Thank you.”

Senator Sakamoto rose to speak in support of the measure as follows:

“I appreciate the hard work of the Chair and others to continue to improve our workers’ compensation system, and certainly the IME issues have been a big issue for many, many years. And as a small businessperson, we want our injured employees back, we want safe workers, and I’m glad to hear that, obviously, safety and improved process has reduced the rates. In this particular case, my reservations are that it is a balancing system and until... Well, I hope that the parties can work together to get at least a better agreement between the small businesses and those representing the injured workers so we have a better system, not just continue to fight in a different way. Thank you very much.”

The motion was put by the Chair and carried, S.B. No. 62, S.D. 1, entitled: “A BILL FOR AN ACT RELATING TO WORKERS’ COMPENSATION,” passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Ayes with Reservations, 1 (Sakamoto). Noes, 2 (Hemmings, Slom). Excused, 1 (English).

S.B. No. 695, S.D. 1:

Senator Takamine moved that S.B. No. 695, S.D. 1 pass Third Reading, seconded by Senator Taniguchi.

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

“Again, we are very familiar with this bill. It’s been back for many years, and basically what it requires is an employer to

continue paying for an alleged illness or injury after a dispute has arisen. I do credit the Labor chairman; at least this year, he addressed one of the major problems over the years, and that was that the employer would continue paying, and then if it were later found that the claim was not valid, there was no way for the employer to get back any of the funds that had been expended. Well, the bill partially addresses that and says that the employer 'may' recover, from the health care provider or from the insurer. There is not a mechanism to make sure that there will be a recovery. It does not say that the employer 'shall' recover, does not allow any recovery from the employee who has been the recipient of these ill-gotten gains. So, again, I think if we're talking about fairness, this is not a fair bill. It is not fair to businesses, and particularly small businesses, and I urge consideration and a 'no' vote. Thank you, Madam President."

Senator Takamine rose to speak in support of the measure as follows:

"I think fairness is key to any law that we pass, and a couple of points were mentioned. In terms of making the employer whole, should there have been an overpayment of medicals, there are provisions in the bill that would provide for reimbursement. In addition to that, for a person who has had an industrial injury, particularly if it's, medium to more serious, it's not only the medical benefits, but it's additional permanent impairment that might come into play, and at times, temporary partial disability, as well as total disability benefits. Any additional benefits that the employee may be entitled to are possible offsets should there be an issue of overpayment, by the employer. There are some safeguards in the measure to address the employer's concerns.

"During these tough economic times, isn't this when we want to help out the business community and the employers in whatever way possible? There's some merit in that. But these economic times place the greatest burdens on the workers and the working families as well. If the only breadwinner is disabled because of industrial injury, it's essentially the same as if he lost his job. The income that would have been generated for putting food on the table, for shelter, and for taking care of his family, has been impacted. To have a measure that says, not that he can collect forever, not that he can be treated forever, but before it is cut off, provide an opportunity for the Department to review everything and then make a judgment. If he was entitled to continue treatment which would best ensure the maximum recovery, then provide that opportunity. And if there was an error and too much was provided, then there is some recourse. Thank you, Madam President."

The motion was put by the Chair and carried, S.B. No. 695, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO WORKERS' COMPENSATION," passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, 2 (Hemmings, Slom). Excused, 1 (English).

S.B. No. 823, S.D. 1:

On motion by Senator Takamine, seconded by Senator Taniguchi and carried, S.B. No. 823, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO FAMILY LEAVE," passed Third Reading on the following showing of Ayes and Noes:

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

At this time, the Chair made the following announcement:

"Referrals and re-referrals may be made in accordance with the Supplemental Order of the Day distributed to your offices later this afternoon."

#### RE-REFERRAL OF SENATE BILL

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

S.B. No.	Re-referred to:
S.B. No. 1111	Committee on Ways and Means

#### ADJOURNMENT

At 12:19 p.m., on motion by Senator Sakamoto, seconded by Senator Slom and carried, the Senate adjourned until 11:30 a.m., Tuesday, February 24, 2009.