

THIRTY-SIXTH DAY

Monday, March 22, 2010

The Senate of the Twenty-Fifth Legislature of the State of Hawai'i, Regular Session of 2010, convened at 11:36 a.m. with the President in the Chair.

The Divine Blessing was invoked by the Reverend Dr. Bert M. Sumikawa, Kapolei Buddhist Sangha, after which the Roll was called showing all Senators present with the exception of Senator Tsutsui who was excused.

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

At this time, the following introductions were made to the members of the Senate:

Senator Kidani, with the assistance of Senators Kim, Baker, and Galuteria, recognized and honored the life and contributions of the Honorable Patsy Takemoto Mink in celebration of National Women's History Month. Senator Kidani introduced several of the Honorable Patsy T. Mink's family members including daughter Professor Wendy Mink; brother Mr. Eugene Takemoto, his wife Mrs. Frances Takemoto, and their daughter Ms. Jo Ann Kagawa; and longtime office manager Ms. Joan Manke and her husband Mr. James Manke, a former staff member. Senator Kim introduced other family members seated in the gallery including Maureen and Mark Farineau, Jean Igarashi, Aaron and Cindy Kagawa, Kristi Kagawa, Phyllis Takara, Wayne and Shawn Takemoto, Julie Tamura, Calvin Tamura, and Ruth Tamura. Senator Baker introduced former staff members seated in the gallery including Paula Jorgensen, Florence Kong Lee, Herb Lee, Reese Nakamura, Joanne Nakashima, Linnie Pascual, Janelle Saneishi, Joanne Tachibana, Jayson Watts, Carol Ross, and Alice Mak. Senator Galuteria introduced friends and colleagues seated in the gallery including Amy Agbayani, Kimberlee Bassford, Steve Beaudry, Faye Kennedy, Richard and Ann Port, Judy Sobin, Joanne Tachibana, Alda Mae Takabayashi, Carol Takahashi, Cynthia Takenaka, Jim Mak, and Watters Martin.

At 11:50 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:57 a.m.

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 367 to 376) were read by the Clerk and were disposed of as follows:

Gov. Msg. No. 367, dated March 12, 2010, transmitting the Annual Evaluation of the Hawaii Unemployment Compensation Fund, prepared by the Department of Labor and Industrial Relations pursuant to Section 383-126.5, HRS, was placed on file.

Gov. Msg. No. 368, dated March 19, 2010, transmitting the Governor's statement of objections to Senate Bill No. 771, S.D. 1, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO APPRAISALS," which was returned to the Senate without approval and reads as follows:

"EXECUTIVE CHAMBERS

HONOLULU

March 19, 2010

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 771

Honorable Members
Twenty-Fifth Legislature

State of Hawai'i

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. 771, entitled 'A Bill for an Act Relating to Appraisals.'

The purpose of this bill is to require real estate appraisers to comply with the Uniform Standards of Professional Appraisal Practice when they are acting as arbitrators. The bill also requires that the record of an award in an arbitration proceeding conducted by an appraiser include specific findings of fact, evidence, and the appraiser's reasoning for the award.

This bill is objectionable because appraisers who serve as arbitrators are not engaging in the practice of real estate appraisal. The fact that arbitration is being conducted for the purpose of determining the value of real estate does not cure this objection. Arbitration is an alternative dispute resolution process used to reach a compromise solution, and not an appraisal. In an arbitration proceeding, the parties submit their cases to an impartial person or panel for what is intended to be a final, binding decision.

During an arbitration proceeding to determine the value of real estate, both sides typically hire their own appraisers as expert witnesses. These expert witnesses are required by state statute to follow the Uniform Standards of Professional Appraisal Practice ("USPAP") if they perform an appraisal. Arbitrators therefore have an opportunity to evaluate competing and USPAP conforming appraisals and make an accordingly informed decision.

Forcing arbitrators to use USPAP would require them to follow a standard that is not applicable to their proceedings, increasing costs and lengthening the process of arbitration. It would be more appropriate to require these panels to follow the Uniform Arbitration Act, as set forth in Chapter 658A of the Hawaii Revised Statutes, and amend the chapter to specify the award explanation.

While requiring arbitrators to comply with USPAP is not an appropriate mechanism for improving transparency, there is some merit in the second element of this legislation, which would require that the record of an award in an arbitration proceeding conducted by an appraiser include specific findings of fact, evidence, and the appraiser's reasoning for the award. Parties to arbitrations that determine the value of real estate might indeed benefit from a more detailed rationale for an arbitration award. Accordingly, legislation along these lines may be worth pursuing in the future, with the input of all stakeholders. However, while improving the transparency of these types of arbitration proceedings deserves attention, this bill, as written, is not the appropriate mechanism for achieving that goal.

For the foregoing reasons, I am returning Senate Bill No. 771 without my approval.

Respectfully,

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

was placed on file.

Gov. Msg. No. 369, submitting for consideration and confirmation to the Hawai'i Workforce Development Council, the nomination of ALENA N. MEDEIROS, term to expire June 30, 2010, was referred to the Committee on Labor.

Gov. Msg. No. 370, submitting for consideration and confirmation to the Hawai'i Workforce Development Council, the nomination of ALENA N. MEDEIROS, term to expire June 30, 2014, was referred to the Committee on Labor.

Gov. Msg. No. 371, submitting for consideration and confirmation to the Commission on Transportation, the nomination of JOHN B. RAY, term to expire June 30, 2014, was referred to the Committee on Transportation, International and Intergovernmental Affairs.

Gov. Msg. No. 372, submitting for consideration and confirmation to the Board of Directors of the Agribusiness Development Corporation, the nomination of DUANE C.K. LAU, term to expire June 30, 2014, was referred to the Committee on Water, Land, Agriculture, and Hawaiian Affairs.

Gov. Msg. No. 373, submitting for consideration and confirmation to the Board of Directors of the Agribusiness Development Corporation, the nomination of DAVID G. RIETOW, term to expire June 30, 2014, was referred to the Committee on Water, Land, Agriculture, and Hawaiian Affairs.

Gov. Msg. No. 374, submitting for consideration and confirmation to the Board of Agriculture, the nomination of JERRY L. ORNELLAS, term to expire June 30, 2014, was referred to the Committee on Water, Land, Agriculture, and Hawaiian Affairs.

Gov. Msg. No. 375, submitting for consideration and confirmation to the Board of Land and Natural Resources, the nomination of DAVID C. GOODE, term to expire June 30, 2014, was referred to the Committee on Water, Land, Agriculture, and Hawaiian Affairs.

Gov. Msg. No. 376, letter dated March 18, 2010, transmitting proposed changes to the Appropriations Act (H.B. No. 2200) for the Department of Accounting and General Services, the Department of the Attorney General, the Department of Human Services, the Department of Land and Natural Resources, the Department of Taxation, the Department of Hawaiian Home Lands, and the Department of Transportation, was placed on file.

HOUSE COMMUNICATION

The following communication from the House (Hse. Com. No. 271) was read by the Clerk and placed on file:

Hse. Com. No. 271, informing the Senate that on March 19, 2010, the House agreed to the amendments proposed by the Senate to H.C.R. No. 18, and H.C.R. No. 18, S.D. 1 was finally adopted in the House of Representatives.

STANDING COMMITTEE REPORTS

Senator Taniguchi, for the Committee on Judiciary and Government Operations, presented a report (Stand. Com. Rep. No. 2828) recommending that H.B. No. 1992, H.D. 1, 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 H.B. No. 1992, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE INTERMEDIATE APPELLATE COURT," passed Second Reading and was placed on the calendar for Third Reading on Wednesday, March 24, 2010.

Senator Taniguchi, for the Committee on Judiciary and Government Operations, presented a report (Stand. Com. Rep. No. 2829) recommending that H.B. No. 2721, H.D. 1, 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 H.B. No. 2721, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO COURT REPORTERS," passed Second Reading and was placed on the calendar for Third Reading on Wednesday, March 24, 2010.

ORDER OF THE DAY

THIRD READING

H.B. No. 1853, S.D. 1:

Senator Sakamoto moved that H.B. No. 1853, S.D. 1 pass Third Reading, seconded by Senator Kidani.

Senator Slom rose to speak in opposition to the measure as follows:

"First of all, Madam President, as you know, I do not support bans on things but the idea of banning ice cream and candy from public school sales—you know, just how far is too far, as we go? The body the bill talks about, the DOE, following the authoritative rules of wellness—it would be so much more refreshing if the DOE followed the authoritative rules of education of our children and leaving things like ice cream and candy and the very few things that we can still enjoy in this country left to people. As one of my staff members said, 'It's like taking candy from a baby.' Well, in fact it is taking candy from a baby; and Madam President, how will we now be able to stand up and say, 'I scream, you scream, we all scream for ice cream?' Thank you, Madam President."

The motion was put by the Chair and carried, H.B. No. 1853, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC SCHOOLS," passed Third Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, 2 (Hemmings, Slom). Excused, 2 (Hee, Tsutsui).

H.B. No. 2027, H.D. 1, S.D. 1:

On motion by Senator Baker, seconded by Senator Ige and carried, H.B. No. 2027, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO DISHONORED CHECKS," passed Third Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Hee, Tsutsui).

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

"As we honored Patsy T. Mink, Congresswoman and woman extraordinaire on our floor today, I wanted to rise and just offer a few comments on the passing of Liz Carpenter.

"Liz Carpenter, as many of you know—maybe those of you that are closer to my age range than others—Liz Carpenter was the first woman to serve as an executive assistant to the Vice President of the United States, Lyndon Baines Johnson, and then became press secretary to the First Lady Mrs. LadyBird Johnson. And the thing that most people remember as I was listening to the commentary on her life was that Liz Carpenter was the one who penciled the 55 words or so that the new President of the United States offered to the nation after the passing of John Fitzgerald Kennedy. However, the thing that I remember about her was her wit and her passion for equity. I had the good fortune to work with her when I was in Washington, D.C., many years ago on the Equal Rights Amendment—she co-chaired the national coalition, ERAmerica, to push for ratification of the ERA and was one of the co-founders of the National Women's Political Caucus. Like Patsy Mink, Liz Carpenter fought tirelessly for equal rights for women. And I just thought we would be remiss on a day that we honored Patsy Mink for her groundbreaking accomplishments on behalf of young women and girls, if we did

not offer a few words of appreciation, acknowledgment, and condolence on the passing of Liz Carpenter. Thank you, Madam President.”

At this time, the Chair made the following announcement:

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

RE-REFERRAL OF A HOUSE BILL

The Chair re-referred the following House bill that was received:

H.B. No.: Re-referred to:

H.B. No. 2964, H.D. 1 Committee on Ways and Means

ADJOURNMENT

At 12:36 p.m., on motion by Senator Sakamoto, seconded by Senator Slom and carried, the Senate adjourned until 11:30 a.m., Tuesday, March 23, 2010.