

EIGHTEENTH DAY

Tuesday, February 14, 2012

The Senate of the Twenty-Sixth Legislature of the State of Hawai'i, Regular Session of 2012, convened at 11:33 a.m. with the President in the Chair.

The Roll was called showing all Senators present.

The President announced that he had read and approved the Journal of the Seventeenth Day.

At this time, Senator Chun Oakland, on behalf of Senator Kim and herself, welcomed a group of students from the Susannah Wesley Community Center CBASE program and their teacher To'i Tuala.

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 1102 and 1103) were read by the Clerk and were placed on file:

Gov. Msg. No. 1102, informing the Senate that on February 13, 2012, the Governor signed into law Senate Bill No. 239, S.D. 2, H.D. 2, C.D. 1 as Act 2, entitled: "RELATING TO THE HAWAII TOBACCO SETTLEMENT SPECIAL FUND."

Gov. Msg. No. 1103, informing the Senate that on February 13, 2012, the Governor signed into law Senate Bill No. 809, S.D. 1, H.D. 1, C.D. 1 as Act 3, entitled: "RELATING TO THE UNIVERSITY OF HAWAII."

HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 12 to 14) were read by the Clerk and were disposed of as follows:

Hse. Com. No. 12, transmitting H.B. No. 2096, H.D. 1, which passed Third Reading in the House of Representatives on February 13, 2012, was placed on file.

On motion by Senator Espero, seconded by Senator Slom and carried, H.B. No. 2096, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EMPLOYMENT SECURITY," passed First Reading by title and was deferred.

Hse. Com. No. 13, transmitting H.B. No. 2437, H.D. 1, which passed Third Reading in the House of Representatives on February 13, 2012, was placed on file.

On motion by Senator Espero, seconded by Senator Slom and carried, H.B. No. 2437, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ELECTIONS," passed First Reading by title and was deferred.

Hse. Com. No. 14, informing the Senate that on February 13, 2012, the House disagreed to the amendments proposed by the Senate to H.B. No. 238, H.D. 2 (S.D. 1), was placed on file.

SENATE CONCURRENT RESOLUTION

The following concurrent resolution (S.C.R. No. 41) was read by the Clerk and was deferred:

S.C.R. No. 41 "SENATE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM TO CONVENE A GAMBLING TASK FORCE."

Offered by: Senators Ryan, Galuteria, Espero, Fukunaga, Ige, Kidani, Nishihara, Tsutsui, Wakai.

STANDING COMMITTEE REPORTS

Senator Baker, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 2144) recommending that S.B. No. 2112 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 2112, entitled: "A BILL FOR AN ACT RELATING TO LEASEHOLD CONVERSION," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Baker, for the majority of the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 2145) recommending that S.B. No. 2762 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the majority of the Committee was adopted and S.B. No. 2762, entitled: "A BILL FOR AN ACT RELATING TO MONEY TRANSMITTERS," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Espero and Hee, for the Committee on Public Safety, Government Operations, and Military Affairs and the Committee on Judiciary and Labor, presented a joint report (Stand. Com. Rep. No. 2146) recommending that S.B. No. 2776, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Espero, seconded by Senator Slom and carried, the joint report of the Committees was adopted and S.B. No. 2776, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC SAFETY," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Baker, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 2147) recommending that S.B. No. 2765, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 2765, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CAPTIVE INSURANCE COMPANIES," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Fukunaga, for the Committee on Economic Development and Technology, presented a report (Stand. Com. Rep. No. 2148) recommending that S.B. No. 2066 pass Second Reading and be referred to the Committee on Judiciary and Labor.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 2066, entitled: "A BILL FOR AN ACT RELATING TO UNAUTHORIZED COMPUTER ACCESS," passed Second Reading and was referred to the Committee on Judiciary and Labor.

Senator Dela Cruz, for the Committee on Water, Land, and Housing, presented a report (Stand. Com. Rep. No. 2149) recommending that S.B. No. 2667 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B.

No. 2667, entitled: "A BILL FOR AN ACT RELATING TO WATER," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Dela Cruz, for the Committee on Water, Land, and Housing, presented a report (Stand. Com. Rep. No. 2150) recommending that S.B. No. 2740, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 2740, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HOUSING LOAN AND MORTGAGE PROGRAM," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Dela Cruz, for the Committee on Water, Land, and Housing, presented a report (Stand. Com. Rep. No. 2151) recommending that S.B. No. 2857, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 2857, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO SPECIAL PURPOSE REVENUE BONDS TO ASSIST DAM AND RESERVOIR OWNERS," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Chun Oakland, for the Committee on Human Services, presented a report (Stand. Com. Rep. No. 2152) recommending that S.B. No. 2140, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Judiciary and Labor.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 2140, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HUMAN SERVICES," passed Second Reading and was referred to the Committee on Judiciary and Labor.

Senator Chun Oakland, for the Committee on Human Services, presented a report (Stand. Com. Rep. No. 2153) recommending that S.B. No. 2661 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 2661, entitled: "A BILL FOR AN ACT RELATING TO MEDICAID," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Gabbard and Espero, for the Committee on Energy and Environment and the Committee on Public Safety, Government Operations, and Military Affairs, presented a joint report (Stand. Com. Rep. No. 2154) recommending that S.B. No. 2281, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Espero, seconded by Senator Slom and carried, the joint report of the Committees was adopted and S.B. No. 2281, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ENVIRONMENTAL IMPACT STATEMENTS," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Gabbard and Espero, for the Committee on Energy and Environment and the Committee on Public Safety, Government Operations, and Military Affairs, presented a joint report (Stand. Com. Rep. No. 2155) recommending that S.B. No. 2288 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Espero, seconded by Senator Slom and carried, the joint report of the Committees was adopted and S.B. No. 2288, entitled: "A BILL FOR AN ACT RELATING TO ENERGY," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Baker, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 2156) recommending that S.B. No. 2768 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 2768, entitled: "A BILL FOR AN ACT RELATING TO INSURANCE," passed Second Reading and was referred to the Committee on Ways and Means.

Senator English, for the Committee on Transportation and International Affairs, presented a report (Stand. Com. Rep. No. 2157) recommending that S.B. No. 2871, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 2871, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO COMMERCIAL DRIVER'S LICENSE," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Baker, for the majority of the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 2158) recommending that S.B. No. 2760 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the majority of the Committee was adopted and S.B. No. 2760, entitled: "A BILL FOR AN ACT RELATING TO ESCROW DEPOSITORIES," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Baker, for the majority of the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 2159) recommending that S.B. No. 2761, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the majority of the Committee was adopted and S.B. No. 2761, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO FINANCIAL INSTITUTIONS," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Baker, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 2160) recommending that S.B. No. 2168, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 2168, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INSURANCE," passed Second Reading and was referred to the Committee on Ways and Means.

At this time, Senator Slom welcomed his 2 1/2 year old "birth twin" Mahina with whom he shares a birthday, and her grandmother Suzie McLaughlin, a distinguished teacher at Maryknoll School for more than three decades.

Senator Ryan wished everyone a Happy Valentine's Day and reminded everyone that it was a great day to remember and cherish loved ones.

Senator Kahele rose to speak on a point of personal privilege as follows:

"This morning before I even got out of bed, my grandson, age 7, came up to me and he presented me with a Valentine's Day card that he had made, and he also made a nice little red heart here. He told me, 'Papa, you're my Valentine.' So, I wanted to wish all the young, beautiful women in the chamber and up in the gallery a Happy Valentine's Day."

Senator Kim recognized that today was Senate Clerk Carol Taniguchi's birthday and wished her haou'oli lā hānau.

At 11:38 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:39 a.m.

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

"As you know, the Committees on Hawaiian Affairs and Water Land took action on the OHA settlement. I understand the bill now moves on. I wanted to let everybody know the Committee on Judiciary looks forward to its arrival because we intend to answer the question, 'Is it accurate?' and if so, how come it's not true? So, we look forward to its arrival."

Senator Hee, Chair of the Committee on Judiciary and Labor, requested a waiver of the notice requirement pursuant to Senate Rule 21 for S.B. No. 2057.

At 11:40 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:42 a.m.

Senator Hee withdrew his previous request for a waiver of the notice requirement.

Senator Solomon rose to speak on a point of personal privilege as follows:

"I'd like to ask the previous speaker a question. If he would please define what does he mean by 'accurate' in terms of the settlement bill for OHA that was passed out of both Water Land and Hawaiian Affairs?"

Senator Hee responded:

"Thank you, Mr. President, I will yield. There are several things on the settlement issue that we have been researching on the Judiciary and Labor Committee. I don't want to belabor this issue, but let me give you an example of one of the conundrums of this proposal.

"There's some ambiguity on whether or not the lands in question are ceded, and I'm not sure we'll be able to resolve that question going forward. There's no disputing that certain parcels along Pier 1 are ceded; there's no disputing that. However, there is some question on the Kewalo side, where Fisherman's Wharf is located. We do know that those lands where Kewalo is were once the lands of Victoria Ward. At the time Kewalo Basin was dredged, those lands were fishponds; we do know that.

"We feel quite confident that the lands that are being conveyed to OHA were once the lands of Princess Kamāmalu; we feel confident about that. We also know that the lands of Kamāmalu were submerged lands. We also know that Princess Kamāmalu left them to her cousin, Princess Ruth Ke'elikōlani, who left the land to Princess Bernice Pauahi Bishop. We also

know Princess Bernice Pauahi Bishop, or more likely her husband, conveyed those lands to the state.

"The attorney general has not taken a position on whether those are ceded lands. The lands that brought those fishponds owned by Kamāmalu were filled with submerged lands in order to build Kewalo Basin.

"I happen to take the wide view when Hawaiian lands are called into question. Because those ceded lands were deposited on the lands of Kamāmalu—herself a Hawaiian, who but for the fact of the mahele, was a member of the crown—that I would argue that those lands belong to the people of Hawai'i, and therefore are ceded. So it may be accurate but not true, and that was my point.

"When we deliberate the issue, I want to assure everyone that what others may characterize as pono, I may disagree. Some of you know that I happen to believe that too often the words 'aloha', 'mahalo', and 'pono' are used as punchlines too often by those who would speak in an effort to embrace the host culture, and we'll get into that. And that's why I said earlier that the Committee on Judiciary looks forward to the discussion having to do with the settlement for the Office of Hawaiian Affairs. Thank you."

Senator Solomon rose to make the following remarks:

"Thank you very much, Mr. President. I want to thank the previous speaker. I'm happy to note that he does feel that the report is accurate. However, in his own opinion, he feels otherwise. Well, I'd just like to remind you, Mr. President, as well as my colleagues, we all have opinions on many matters that we deliberate on here in this building, and I'm hoping that the Judiciary Chairman will see his way clear as when he reads the committee reports from both the Water Land Committee and the Hawaiian Affairs Committee to note we did our due diligence on this recommendation. Thank you very much, Mr. President."

Senator Kidani rose to request that the Senate adjourn on a rising vote to observe a moment of silence in honor and memory of Representative Sam Lee, and the Chair so ordered.

ADJOURNMENT

At 11:50 a.m., on motion by Senator Espero, seconded by Senator Slom and carried, the Senate adjourned until 11:30 a.m., Wednesday, February 15, 2012, on a rising vote, observing a moment of silence in memory of Representative Sam Lee, former State Representative of the Mililani area.