

## FIFTY-FOURTH DAY

Wednesday, April 21, 2010

The Senate of the Twenty-Fifth Legislature of the State of Hawai'i, Regular Session of 2010, convened at 11:44 a.m. with the Vice 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 Hanabusa who was excused.

The Vice President announced that he had read and approved the Journal of the Fifty-Third Day.

## MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 496 to 500) were read by the Clerk and were placed on file:

Gov. Msg. No. 496, informing the Senate that on April 20, 2010, the Governor signed into law House Bill No. 134, H.D. 2, S.D. 2 as Act 38, entitled: "RELATING TO MOTOR VEHICLE DRIVER LICENSING."

Gov. Msg. No. 497, informing the Senate that on April 20, 2010, the Governor signed into law House Bill No. 2027, H.D. 1, S.D. 1 as Act 39, entitled: "RELATING TO DISHONORED CHECKS."

Gov. Msg. No. 498, informing the Senate that on April 20, 2010, the Governor signed into law House Bill No. 2383, H.D. 1, S.D. 2 as Act 40, entitled: "RELATING TO FLAGS."

Gov. Msg. No. 499, informing the Senate that on April 20, 2010, the Governor signed into law Senate Bill No. 2122, S.D. 1 as Act 41, entitled: "RELATING TO RESEARCH."

Gov. Msg. No. 500, informing the Senate that on April 20, 2010, the Governor signed into law Senate Bill No. 2389 as Act 42, entitled: "RELATING TO THE UNIVERSITY OF HAWAII."

## HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 598 to 604) were read by the Clerk and were placed on file:

Hse. Com. No. 598, informing the Senate that on April 20, 2010, the House agreed to the amendments proposed by the Senate to H.B. No. 2897, H.D. 1 and H.B. No. 2897, H.D. 1, S.D. 1 passed Final Reading in the House of Representatives.

Hse. Com. No. 599, informing the Senate that on April 20, 2010, the House reconsidered its action taken on April 7, 2010, in disagreeing to the amendments proposed by the Senate to H.B. No. 2297, H.D. 2 (S.D. 2).

Hse. Com. No. 600, returning S.C.R. No. 108, S.D. 2, which was adopted by the House of Representatives on April 20, 2010.

Hse. Com. No. 601, returning S.C.R. No. 140, S.D. 1, which was adopted by the House of Representatives on April 20, 2010.

Hse. Com. No. 602, returning S.C.R. No. 195, S.D. 1, which was adopted by the House of Representatives on April 20, 2010.

Hse. Com. No. 603, returning S.C.R. No. 201, which was adopted by the House of Representatives on April 20, 2010.

Hse. Com. No. 604, informing the Senate that on April 20, 2010, the Speaker made the following changes to the conferees on the following bill:

S.B. No. 532, S.D. 1 (H.D. 1):

Discharged Representative Souki.

## CONFERENCE COMMITTEE REPORTS

Senator English, for the Committee on Conference on the disagreeing vote of the House to the amendments proposed by the Senate to H.B. No. 1190, H.D. 1, presented a report (Conf. Com. Rep. No. 12-10) recommending that H.B. No. 1190, H.D. 1, S.D. 2, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15 of the Constitution of the State of Hawai'i, action on Conf. Com. Rep. No. 12-10 and H.B. No. 1190, H.D. 1, S.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TRAFFIC ACCIDENT INVESTIGATION," was deferred for a period of 48 hours.

Senator English, for the Committee on Conference on the disagreeing vote of the House to the amendments proposed by the Senate to H.B. No. 2020, H.D. 2, presented a report (Conf. Com. Rep. No. 13-10) recommending that H.B. No. 2020, H.D. 2, S.D. 2, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15 of the Constitution of the State of Hawai'i, action on Conf. Com. Rep. No. 13-10 and H.B. No. 2020, H.D. 2, S.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO COUNTIES," was deferred for a period of 48 hours.

Senator Sakamoto, for the Committee on Conference on the disagreeing vote of the House to the amendments proposed by the Senate to H.B. No. 1854, presented a report (Conf. Com. Rep. No. 14-10) recommending that H.B. No. 1854, S.D. 2, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15 of the Constitution of the State of Hawai'i, action on Conf. Com. Rep. No. 14-10 and H.B. No. 1854, S.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," was deferred for a period of 48 hours.

Senator Taniguchi, for the Committee on Conference on the disagreeing vote of the House to the amendments proposed by the Senate to H.B. No. 2676, H.D. 1, presented a report (Conf. Com. Rep. No. 15-10) recommending that H.B. No. 2676, H.D. 1, S.D. 1, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15 of the Constitution of the State of Hawai'i, action on Conf. Com. Rep. No. 15-10 and H.B. No. 2676, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE KAHO'OLAWA ISLAND RESERVE COMMISSION," was deferred for a period of 48 hours.

Senator Gabbard, for the Committee on Conference on the disagreeing vote of the House to the amendments proposed by the Senate to H.B. No. 2239, presented a report (Conf. Com. Rep. No. 16-10) recommending that H.B. No. 2239, S.D. 2, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15 of the Constitution of the State of Hawai'i, action on Conf. Com. Rep. No. 16-10 and H.B. No. 2239, S.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE DEPOSIT BEVERAGE CONTAINER PROGRAM," was deferred for a period of 48 hours.

Senator Espero, for the Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House to S.B. No. 950, S.D. 2, presented a report (Conf. Com. Rep. No. 59-10) recommending that S.B. No. 950, S.D. 2, H.D. 3, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15 of the Constitution of the State of Hawai'i, action on Conf. Com. Rep. No. 59-10 and S.B. No. 950, S.D. 2, H.D. 3, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ELECTRIC GUNS," was deferred for a period of 48 hours.

Senator English, for the Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House to S.B. No. 2449, presented a report (Conf. Com. Rep. No. 60-10) recommending that S.B. No. 2449, H.D. 1, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15 of the Constitution of the State of Hawai'i, action on Conf. Com. Rep. No. 60-10 and S.B. No. 2449, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO DRIVER LICENSING," was deferred for a period of 48 hours.

Senator Fukunaga, for the Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House to S.B. No. 2019, S.D. 1, presented a report (Conf. Com. Rep. No. 61-10) recommending that S.B. No. 2019, S.D. 1, H.D. 2, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15 of the Constitution of the State of Hawai'i, action on Conf. Com. Rep. No. 61-10 and S.B. No. 2019, S.D. 1, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE MAXIMUM TERM OF COMMERCIAL USE AND OPERATOR PERMITS FOR THRILL CRAFT AND PARASAILING," was deferred for a period of 48 hours.

Senator Gabbard, for the Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House to S.B. No. 2817, S.D. 1, presented a report (Conf. Com. Rep. No. 62-10) recommending that S.B. No. 2817, S.D. 1, H.D. 1, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15 of the Constitution of the State of Hawai'i, action on Conf. Com. Rep. No. 62-10 and S.B. No. 2817, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO SOLAR ENERGY DEVICES," was deferred for a period of 48 hours.

#### ORDER OF THE DAY

#### AGREE/DISAGREE

#### MATTERS DEFERRED FROM TUESDAY, APRIL 20, 2010

At 11:49 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:50 a.m.

S.C.R. No. 202, S.D. 1 (H.D. 1):

By unanimous consent, action on S.C.R. No. 202, S.D. 1 (H.D. 1), entitled: "SENATE CONCURRENT RESOLUTION AUTHORIZING THE MUTUAL CANCELLATION OF LEASE OF NON-EXCLUSIVE EASEMENT S-5252 AND ISSUANCE OF A TERM, NON-EXCLUSIVE EASEMENT COVERING A PORTION OF STATE SUBMERGED LANDS SITUATED AT LAPAAKEA, LAHAINA, MAUI, IDENTIFIED BY TAX MAP KEY: (2) 4-5-001:055: SEAWARD OF TAX MAP KEY: (2) 4-5-001:006," was deferred until Thursday, April 22, 2010.

S.C.R. No. 18, S.D. 1 (H.D. 1):

Senator Kim moved that the Senate agree to the amendments proposed by the House to S.C.R. No. 18, S.D. 1, seconded by Senator Tsutsui.

Senator Kim noted:

"It's a good resolution. Thank you."

Senator Hee rose on a point of inquiry and said:

"How good? Maika'i loa or ano maika'i or...."

Senator Kim continued:

"This resolution establishes the Joint Legislative Investigating Committee to oversee the investigations of Department of Budget and Finance's handling of the State's investment in student loan auction rate securities. We just had some technical language changes that we agreed to, and with that, I believe that this is good to go. Thank you."

The motion as put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.C.R. No. 18, S.D. 1 and S.C.R. No. 18, S.D. 1, H.D. 1, entitled: "SENATE CONCURRENT RESOLUTION ESTABLISHING A JOINT LEGISLATIVE INVESTIGATING COMMITTEE TO OVERSEE THE INVESTIGATION OF THE DEPARTMENT OF BUDGET AND FINANCE'S HANDLING OF THE STATE'S INVESTMENT IN STUDENT LOAN AUCTION RATE SECURITIES," was placed on the calendar for Final Adoption on Thursday, April 22, 2010.

At 11:52 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:53 a.m.

S.C.R. No. 110, S.D. 2 (H.D. 1):

Senator Sakamoto moved that the Senate agree to the amendments proposed by the House to S.C.R. No. 110, S.D. 2, seconded by Senator Kim.

Senator Sakamoto noted:

"It is good—maika'i. The House added a member to the working group, and we agree to that change."

The motion was put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.C.R. No. 110, S.D. 2 and S.C.R. No. 110, S.D. 2, H.D. 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE ESTABLISHMENT OF A WORKING GROUP TO DEVELOP A COMPREHENSIVE PLAN TO IMPROVE AWARENESS OF AND STRENGTHEN SUPPORT FOR PERSONS WITH DYSLEXIA," was placed on the calendar for Final Adoption on Thursday, April 22, 2010.

S.C.R. No. 183, S.D. 1 (H.D. 1):

By unanimous consent, action on S.C.R. No. 183, S.D. 1 (H.D. 1), entitled: "SENATE CONCURRENT RESOLUTION CONVENING A LEGISLATIVE NOISE POLLUTION TASK FORCE TO REVIEW BEST PRACTICES FROM OTHER STATES IN REDUCING URBAN NOISE POLLUTION," was deferred until Thursday, April 22, 2010.

#### ADVISE AND CONSENT

At 11:54 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:57 a.m.

At this time, the Chair made the following announcement:

"If there are no objections from the members, we will be taking advise and consent on Standing Committee Reports Nos. 3206, 3207, and 3208 separately."

Stand. Com. Rep. No. 3206 (Gov. Msg. No. 340):

Senator Hee moved that Stand. Com. Rep. No. 3206 be received and placed on file, seconded by Senator Tokuda and carried.

Senator Hee then moved that the Senate advise and consent to the nomination of RONALD I. HELLER to the Land Use Commission, term to expire June 30, 2014, seconded by Senator Tokuda.

Senator Hee rose in support of the nomination as follows:

“Colleagues, I am the one that asked to have the three Land Use Commission advise and consent separately, and the reason is I intend to support the first and not support the second and the third. I am the one that was afforded the opportunity to list them in this order, and I did so by design.

“I want to share with you that your Committee took the advise and consent process very seriously, and in our initial questionnaire to the three members, I used the language of former Governor George Ariyoshi to provide a basis for responses. Let me read to you what was conveyed to all three and how they responded: Governor Ariyoshi had said:

At the beginning of statehood, our system of land management was the envy of other governmental jurisdictions. We were on the leading edge of land use planning. Delegations periodically arrived to study our land use law. We imagined that as other governments came to see the negative effects of unplanned development, they would emulate us.

Originally the job of the Land Use Commissioners was to serve the broad public interest over the long term. When I came into office, I appointed a representative of the League of Women Voters to the Commission because the league had worked hard on understanding land use decisions. I also appointed a young Hawaiian activist who spoke eloquently from a Hawaiian cultural point of view about the land; I felt her views needed to be represented.

Today the intent and functioning of the land use law has been extensively subverted. The commission membership prominently includes a realtor, a development lawyer, and a corporate lawyer. Members with large constituencies that are similarly tied to development...The Commission’s executive director previously held the Land Use Research Foundation Executive Directorship, a lobbying group for developers and large land owners.

Contrary to the original idea of the Land Use Law, the public is substantially shut out of the process...

The most widely embraced goal of the Land Use Law was the preservation of prime agricultural land. The 1978 Constitution Convention mandated the protection of agriculturally important lands, but this mandate has not been implemented.

“Mr. President and members, these questions were asked of Ronald I. Heller. I stand in support because this is how he responded:

I will do what the law requires. I understand the need to be impartial and fair. Although the Land Use Commission decides specific cases one at time similar to the court system, the Land Use Commission—and he underscored this word ‘is’—is supposed to consider the impact of its decisions on

the persons who may not be parties to the case. The Land Use Commission is required to consider, among other things, the preservation or maintenance of important natural systems or habitats; the maintenance of valued cultural, historical, and natural resources; the maintenance of other natural resources relevant to Hawaii’s economy, including agricultural resources.

Mr. Heller said:

The law defines the powers and duties of the Land Use Commission specifically sets forth ‘conserving and protecting agricultural lands,’ ‘promoting diversified agriculture,’ and ‘increasing agricultural self-sufficiency’ as important goals. Even more importantly, it is specifically set forth in the law ‘that there is a compelling State interest in conserving the State’s agricultural land resource base and assuring the long-term availability of agricultural lands for agricultural use.

“He closes by saying, ‘That is a clear and strong statement.’

“Mr. President and members, Mr. Heller is not up for reconfirmation. This is his first at bat. He is someone who obviously has given a lot of thought to his duties as a land use commissioner. I stand in support of him for those reasons. Thank you, Mr. President.”

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

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

Stand. Com. Rep. No. 3207 (Gov. Msg. No. 341):

Senator Hee moved that Stand. Com. Rep. No. 3207 be received and placed on file, seconded by Senator Tokuda.

Senator Hee then moved that the Senate advise and consent to the nomination of RANSOM A.K. PILTZ to the Land Use Commission, term to expire June 30, 2014, seconded by Senator Tokuda.

Senator Hee rose in opposition to the nomination as follows:

“Let me say at the outset: The Committee recommended advise and consent, and let me tell you why. It was clear as the Chair of the Committee that at least one other member supported the nominee, and I respect that. It was my decision as Chair not to split the Committee, but rather to recommend an advise and consent. I believe it is clear to those members who participated that they knew of my strong reservations on the nominee.

“Let me say at the outset: This is not a personal issue with me. I frankly think he’s a very nice man. So, it is not about that. It is about the nominee’s voting record. As someone up for reconfirmation, all of you are given the benefit of a track record. Unlike the previous nominee who has set forth his goals, he has yet to be judged. On the other hand, this nominee has a track record. I will tell you without question we have every vote that this nominee has participated in.

“Before, however, going into how he voted, I want to share with you a comparison. As opposed to the previous nominee, who has yet to set foot in the Commission, his response to the Committee was nine pages. This nominee’s (who has been a commissioner for four years) response to the committee was four paragraphs, and the last paragraph was, ‘Mahalo for giving me the opportunity to serve the people of Hawai’i.’ It’s clear to me that he did not—it appears to me... Well, I have concluded that he did not nearly put any effort to take seriously the questionnaires provided each member. I will tell each of you that when I received the four paragraphs, I e-mailed him

immediately and asked him, 'Are you sure that this is your response?' I didn't get a response, so I presume he's sure.

"Members, this nominee, on every vote of which seven petitions were to develop A-list prime lands, voted 'yes' to develop all of those lands. On other lands that are not prime ag lands, he voted 'yes.' When asked about this in the Committee, one by one, he couldn't remember. It got to a point where I seriously gave thought to the question, 'Do you have a neurological issue, or is your memory one of convenience?' But I thought maybe we'd leave those questions to lay.

"On the island of O'ahu, on the leeward side of this island, there are 33,000 house units that have been approved to be built, but they're not being built. There is a development being planned on 1,500 acres in Kapolei on prime ag land for another 12,000 house lots. There is another development at Koa Ridge—to which is five percent prime ag lands that has irrigation—that envisions another 5,000 homes. Three thousand three hundred acres of prime ag land has been developed over the last two decades. This nominee has participated in some of those decisions.

"We cannot appoint the nominees to the Commission, but it is our duty to judge the qualities of the nominee. His record speaks for itself. If he is not re-nominated, it is my view he will vote for Koa Ridge. It is my view he will vote for Ho'opili. When asked about his record, he said, 'You have to find a balance.' So I asked him what was the balance, and he shrugged his shoulders. So, I wasn't sure what the balance was. He is a nice man, but he is not fit, as his record would show, to serve as a commissioner on the Land Use Commission.

"Here are what other people have said with regard to prime ag land: 'Mercifully, early in the 1900s,' these people are from Vancouver, Canada, 'the Vancouver city fathers dedicated a prime piece of land as designated "no build" area.' Evidently this place is called 'Stanley Park.' 'Despite the fact that is was in the heart of Vancouver and was sought after by several prominent individuals, businesses, and have since then have been steadfastly rejected, several highly organized attempts to pave over the area and turn the pristine beauty of the spot into homes for the wealthy.' This couple wrote to me about a bill but its message was very clear. He said of the bill, 2290, he said—but I want to focus on his comments on land preservation—'It's even more important to the residents of O'ahu since it deals with agricultural lands, and as such the area serves a very important secondary function, offering residents and visitors great spiritual and visual values as a respite from the built-up urban-suburban nature of where so many people live and work.'

"This nominee said to the panel, 'We need to have homes. Local people need to live in these homes.' So I asked him why is it then with the inventory of 33,000 homes already approved with Ho'opili before them, was it his idea in his mind's eye that local kids coming back from college would qualify to live in these homes. He shrugged his shoulders. Well, if that was the case, then you wouldn't have three generations under one roof now, would we?

"Let me close with two statements that were written in a commentary recently:

From the Governor on down, everyone agrees we should become less reliant on cars, more reliant on locally-grown food and energy. We voted to build a mass transit system to take cars off the road and focus growth on a dense urban core. As private investors, homeowners, and as a community, we're pouring billions into biofuel power plants, undersea electric cables, photovoltaics, wind farms, energy car charging stations, algae to energy research, and a

slew of other projects to promote a sustainable future.

"Members, given the voting record of this nominee, I am convinced that what I just read is not within his vision of the future. I urge my colleagues to consider a 'no' vote. Thank you."

Senator Tokuda rose in support of the nomination as follows:

"On March 31, your Committee on Water, Land, Agriculture, and Hawaiian Affairs voted four in favor, three excused, to confirm Mr. Ransom Piltz to another term on the Land Use Commission. Perhaps this is a procedural and philosophical difference that I have with the Chair, but I believe that if at all possible, the time and place to question, raise any damming points, and reject nominees is at the committee level, regardless of the potential to divide a committee.

"At our hearing, there was extensive discussion regarding land use policy and overall land use philosophy, as well as Mr. Piltz's voting record on the Commission and his possible future position on decisions that may come before the Commission. For myself and other members of the Committee, Mr. Piltz's responses, resume, and overall record was sufficient to support his reconfirmation in committee, and to then pass it on to the Senate floor for confirmation.

"Mr. Piltz is an established businessman who ran his own electrical consulting company on Maui for over 30 years. In addition to his leadership roles with the Maui Contractors Association that dates back to 1974, Mr. Piltz served on the County of Maui Planning Commission from 2000 to 2005, also serving as its chairperson from 2004 to 2005. Mr. Piltz currently serves as the Chairperson for the Land Use Commission.

"In my observations of Mr. Piltz during hearings, I found him to be fair and balanced in both his running of the hearings and the decisions that were made. While I share many of the concerns regarding overall land use policy for our state that the Chairperson has mentioned in his statements, I respectfully stand by my vote in committee to confirm this nominee. Thank you."

Senator Hee inquired:

"Mr. President, would you ask the previous speaker if she would yield to a question?"

The Chair asked Senator Tokuda if she would yield to a question, and Senator Tokuda indicated that she would consider it.

Senator Hee continued:

"Would you ask the previous speaker—she mentioned in her observations of the nominee as chair of the Land Use Commission—would you ask her how extensive is her observation and how many issues that came before the Commission she observed the nominee? And will you ask her, in her observation, how did the nominee vote when it became a question of rezoning ag land for more development?"

The Chair then asked Senator Tokuda if she would care to respond.

Senator Tokuda responded:

"In response to that question, I did observe Mr. Piltz in regards to the Hawaiian Memorial Park situation and case, which was a petition to change conservation land to urban, as well as an appeal on that decision in which it was a unanimous decision by all LUC members to reject the petition to rezone from conservation to urban, and also the appeal that the memorial park did put forward on this decision.



“Clearly, I am not as versed in his voting record as the Chairperson is, but again, as I stated, our Committee had the time and the place to deliberate these particular issues, and if the Chairperson really felt strongly that he should be rejected on those grounds, these types of issues, concerns should have been raised at the committee level and should have been discussed with the committee members as well. And that’s how I’ll respond. Thank you.”

Senator Hee rose and said:

“I would like to thank the previous speaker. I would like to note, though, that the previous speaker, as did I, supported the keeping of Hawaiian Memorial Park from re-designation. And I would note that Hawaiian Memorial Park is not zoned prime agricultural land; what we’re dealing with is conservation land. So thank you, Mr. President.”

At 12:19 p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:31 p.m.

At this time, the Chair made the following announcement:

“If there are no objections from the members, we will defer both Governor’s Message Nos. 341 and 338 until Monday, April 26.”

By unanimous consent action on Stand. Com. Rep. No. 3207 and Gov. Msg. No. 341 was deferred until Monday, April 26, 2010.

Senator Slom rose on a point of information as follows:

“Since I am not on the Committee and did not have the opportunity to either listen to the testimony or hear the questions—and I do want to make a good and fair decision—I’d like to direct a question to the Chair of the Committee. I heard him briefly talk about this, but I’d like a clarification. Since he voted straight up in the Committee on this nomination and had the questions and the four paragraphs and all that, was there additional material that he learned after that Committee that made him take the position today? Thank you.”

The Chair then asked Senator Hee if he would care to respond.

Senator Hee responded:

“The answer is yes; I did learn more information. We’ve had our staff at work. Obviously, what I’ve spoken about the nominee couldn’t have been put together in any quick fashion.

“But let me speak to the concern of, ‘You’re going down now, but why did you go straight up?’ And the reason is because I was stupid. That’s the answer. I thought it was in the interest of the Committee to keep the Committee as a unit. The fact of the matter is after the discussion, and we went in recess for decision making, I leaned over to one of the senior members on the Committee and I said to that member, ‘Let’s go “down,”’ and the member said—this is my interpretation of what the member communicated to me—was, ‘No; go “up.”’ We had a short discussion, and I said a few things that to me had more than enough merit to go ‘down’ on him.

“The short end of the long story is that I decided to try to keep the Committee as a unit. I guess in retrospect maybe I could have turned to the vice chair of the Committee to say, ‘Move, we approve,’ and I vote ‘no,’ but I was the Chairman and I didn’t know if I should say, ‘Okay, we move to approve and I vote “no” as the Chair.’ It just did seem so awkward for me, but I’m still learning how this place works, so that’s the reason. Honestly, I did communicate that I was ‘down’ on this guy. So, that’s my response. Thank you.”

Stand. Com. Rep. No. 3208 (Gov. Msg. No. 338):

By unanimous consent, action on Stand. Com. Rep. No. 3208 and Gov. Msg. No. 338 was deferred until Monday, April 26, 2010.

Stand. Com. Rep. No. 3209 (Gov. Msg. Nos. 414, 447, 448, 449, 450, 451, and 452):

Senator Chun Oakland moved that Stand. Com. Rep. No. 3209 be received and placed on file, seconded by Senator Ihara and carried.

Senator Chun Oakland then moved that the Senate advise and consent to the nominations to the State Rehabilitation Council of the following:

DONALD THOMSON, term to expire June 30, 2013 (Gov. Msg. No. 414);

JUDITH CORYELL, term to expire June 30, 2013 (Gov. Msg. No. 447);

REGINA GOO, term to expire June 30, 2013 (Gov. Msg. No. 448);

GWEN L. KELIHOOMALU, term to expire June 30, 2013 (Gov. Msg. No. 449);

PINA S. LEMUSU, term to expire June 30, 2013 (Gov. Msg. No. 450);

HOWARD ALAN LESSER, term to expire June 30, 2013 (Gov. Msg. No. 451); and

ROBERT SCOTT WALL, term to expire June 30, 2013 (Gov. Msg. No. 452),

seconded by Senator Ihara.

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

Ayes, 23. Noes, none. Excused, 2 (Hanabusa, Taniguchi).

Stand. Com. Rep. No. 3210 (Gov. Msg. No. 422):

Senator Takamine moved that Stand. Com. Rep. No. 3210 be received and placed on file, seconded by Senator Bunda and carried.

Senator Takamine then moved that the Senate advise and consent to the nomination of NORMAN KENICHI KATO II to the Hawai’i Labor Relations Board, term to expire June 30, 2011, seconded by Senator Bunda.

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

Ayes, 23. Noes, none. Excused, 2 (Hanabusa, Taniguchi).

Stand. Com. Rep. No. 3211 (Gov. Msg. No. 453):

Senator Takamine moved that Stand. Com. Rep. No. 3211 be received and placed on file, seconded by Senator Bunda and carried.

Senator Takamine then moved that the Senate advise and consent to the nomination of JERRY RAUCKHORST to the Board of Trustees of the Employees’ Retirement System (ERS), term to expire January 1, 2014, seconded by Senator Bunda.

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

Ayes, 23. Noes, none. Excused, 2 (Hanabusa, Taniguchi).

#### FINAL ADOPTION

S.C.R. No. 93, S.D. 1, H.D. 1:

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the Senate agreed to the amendments proposed by the House to S.C.R. No. 93, S.D. 1 and S.C.R. No. 93, S.D. 1, H.D. 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION TO REVIEW THE FEASIBILITY OF DEVELOPING SINGLE ROOM OCCUPANCY DWELLINGS IN TRANSIT ORIENTED DEVELOPMENT PROJECTS TO ALLEVIATE THE AFFORDABLE HOUSING SHORTAGE," was Finally Adopted.

#### ADOPTION OF RESOLUTIONS

##### MATTERS DEFERRED FROM TUESDAY, APRIL 20, 2010

Stand. Com. Rep. No. 3212 (H.C.R. No. 44):

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.C.R. No. 44, entitled: "HOUSE CONCURRENT RESOLUTION AUTHORIZING THE SALE OF STATE RECLAIMED LAND AT KAALAEA, KOOLAUPOKO, OAHU, FOR PRIVATE PROPERTY PURPOSES," was adopted.

Stand. Com. Rep. No. 3213 (S.R. No. 12, S.D. 1):

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and S.R. No. 12, S.D. 1, entitled: "SENATE RESOLUTION REQUESTING THE ESTABLISHMENT OF A STATEWIDE SERVICE PROJECT TO PLANT ONE MILLION TREES AND CLEAN BEACHES ACROSS THE STATE BY OCTOBER 2010, AS PART OF THE CHILDREN AND YOUTH MONTH CELEBRATION," was adopted.

#### FINAL READING

Conf. Com. Rep. No. 8-10 (H.B. No. 1862, H.D. 1, S.D. 1, C.D. 1):

On motion by Senator Takamine, seconded by Senator Slom and carried, Conf. Com. Rep. No. 8-10 was adopted and H.B. No. 1862, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC ORDER," passed Final Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Hanabusa, Taniguchi).

Conf. Com. Rep. No. 55-10 (S.B. No. 2187, S.D. 1, H.D. 2, C.D. 1):

Senator Nishihara moved that Conf. Com. Rep. No. 55-10 be adopted and S.B. No. 2187, S.D. 1, H.D. 2, C.D. 1 pass Final Reading, seconded by Senator Galuteria.

Senator Ihara requested that his vote be cast "aye, with reservations," and the Chair so ordered.

The motion was put by the Chair and carried, Conf. Com. Rep. No. 55-10 was adopted and S.B. No. 2187, S.D. 1, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII TOURISM AUTHORITY," passed Final Reading on the following showing of Ayes and Noes:

Ayes, 23; Ayes with Reservations (Ihara). Noes, none. Excused, 2 (Hanabusa, Taniguchi).

Conf. Com. Rep. No. 56-10 (S.B. No. 2441, S.D. 2, H.D. 2, C.D. 1):

Senator Gabbard moved that Conf. Com. Rep. No. 56-10 be adopted and S.B. No. 2441, S.D. 2, H.D. 2, C.D. 1 pass Final Reading, seconded by Senator Hee.

Senator Hooser rose to speak in support of the measure and requested that remarks in support of the measure be entered into the Journal and the Chair so ordered.<sup>1</sup>

The motion was put by the Chair and carried, Conf. Com. Rep. No. 56-10 was adopted and S.B. No. 2441, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ENDANGERED SPECIES," passed Final Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Hanabusa, Taniguchi).

Conf. Com. Rep. No. 57-10 (S.B. No. 2607, S.D. 2, H.D. 1, C.D. 1):

Senator Nishihara moved that Conf. Com. Rep. No. 57-10 be adopted and S.B. No. 2607, S.D. 2, H.D. 1, C.D. 1 pass Final Reading, seconded by Senator Baker.

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

"Mr. President, I have some remarks in support of this measure I'd like to have inserted into the Journal."

The Chair having so ordered, Senator Baker's remarks read as follows:

"Madam President, I rise in support of SB 2607.

"This measure will improve DCCA's enforcement of necessary business regulation between activity desks who book activities that visitors and others enjoy like whale watches, snorkel excursions and luau and the activity providers whose businesses provide them. One of the primary reasons that the activity industry lost millions of dollars in revenue in the last 20 years has been a lack of statutory clarity and ability to proactively enforce HRS 468-M regarding activity desks. During that same timeframe, the State of Hawaii also lost millions in unpaid excise and income taxes.

"SB 2607, CD1 establishes clear record-keeping and trust account requirements for client trust accounts held by activity desks. It clarifies that activity desks shall include registration numbers on all advertising materials and requires an activity desk to obtain full payment for activities prior to or at the time reservations are made, with certain exceptions. And finally this conference draft will require that sums paid to an activity desk shall be held in trust while increasing the required amount that activity desks for a bond or letter of credit from \$100,000 to \$250,000.

"This bill is positive legislation because it creates a level playing field between activity desks and activity providers; it protects the businesses and the consumers they serve.

"I urge all my colleagues to support this important measure. Mahalo.

The motion was put by the Chair and carried, Conf. Com. Rep. No. 57-10 was adopted and S.B. No. 2607, S.D. 2, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ACTIVITY DESKS," passed Final Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Hanabusa, Taniguchi).

At this time, the following late introduction was made to the members of the Senate:

Senator Hooser introduced Ms. Keiko Bonk, who was instrumental in leading the charge to save monk seals and very involved in conservation projects around the state. Also recognized was Mr. Bill Chandler, Vice President for Government Affairs of the Marine Conservation Biology Institute.

<sup>1</sup> Request withdrawn at later date

## MISCELLANEOUS BUSINESS

## RECONSIDERATION OF ACTIONS TAKEN

S.B. No. 2523, S.D. 2 (H.D. 2):

Senator Hee moved that the Senate reconsider its action taken on April 7, 2010, in disagreeing to the amendments proposed by the House to S.B. No. 2523, S.D. 2, seconded by Senator Kim and carried.

In accordance with the Conference Committee Procedures agreed upon by the Senate and the House of Representatives, the managers on the part of the Senate recommended that the Senate agree to the amendments proposed by the House to S.B. No. 2523, S.D. 2, on the following showing of Ayes and Noes:

Ayes, 2 (Hee, Kim). Noes, none. Excused, 1 (Hemmings).

Senator Hee then moved that the Senate agree to the amendments made by the House to S.B. No. 2523, S.D. 2, seconded by Senator Kim.

Senator Hee noted:

“Yes, Mr. President. Senator Kim said to move to agree to the House amendments, and I did so. Thank you.”

The motion was put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 2523, S.D. 2 and S.B. No. 2523, S.D. 2, H.D. 2, entitled: “A BILL FOR AN ACT RELATING TO AGRICULTURAL INSPECTIONS,” was placed on the calendar for Final Reading on Thursday, April 22, 2010.

Senator Hee rose on a point of personal privilege as follows:

“You know, members, I guess we had somewhat of a good discussion on two nominees with the Land Use Commission. I wanted to make a few comments.

“I did not seek out to speak to any of you. I may have commented, but did not seek to lobby any of you, and there’s a reason for that. You know, I felt that on its face, the merits should stand where they are. I wanted to note that neither the nominee—nor the next nominee, who I also will speak against—has not called me and I presume has not called you because I think they presume they’re going to be appointed today. And I presume that now that the message will be given to the nominee from Maui and the other nominee from the Big Island that you folks may receive calls.

“So, while I yield to the leadership that we should caucus on these two and vote on Monday, I want to be clear that I felt strongly that on the merits of the discussion and on the merits of their voting record that all of you could make a decision based on the merits and not because the Chair had lobbied you, or the nominees, which I presume will begin the lobbying effort. Thank you, Mr. President.”

Senator Hemmings rose on a point of personal privilege as follows:

“What is being discussed here today on the nominees that have been deferred to Monday are very profound for the future of this island and for the State of Hawai’i. And I laud the Committee Chair not for his methodology, but for his vision for the future. A few lines that he uttered that bear so much consideration for our decision on Monday have to do with our future. Mr. President, you yourself chaired the sustainability conference. This nomination decision we’ll make Monday will have much to do not with one development in one particular area, but with the sustainability of this entire state in the future, most especially with the island of O’ahu. This decision will have to do with whether we do accommodate the demand for future growth in the urban core or if we spread out housing

developments throughout this entire island, paving over and building homes on some of our most precious agricultural land.

“This has indeed been a healthy discussion, and I especially laud the Committee Chair of Water-Land for his very candid response to what could be termed as ‘incisive’ questions. There seems to be a gift that we politicians have of sometimes evading questions and/or telling the asker of the questions what we believe they want to hear. I found the candid responses very refreshing.

“I missed the hearing on this particular nominee and the other one, but I understand, after listening to the Committee Chair, more clearly what is at stake. This has nothing to do with the individuals and their integrity and their personal beliefs. It has to do with what is best for the most, the long-term interests of this state, and all the people we serve, not just the people in our district.

“Therefore, I wanted to underscore the necessity for us to really take the time and search our souls in making these decisions on Monday, and I think this has been very healthy exercise in democracy. Thank you, Mr. President.”

At this time, the Chair made the following announcements:

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

“Conferees will be named in accordance with the Action Sheets to be distributed to your offices later this afternoon.

“Tomorrow is the final decking deadline for all non-fiscal bills in conference. All conference committee meetings must conclude by 6:00 p.m. and the Senate will convene in session at 6:30 p.m.”

## 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. 1947, H.D. 1	Jointly to the Committee on Labor and the Committee on Ways and Means

## ADJOURNMENT

At 12:46 p.m., on motion by Senator Sakamoto, seconded by Senator Slom and carried, the Senate adjourned until 6:30 p.m., Thursday, April 22, 2010.