

TENTH DAY

Friday, February 1, 2013

The Senate of the Twenty-Seventh Legislature of the State of Hawai'i, Regular Session of 2013, convened at 11:39 a.m. with the President in the Chair.

The Roll was called showing all Senators present with the exception of Senator Shimabukuro who was excused.

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

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 217 and 671) were read by the Clerk and were placed on file:

Gov. Msg. No. 217, dated January 9, 2013, transmitting the following reports prepared by the Department of Health, Alcohol and Drug Abuse Division: Report on Implementation of the State Plan for Substance Abuse, pursuant to Section 321-195; Report by the Hawaii Advisory Commission on Drug Abuse and Controlled Substances, pursuant to Section 329-3, HRS; Report on the Coordination of Offender Substance Abuse Treatment Programs, pursuant to Act 161, Section 10, SLH 2002; and the Progress Report on the Substance Abuse Treatment Monitoring Program, pursuant to Act 40, Section 29, SLH 2004.

Gov. Msg. No. 671, informing the Senate that on January 30, 2013, the Governor withdrew MARY MARASOVICH, gubernatorial nominee to the Emergency Medical Services Advisory Committee, from consideration by the Senate (Gov. Msg. No. 637).

DEPARTMENTAL COMMUNICATIONS

The following communications (Dept. Com. Nos. 73 to 78) were read by the Clerk and were placed on file:

Dept. Com. No. 73, from the Department of Budget and Finance dated January 22, 2013, transmitting a compact disc of the FYs 10-16 Non-General Fund Information Report pursuant to Section 37-47, HRS.

Dept. Com. No. 74, from the County of Maui Police Department dated January 4, 2013, transmitting the 2012 Standard of Conduct Annual Report pursuant to Act 242 (updates information previously transmitted to the Legislature under Dept. Com. No. 52).

Dept. Com. No. 75, from the Office of the County Clerk - Elections Division, County of Hawaii, dated January 8, 2013, transmitting a report of a possible security breach of personal information pursuant to Section 487N-4, HRS.

Dept. Com. No. 76, from the County of Kauai Police Department dated January 14, 2013, transmitting the 2012 Standard of Conduct Annual Report pursuant to Section 52D-3.5, HRS.

Dept. Com. No. 77, from the State Procurement Office dated January 22, 2013, transmitting its Executive Overview of programs, services, issues, and concerns.

Dept. Com. No. 78, from the Department of Education dated January 23, 2013, transmitting its list of repair and maintenance projects for Fiscal Year 2013-2014.

HOUSE COMMUNICATION

The following communication from the House (Hse. Com. No. 6) was read by the Clerk and was disposed of as follows:

Hse. Com. No. 6, transmitting H.B. No. 423, which passed Third Reading in the House of Representatives on January 31, 2013, was placed on file.

On motion by Senator Espero, seconded by Senator Slom and carried, H.B. No. 423, entitled: "A BILL FOR AN ACT RELATING TO BUREAU OF CONVEYANCES," passed First Reading by title and was deferred.

STANDING COMMITTEE REPORTS

Senator Chun Oakland, for the Committee on Human Services, presented a report (Stand. Com. Rep. No. 6) recommending that S.B. No. 83 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. 83, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII PUBLIC HOUSING AUTHORITY," 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. 7) recommending that S.B. No. 86 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. 86, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC HOUSING," 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. 8) recommending that S.B. No. 87 pass Second Reading and be referred to the Committee on Economic Development, Government Operations and Housing.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 87, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC HOUSING," passed Second Reading and was referred to the Committee on Economic Development, Government Operations and Housing.

Senator Chun Oakland, for the Committee on Human Services, presented a report (Stand. Com. Rep. No. 9) recommending that S.B. No. 90, 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. 90, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC HOUSING PROGRAM ADMINISTRATION," 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. 10) recommending that S.B. No. 91, 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. 91, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HOUSING," 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. 11) recommending that S.B. No. 92, 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. 92, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HOUSING," 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. 12) recommending that S.B. No. 305 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. 305, entitled: "A BILL FOR AN ACT RELATING TO DEVELOPMENT OF PUBLIC HOUSING," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Chun Oakland, for the Human Services, presented a report (Stand. Com. Rep. No. 13) recommending that S.B. No. 728, 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. 728, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE SENIOR RESIDENCE AT PIIKOI, OAHU," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Green, for the Committee on Health, presented a report (Stand. Com. Rep. No. 14) recommending that S.B. No. 198 pass Second Reading and be referred to the Committee on Commerce and Consumer Protection.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 198, entitled: "A BILL FOR AN ACT RELATING TO ADVANCED PRACTICE REGISTERED NURSES," passed Second Reading and was referred to the Committee on Commerce and Consumer Protection.

Senator Green, for the Committee on Health, presented a report (Stand. Com. Rep. No. 15) recommending that S.B. No. 527 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. 527, entitled: "A BILL FOR AN ACT RELATING TO CANCER," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Green and Espero, for the Committee on Health and the Committee on Public Safety, Intergovernmental and Military Affairs, presented a joint report (Stand. Com. Rep. No. 16) recommending that S.B. No. 531 pass Second Reading and be referred to the Committee on Commerce and Consumer Protection.

On motion by Senator Espero, seconded by Senator Slom and carried, the joint report of the Committees was adopted and S.B. No. 531, entitled: "A BILL FOR AN ACT RELATING TO WARNING SIGNS," passed Second Reading and was referred to the Committee on Commerce and Consumer Protection.

Senator Baker, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep.

No. 17) recommending that S.B. No. 891 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. 891, entitled: "A BILL FOR AN ACT RELATING TO NOTARIES PUBLIC," 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. 18) recommending that S.B. No. 503 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. 503, entitled: "A BILL FOR AN ACT RELATING TO PRIVATE TRANSFER FEES," passed Second Reading and was referred to the Committee on Judiciary and Labor.

Senator Baker, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 19) recommending that S.B. No. 499 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. 499, entitled: "A BILL FOR AN ACT RELATING TO PARTITION OF HEIRS PROPERTY," passed Second Reading and was referred to the Committee on Judiciary and Labor.

Senator Nishihara, for the Committee on Agriculture, presented a report (Stand. Com. Rep. No. 20) recommending that S.B. No. 593, 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. 593, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO AGRICULTURE," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Nishihara, for the Committee on Agriculture, presented a report (Stand. Com. Rep. No. 21) recommending that S.B. No. 326 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. 326, entitled: "A BILL FOR AN ACT RELATING TO AGRICULTURE," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Nishihara, for the Committee on Agriculture, presented a report (Stand. Com. Rep. No. 22) recommending that S.B. No. 524 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. 524, entitled: "A BILL FOR AN ACT RELATING TO AGRICULTURE," 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. 23) recommending that S.B. No. 94 pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 94, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII INTERAGENCY COUNCIL ON HOMELESSNESS," passed Second Reading and was placed

on the calendar for Third Reading on Monday, February 4, 2013.

At this time, Senator Solomon made the following announcement:

“Thank you, Madam President. Just an announcement to let my colleagues know that we will not be hearing Senate Bill 1, which is the repeal of the PLDC, on February 5. We decided that we’re going to wait for the House vehicle to come over. The House is having their hearing this Saturday on February 9. Thank you very much.”

At this time, Senator Baker informed the members about Go Red for Women Day, and thanked members and staff who were wearing red that day to raise awareness of women’s heart health.

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

“Would you ask the Chair of Water and Land the question of if no vehicle comes from the House on the PLDC repeal, is there a commitment from Water and Land to hear a measure on the repeal of the PLDC, only to the extent that if no such vehicle would arrive to this chamber? Thank you.”

Senator Solomon responded as follows:

“Yes, that’s a commitment. You know, we had 11 bills that were introduced by our colleagues here on the floor, and we got the message. So, it’s just a matter of working through all of those bills because those bills just do not require a repeal; they also went further than a repeal. So, we’re trying to get everything put together and see where the House is positioning themselves and go from there. Thank you.”

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

“Here’s the concern: Waiting for another chamber to take action sometimes invalidates the best efforts and commitments of the chamber that is waiting. So, in this particular example, if the House were to fail, the concerns of deadlines, internal deadlines, and moving measures forward is at risk. And I’m not suggesting that somehow I have a crystal ball and I’ve figured this thing out; in fact, quite the opposite – it is because I don’t have a crystal ball that the last thing anyone needs to hear from the Legislature is that, well, one chamber was waiting and nothing arrived and unfortunately because of our internal deadlines we are unable to go forward, which may result in discomfort in the chamber and could be avoided looking forward. And I don’t think anyone here wants to engage a mechanism more commonly known as ‘gutting and replacing’ bills that have appropriate titles because while waiting for the other chamber the anticipated response didn’t arrive. So, I raise these issues in anticipation of what I hope doesn’t happen because a lot of things can be avoided prospectively.”

“And I also want to say this: I’m from the old school, and I believe the chair has the absolute prerogative. Now, I recognize there are mechanisms that can yank things. Well, the old school also had mechanisms that could yank things, but there was an abiding respect for the chair’s judgment, at least in the old school, 100 percent of the time. I’m not standing here and suggesting that’s the right thing to do, but rather suggesting that while I recognize the chair’s absolute prerogative, as the Chairman of Judiciary and Labor I want to also state that this is an issue that simply won’t go away. I look forward to the debate that is anticipated and also, I don’t look forward if what is anticipated doesn’t come to fruition. Thank you.”

The Chair responded as follows:

“Thank you, Senator Hee. I’m sure all of the chairs are very cognizant of our deadlines and will be prudent about them.”

Senator Solomon rose to speak in response as follows:

“Madam President, I just want to thank the introducer of the bill for his concerns. They’re very well taken, but I do not want to get into a running discussion on ‘gut and replace’ because I’m sure that the previous speaker has used that tactic and so have we all.

“The bottom line is that I was not making this decision in a vacuum. You know we’ve discussed it with the House; we feel that this is an appropriate way that we would like to proceed. I already made a commitment early on in my previous remarks that I’ve gotten the message loud and clear; there wasn’t just the introducer’s bill but there were several others that have expressed great concern.

“I’m not into a territorial battle over this bill. What I’m concerned about is doing what’s pono for Hawai‘i, and this has always been the agenda that has driven me. I don’t have to remind this body that the state is on the verge of bankruptcy, although nobody would seem to think that that matters as we’re going through all of our bills. I took the remarks of the Governor very, very much to heart about our obligations to pay our unfunded liabilities. No matter what, the PLDC was a tremendous opportunity for the State of Hawai‘i for revenue generation.

“So, these are my thoughts into how we can possibly buy us some time. I’ve always prided myself as being a part of this body; that we in the upper house always had a much broader vision into how we are going to solve our problems. I think these problems are real. I’ve expressed great concern in the caucus, and I would like to reiterate them at this moment – although I’m not the kind of person that normally talks about what goes on in caucus – but I expressed great concern about how the Judiciary has been making many of our decisions when it comes to land use policy. I feel it is appropriate that the Senate stand up and we take our land use policy back to this building because this is where it belongs.

“It is with those intents in mind that I am asking my colleagues to give your Water and Land Committee those kinds of considerations. You know we have a long ways to go; there’s a lot of other opportunities. We have many broad titles that are available to us. And I am most certain that I will be taking this to caucus before we make any kind of major decision as to how we are going to resolve this dilemma. Thank you very much, Madam President.”

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

“When the previous speaker, whom I love dearly, said ‘the Judiciary,’ she meant the branch of government and not the Committee on Judiciary. I know we all know that – we all know that – but there may be somebody under the American flag who maybe didn’t hear it. So, I make that emphatically clear so we don’t read it in tomorrow’s *Star-Advertiser* or any other sterling media outlet. Thank you.”

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

“Although I had not anticipated rising so early in my tenure, and I also had not anticipated publicly stating this early in my tenure that I am in agreement with the senator from Kahuku, but for the fact that he mentioned he was from the old school, I would say that his remarks, I would like to enter them as my own.

“But I guess I would like to add to that I had the pleasure of meeting with the various senators when I first started, to talk about thinking back to their freshman year and what advice could they give me. One of the things that came through loud

and clear is that there's a strong pride in this body as being the upper house of the Legislature and taking the initiative on many issues; and I find it a little, I guess, disappointing to just wait to see what the House sends over to us on this issue because it is a matter of great importance. I understand that there may be opportunities for hearings without decision making, and would wonder whether there would be an option for consideration so that this body can take some discussion, informed discussion, without just waiting to see what is received by the House. Thank you."

Senator Ihara rose and said:

"Madam President, I want to weigh in and I actually have a question for the Water and Land chair, if she's willing. To follow up on the last speaker: Is it the intent to have decision making on a bill – PLDC repeal bill or whatever bill that comes over – when the Water and Land Committee has jurisdiction over it?"

Senator Solomon responded as follows:

"Thank you very much. Well, I'm going to reiterate what my brother from Kahuku said: I don't have a crystal ball. I don't know what the House is going to come up with, although I wish I did. I wish I could really know exactly where they're coming from, but I think it's a wait-and-see, and see what they come up with. I'm hoping that it'll be a clean bill, something that we could all, if possible, look at the intent and go from there. So, at this moment, I'm not prepared to make a commitment.

"However, Madam President, I have never once shied away from bringing a matter to the Committee of the Whole. So if that's the desire of this body, so be it. I'm throwing the gauntlet out because it's within our Mason's Rules; we're all from the old shop. Thank you very much."

At this time, the Chair made the following announcement:

"Please note that the three working days for re-referral requests has long passed. I will consider, on very extenuating circumstances, for anything else."

RE-REFERRAL OF SENATE BILLS

The Chair re-referred the following Senate bills that were introduced:

S.B. No.:	Re-referred to:
S.B. No. 1226	Committee on Human Services, then jointly to the Committee on Judiciary and Labor and the Committee on Ways and Means
S.B. No. 1264	Jointly to the Committee on Health, the Committee on Judiciary and Labor, and the Committee on Commerce and Consumer Protection, then to the Committee on Ways and Means
S.B. No. 1288	Committee on Judiciary and Labor, then to the Committee on Ways and Means

ADJOURNMENT

At 11:55 a.m., on motion by Senator Espero, seconded by Senator Slom and carried, the Senate adjourned until 11:30 a.m., Monday, February 4, 2013.