

JOURNAL
of the
SENATE OF THE
TWENTY - FIFTH LEGISLATURE
of the
STATE OF HAWAII

Third Special Session of 2009

Convened Thursday, November 19, 2009

Adjourned Friday, November 20, 2009

TABLE OF CONTENTS

	PAGE
First Day, Thursday, November 19, 2009	1
Second Day, Friday, November 20, 2009	2
 Appendix:	
Standing Committee Report	7
 History:	
Senate Resolutions	8

THE
TWENTY-FIFTH LEGISLATURE
STATE OF HAWAII
THIRD SPECIAL SESSION OF 2009
JOURNAL OF THE SENATE

FIRST DAY

Thursday, November 19, 2009

The Senate of the Twenty-Fifth Legislature of the State of Hawai'i, Special Session of 2009, was called to order at 9:19 a.m., by Senator Colleen Hanabusa, President of the Senate, in accordance with the following Proclamation:

"November 19, 2009

PROCLAMATION

I, Colleen Hanabusa, President of the Senate of the Twenty-Fifth Legislature of the State of Hawai'i, pursuant to the power vested in me by Section 10, Article III of the Constitution of the State of Hawai'i, and at the written request of two-thirds of the members to which the Senate is entitled, do hereby convene the Senate in Special Session for the purpose of carrying out its responsibility established by Section 3, Article VI of the Constitution of the State of Hawai'i for a period of two (2) days commencing on Thursday, November 19, 2009, at nine o'clock a.m.

/s/ Colleen Hanabusa
Colleen Hanabusa
President of the Senate,"

was read by the Clerk and was placed on file.

The Divine Blessing was invoked by Pastor David W. Keiffer, Christ Lutheran Church of Mililani, after which the Roll was called showing all Senators present with the exception of Senators Kim and Tsutsui who were excused.

MESSAGE FROM THE GOVERNOR

Gov. Msg. No. 1, submitting for consideration and confirmation, the nomination of EDWIN C. NACINO to the office of Judge, Circuit Court of the First Circuit, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, for a term of ten years, was read by the Clerk and was referred to the Committee on Judiciary and Government Operations.

STANDING COMMITTEE REPORT

On motion by Senator Sakamoto, seconded by Senator Slom and carried unanimously, the Clerk was authorized to receive a standing committee report on Gov. Msg. No. 1. In consequence thereof, and subsequent to its recessing at 9:23 a.m., the Senate took the following action:

Senator Taniguchi, for the Committee on Judiciary and Government Operations, presented a report (Stand. Com. Rep. No. 1) recommending that the Senate consent to the nomination of EDWIN C. NACINO to the office of Judge, Circuit Court of the First Circuit, for a term of ten years, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, and in accordance with Gov. Msg. No. 1.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1 and Gov. Com. No. 1 was deferred until Friday, November 20, 2009.

ADJOURNMENT

At 11:10 a.m., the Senate adjourned until 9:00 a.m., Friday, November 20, 2009.

SECOND DAY

Friday, November 20, 2009

The Senate of the Twenty-Fifth Legislature of the State of Hawai'i, Third Special Session of 2009, convened at 9:06 a.m. with the President in the Chair.

The Divine Blessing was invoked by Mr. Pieper Toyama, Headmaster of Pacific Buddhist Academy, after which the Roll was called showing all Senators present with the exception of Senators Hooser, Kim, and Tsutsui who were excused.

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

ORDER OF THE DAY

ADVISE AND CONSENT

Stand. Com. Rep. No. 1 (Gov. Msg. No. 1):

Senator Taniguchi moved that Stand. Com. Rep. No. 1 be received and placed on file, seconded by Senator Takamine and carried.

Senator Taniguchi then moved that the Senate consent to the nomination of EDWIN C. NACINO to the office of Judge of the Circuit Court of the First 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 Takamine.

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

Senator Taniguchi rose in support of the nominee and stated:

"Your Committee on Judiciary and Government Operations heard from Judge Nacino, and we are convinced that with his humble beginnings and service as a police officer, he will serve well in his capacity as a Circuit Court judge. Testimony received was overwhelmingly in support of Judge Nacino, including testimony from the Attorney General. We also received information from the Hawai'i State Bar Association that Judge Nacino is qualified to serve as judge. For these reasons, I'm asking my colleagues to support the consent of Judge Edwin Nacino as Judge to the Circuit Court of the First Circuit. Thank you, Madam President."

Senator Slom rose in support of the nominee and stated:

"On behalf of the Minority, we would also like to lend our strong support to Judge Nacino. He is an outstanding individual with tremendous experience, background, compassion, and sensitivity. He is the right man for the job. We look forward to him giving us a distinguished career and providing additional justice throughout the State of Hawai'i. As the head of the Hawai'i State Bar Association said, 'He's a straight shooter,' but more than that, Madam President, he is a man who has walked in many shoes and knows the various paths that we have to go to get us justice. We all know that we need improvement in our judicial system, and we are very happy to support him and urge all of our colleagues to do so. Thank you."

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

Ayes, 21. Noes, none. Excused, 4 (Hee, Hooser, Kim, Tsutsui).

At this time, Senator Taniguchi introduced Judge Nacino to the members of the Senate. Judge Nacino was accompanied by his wife Kelly Jo Nacino, sister Falda Nacino, mother-in-law Karen Ogata, brother Frank Nacino, and other friends.

At 9:13 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 9:18 a.m.

SENATE RESOLUTION

The following resolution (S.R. No. 1) was read by the Clerk and was disposed of as follows:

S.R. No. 1 "SENATE RESOLUTION AUTHORIZING THE PRESIDENT TO APPROVE THE JOURNAL OF THIS SENATE FOR THE SECOND DAY OF THIS THIRD SPECIAL SESSION OF 2009."

Offered by: Senators Hooser, Hemmings.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, S.R. No. 1 was adopted.

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

"Madam President and colleagues, the Hawai'i Employee-Union Health Benefits Trust Fund was created in 2001 to better deal with the rising costs of health insurance. The belief was that both management and labor had equal interest in reducing the cost of health insurance. The Board of Trustees was created with management and labor having equal voices and votes in all decisions.

"For more than the last year, the EUTF has been paralyzed by gridlock as important decisions have been delayed by the votes, and the health care of our employees has been held hostage in contract negotiations. Decisions were finally made, and we currently find ourselves in the middle of the most confusing and convoluted Open Enrollment period ever in the history of the State of Hawai'i.

"We all know that each and every family is facing tough choices in our current economy, but let me just use an example to illustrate: If you make the assumption that each and every employee is satisfied with their choice of benefit plan and benefit provider, the current open enrollment that is before our employees, 98 percent of those who chose PPO plans are explicitly prohibited from continuing with their current choices. If you look at all of the employees in the program, more than 73 percent of members would be prohibited from just maintaining their current plan and current service provider. Clearly, something is broken.

"I also wanted just to point out to the members—I think we all got a copy. The administration and staff of the EUTF, which although they are special funded, have been subject to hiring freezes and furlough days. I just wanted to read a comment from their letter to all of us: 'The consequences of the EUTF failing to meet processing deadlines will be disruptive to all concerned. Adjustments to payroll deduction amounts may be delayed, resulting in over-deductions or under-deductions, followed by retroactive corrections in subsequent months. Employees who change benefit plans'—and I just said at least 73 percent will be required to change benefit plans—and schedule appointments for January may find that their health service provider is unable to confirm eligibility or coverage through the carrier and plan administrator because their records have not yet been processed and transmitted to EUTF. This situation will generate numerous calls and e-mails, adding to the volume being dealt with by customer service staff.' Clearly, if 73 percent are forced to make changes—they had estimated about 15,000 changes. I estimate it's more like 40,000 changes. You know, there's a tsunami happening, and I think it's unfortunate and can be avoided.

"Members, Madam President and I had drafted a letter to the EUTF Board asking them to cancel the current enrollment. Clearly, this situation is unacceptable, I think, for all of us, and

this letter will be available for anybody who wishes to join us in signing it. Madam President, I would like permission to insert a copy of the final letter with signatures into the Journal so that it could become part of the record.”

The Chair having so ordered, the letter to the EUTF Board is identified as “ATTACHMENT A” to the Journal of this day.

ADJOURNMENT

Senator Sakamoto moved that the Senate of the Twenty-Fifth Legislature of the State of Hawai‘i, Third Special Session of 2009, adjourn Sine Die, seconded by Senator Slom and carried.

At 9:25 a.m., the President rapped her gavel and declared the Senate of the Twenty-Fifth Legislature of the State of Hawai‘i, Third Special Session of 2009, adjourned Sine Die.

ATTACHMENT A



The Senate

STATE CAPITOL
HONOLULU, HAWAII 96813

November 19, 2009

Mr. George Kahooohanohano
Chair, Board of Trustees
Hawaii Employer Union Trust Fund
102 Merchant Street, Suite 1520
Honolulu, Hawaii 96813

VIA FACSIMILE AND EMAIL
kahooohang001@hawaii.rr.com
808-893-0016
eutfadmin@hawaii.gov
808-586-2320

Dear Chairperson Kahooohanohano:

In our letter of November 9, 2009, we expressed to you how deeply troubled we were over reports being received concerning the conduct of the Hawaii Employer Union Trust Fund (EUTF) enrollment process now in progress and its impact on our State employees. These reports concerned the inadequacy of materials informing EUTF enrollees of the choices that are being placed before them as well as misleading statements on the actions they will need to take to ensure the continuity of their health care insurance coverage.

We commend your recent action to call a special meeting of the EUTF Board for Monday, November 23, 2009 in order that these concerns may be addressed.

To reiterate, the EUTF is still distributing information that states that no action is needed if an enrollee desires to continue with the same enrollments and plan designs. This is simply not the case if the enrollee desires to remain with their current plan administrator. In addition, instead of providing EUTF enrollees with maximum choice when it comes to their health care options, the enrollment process restricts and decreases those choices.

We are also aware that this current EUTF open enrollment process is a significant departure from all previous EUTF open enrollments with which we are familiar, and that it constitutes a major problem for enrollees who have never been confronted with being automatically defaulted to another health plan carrier and forced to take an extraordinary action to simply stay with their current health plan administrator.

To add to this confusion is the EUTF's staffs own admission that critical deadlines for processing enrollee changes are in serious jeopardy and will be cause for more disruption.

The effect of this situation, that is, the lack of proper information, notification, a substantial change in previous policy, the elimination of choice, and the inability of staff to implement will

ATTACHMENT A cont.


November 19, 2009
Page 2 of 3

result in mass confusion and the serious disruption of health care for thousands of employees and their families.


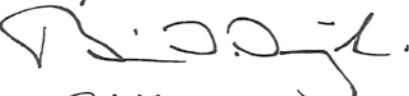
We are very concerned about the impact of all this on EUTF employees especially given the burden they now bear in this distressed economy. We agree that the current enrollment process is seriously flawed and beyond repair. Thus, we strongly recommend that this process be immediately cancelled in order to avoid having EUTF enrollees go through the major disruption that will follow. We hope you will consider this action at the November 23rd special meeting of the Board. By taking such action, the Board will have the time to reconsider its approach and strategies, and make appropriate changes for the next regularly scheduled open enrollment effective July 2010.



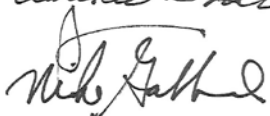
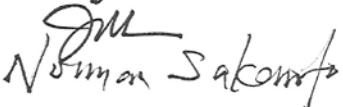
We believe that the EUTF enrollment process should provide each employee the option to choose the benefit plan design that best meets their needs and the plan administrator that provides quality customer service and the most appropriate network of service providers.

With warmest regards,


Colleen Hanabusa
Senate President

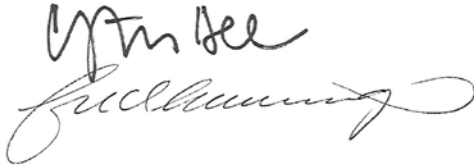

David Y. Ige
Chair, Senate Committee on Health



John M.
Will Eyo
Michelle Adeniji
John Adams Jr.
J. Kelvin Egbel



Carol
Resalya H. Baker
Clarence K. S. Ibihera

Mike Gabriel

Norman Sakomfo

ATTACHMENT A cont.

November 19, 2009
Page 3 of 3

A handwritten signature in cursive script, appearing to read "Jim Williams".A handwritten signature in cursive script, appearing to read "Bruce Kohl".

cc: Jim Williams, EUTF Administrator
EUTF Board Trustees

STANDING COMMITTEE REPORT

SCRep. 1 Judiciary and Government Operations on Gov. Msg. No. 1

Recommending that the Senate consent to the nomination of the following:

CIRCUIT COURT OF THE FIRST CIRCUIT, JUDGE

Gov. Msg. No. 1 EDWIN C. NACINO, for a term of ten years.

Your Committee received testimony in strong support of Judge Edwin C. Nacino from the Attorney General, the Hawaii State Bar Association, the State of Hawaii Organization of Police Officers, the Waialae Elementary Public Charter School Board, and fifty-nine attorneys and individuals. Testimony in opposition to the nomination was received from one individual. Comments regarding the nomination were received from Hawaii Women's Lawyers.

The Board of Directors of the Hawaii State Bar Association found Judge Nacino to be qualified for the position of Circuit Court Judge of the First Circuit, based upon the criteria of integrity, legal knowledge and ability, professional experience, judicial temperament, diligence, financial responsibility, public service, collegiality, and writing ability.

Written testimony presented to your Committee may be reviewed on the Legislature's website.

Judge Nacino received a Bachelor of Arts degree from the University of Hawaii at Manoa and a Juris Doctor degree from the William S. Richardson School of Law at the University of Hawaii at Manoa. Before entering the William S. Richardson School of Law, Judge Nacino was employed full-time as a Honolulu police officer for approximately 8 ½ years, assigned to the patrol division. He is currently serving as a District Judge with the District Court of the First Circuit. Judge Nacino has broad experience in both civil and criminal litigation. Prior to his tenure at the District Court, Judge Nacino practiced law in the private sector as an associate attorney and then a partner with Roeca, Louie & Hiraoka, specializing in civil litigation. He also has experience in the public sector, as a Deputy Corporation Council for the City and County of Honolulu, working in the civil litigation area, and as a deputy Prosecuting Attorney with the Honolulu Prosecutor's Office, trying criminal cases at the District, Family, and Circuit Court levels. Additionally, Judge Nacino has demonstrated a strong commitment to the well-being of the community through his service with community organizations, and to fostering excellence in Hawaii's legal community through teaching law students at the University of Hawaii.

Testimony submitted in support of the nomination highlights the breadth of Judge Nacino's legal background and the scope of his trial experience. His many years of experience as a judge, arbitrator, prosecutor, deputy corporation counsel, and attorney in private practice have given him a thorough understanding of the judicial system. Testimony characterizes Judge Nacino as a jurist who can see both sides of an issue and who demonstrates common sense in dealing with others and the matters before him. Judge Nacino also displays a mature and balanced judicial temperament that reflects his high level of ethics, fairness, and integrity.

Your Committee finds that, based on the testimony submitted on his behalf, Judge Nacino has the experience, temperament, judiciousness, and other competencies to be a Circuit Court judge, and has a good sense of where the equities, rights, and responsibilities lie in a case, which is essential for a Circuit Court judge.

As affirmed by the record of votes by the members of your Committee on Judiciary and Government Operations that is attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the appointee, has found the appointee to be qualified for the position to which appointed and recommends that the Senate consent to the appointment.

Signed by the Chair on behalf of the Committee.

Ayes, 6. Noes, none. Excused, none.

NUMBER AND TITLE	Offered	Referred	Report of Committee	Adoption
S.R. No. 1 AUTHORIZING THE PRESIDENT TO APPROVE THE JOURNAL OF THIS SENATE FOR THE SECOND DAY OF THE THIRD SPECIAL SESSION OF 2009.	2			2