

## TWENTY-FIRST DAY

Tuesday, February 19, 2013

The Senate of the Twenty-Seventh Legislature of the State of Hawai'i, Regular Session of 2013, convened at 11:42 a.m. with the President in the Chair.

The Roll was called showing all Senators present.

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

At this time, Senator Kidani honored and congratulated Chelsea Marie Robinson on her selection as Hawai'i's 2013 Distinguished Young Woman. Ms. Robinson was accompanied by her mother Shery and sister Brittany. Also present from Hanalani School were Upper School Principal Winston Sakurai, Academic Counselor Rochelle Sakurai, Upper School Administrator Karlie Boe, as well as State Chair of the Distinguished Young Women of Hawaii Scholarship Program Dr. Ligaya Stice.

At 11:48 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:57 a.m.

## HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 22 to 25) were read by the Clerk and were disposed of as follows:

Hse. Com. No. 22, transmitting H.B. No. 87, which passed Third Reading in the House of Representatives on February 15, 2013, was placed on file.

On motion by Senator Espero, seconded by Senator Slom and carried, H.B. No. 87, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC HOUSING," passed First Reading by title and was deferred.

Hse. Com. No. 23, transmitting H.B. No. 88, H.D. 1, which passed Third Reading in the House of Representatives on February 15, 2013, was placed on file.

On motion by Senator Espero, seconded by Senator Slom and carried, H.B. No. 88, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CONSTRUCTION OF LAWS," passed First Reading by title and was deferred.

Hse. Com. No. 24, transmitting H.B. No. 436, H.D. 1, which passed Third Reading in the House of Representatives on February 15, 2013, was placed on file.

On motion by Senator Espero, seconded by Senator Slom and carried, H.B. No. 436, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO WORKERS' COMPENSATION," passed First Reading by title and was deferred.

Hse. Com. No. 25, transmitting H.B. No. 872, which passed Third Reading in the House of Representatives on February 15, 2013, was placed on file.

On motion by Senator Espero, seconded by Senator Slom and carried, H.B. No. 872, entitled: "A BILL FOR AN ACT MAKING AN EMERGENCY APPROPRIATION TO THE DEPARTMENT OF HUMAN SERVICES FROM THE NURSING FACILITY SUSTAINABILITY PROGRAM SPECIAL FUND," passed First Reading by title and was deferred.

## SENATE CONCURRENT RESOLUTIONS

The following concurrent resolutions (S.C.R. Nos. 33 to 35) were read by the Clerk and were deferred:

S.C.R. No. 33 "SENATE CONCURRENT RESOLUTION URGING THE UNIVERSITY OF HAWAII BOARD OF REGENTS TO NAME THE LIBRARY BUILDING AT THE UNIVERSITY OF HAWAII WEST OAHU CAMPUS AFTER GENE I. AWAKUNI."

Offered by: Senators Nishihara, Chun Oakland, Gabbard, Galuteria, Green, Kidani, Shimabukuro, Wakai, Baker, Dela Cruz, Ige, Keith-Agaran, Kouchi, Ruderman, Solomon, Thielen.

S.C.R. No. 34 "SENATE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF AGRICULTURE TO IMPLEMENT DIFFERENTIATED WATER TOLL RATES AND CHARGES FOR THE HAMAKUA DISTRICT IRRIGATION SYSTEM."

Offered by: Senators Nishihara, Chun Oakland, Kidani, Baker, Dela Cruz, Espero, Gabbard, Galuteria, Green, Ige, Kahele, Keith-Agaran, Kouchi, Shimabukuro, Taniguchi, Thielen, Wakai.

S.C.R. No. 35 "SENATE CONCURRENT RESOLUTION URGING THE PUBLIC UTILITIES COMMISSION TO ESTABLISH REDUCED TARIFFS FOR THE SALE OF ELECTRICITY GENERATED BY NONFOSSIL FUEL PRODUCERS THAT ELECTRIC UTILITIES WOULD OTHERWISE CURTAIL DURING OFF-PEAK HOURS TO PERSONS ENGAGED IN AQUACULTURE, AQUAPONICS, AND AGRICULTURE."

Offered by: Senators Nishihara, Kidani, Baker, Chun Oakland, Dela Cruz, Espero, Galuteria, Ige, Kahele, Kouchi, Ruderman, Wakai.

## SENATE RESOLUTIONS

The following resolutions (S.R. Nos. 14 to 16) were read by the Clerk and were deferred:

S.R. No. 14 "SENATE RESOLUTION URGING THE UNIVERSITY OF HAWAII BOARD OF REGENTS TO NAME THE LIBRARY BUILDING AT THE UNIVERSITY OF HAWAII WEST OAHU CAMPUS AFTER GENE I. AWAKUNI."

Offered by: Senators Nishihara, Chun Oakland, Gabbard, Galuteria, Green, Kahele, Kidani, Shimabukuro, Wakai, Baker, Dela Cruz, Espero, Ige, Keith-Agaran, Kouchi, Ruderman, Solomon, Thielen.

S.R. No. 15 "SENATE RESOLUTION REQUESTING THE DEPARTMENT OF AGRICULTURE TO IMPLEMENT DIFFERENTIATED WATER TOLL RATES AND CHARGES FOR THE HAMAKUA DISTRICT IRRIGATION SYSTEM."

Offered by: Senators Nishihara, Chun Oakland, Kidani, Baker, Dela Cruz, Gabbard, Galuteria, Green, Ige, Kahele, Keith-Agaran, Kouchi, Shimabukuro, Thielen, Wakai.

S.R. No. 16 "SENATE RESOLUTION URGING THE PUBLIC UTILITIES COMMISSION TO ESTABLISH REDUCED TARIFFS FOR THE SALE OF ELECTRICITY

GENERATED BY NONFOSSIL FUEL PRODUCERS THAT ELECTRIC UTILITIES WOULD OTHERWISE CURTAIL DURING OFF-PEAK HOURS TO PERSONS ENGAGED IN AQUACULTURE, AQUAPONICS, AND AGRICULTURE.”

Offered by: Senators Nishihara, Kidani, Baker, Chun Oakland, Dela Cruz, Espero, Galuteria, Ige, Kouchi, Ruderman, Wakai.

### ORDER OF THE DAY

#### SECOND READING

#### MATTER DEFERRED FROM FRIDAY, FEBRUARY 15, 2013

Stand. Com. Rep. No. 435 (S.B. No. 751, S.D. 1):

On motion by Senator Espero, seconded by Senator Slom and carried, Stand. Com. Rep. No. 435 and S.B. No. 751, S.D. 1, entitled: “A BILL FOR AN ACT RELATING TO URBAN GROWTH COMMISSION,” were recommitted to the Committee on Economic Development, Government Operations and Housing and the Committee on Water and Land.

At this time, the Chair announced that S.B. No. 751, S.D. 1 was re-referred jointly to the Committee on Economic Development, Government Operations and Housing and the Committee on Water and Land and the Committee on Ways and Means.

#### THIRD READING

S.B. No. 1000, S.D. 1:

On motion by Senator Wakai, seconded by Senator Nishihara and carried, S.B. No. 1000, S.D. 1, entitled: “A BILL FOR AN ACT RELATING TO THE ACCESS HAWAII COMMITTEE,” having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

S.B. No. 870, S.D. 1:

On motion by Senator Hee, seconded by Senator Shimabukuro and carried, S.B. No. 870, S.D. 1, entitled: “A BILL FOR AN ACT RELATING TO USE OF FORCE BY PERSONS WITH SPECIAL RESPONSIBILITY FOR CARE, DISCIPLINE, OR SAFETY OF OTHERS,” having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

S.B. No. 880, S.D. 1:

Senator Hee moved that S.B. No. 880, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Shimabukuro.

Senator Slom rose to speak in support of the measure with reservations as follows:

“You know, everything that we say that we do in this chamber and in this building, we say we do for the keiki. Yet sometimes, many of us find this hard to believe because when there are certain pieces of legislation or issues that involve the keiki, we seem to drag our feet. I think that S.B. No. 880 is one of those pieces of legislation. While it is well-meaning – meaning that it’s well-intentioned – this bill would impose a mandatory sentence for a first-time offender of sexual assault on a minor under the age of 12, of 6 years and 8 months, and there are certain exceptions.

“I introduced a bill popularly known nationally as ‘Jessica’s Law,’ which is the law now in 44 states. That bill sends a very

strong message about how we value our children, our minors, because that bill, that law, imposes a mandatory minimum 25 years to life sentence for those who would sexually assault our children. While I support this present bill, it doesn’t go far enough, and there is no reason that we have to continue to beg and plead to get tougher sentencing for those who violate our children.

“The data that’s used in the committee report in substantiation of this particular measure and its 6 year mandatory is based on a survey from 1990 to 2001. There has been no published survey that I’m aware of since that time; we’re now in 2013. That survey did reveal, however, that 440 sexual assaults on children occurred per year, with one-third of them made on children under the age of 12. That means that there are still two-thirds of sexual assaults on our children from the age of 12 up to age 18, or in Hawai’i’s case, 16 – the age of consent.

“What are we doing about that? If we say that bills like this send a strong message and a deterrent, then I think we are avoiding the facts. It seems more and more children are being harmed sexually, and we stand by and we make fancy speeches about it, but we don’t do anything about it. This bill would not be a deterrent as much as a minimum 25 year sentence, and yet, we think that we’ve done our job.

“Many of the hearings here, we get more emotion and more people coming forward if we raise the issue of dog abuse. I think it’s an important subject, but isn’t it interesting that all of the passion and all of the excitement and all of the hard-lining goes into cruelty to animals? And yet our children – who we say are so valuable and we’re so concerned about – we find it hard to penalize the first-time offender because what we’ve learned often, to our great distaste, is that the first-time offender becomes a second-time, third-time, fourth-time, and fifth-time offender. We are being hypocritical in this building and in this legislature, and we can start with the very basic protection of our young people.

“Now, I know this bill’s got a defective date and it’s going to go to conference. I would urge the members of this body and of this legislature to finally get serious if we want to protect our children, and to make sure that we not only send a message, but we send the judicial incarceration if we really think that these are serious crimes. Thank you, Madam President.”

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

“Colleagues, this measure imposes a minimum mandatory; it doesn’t preclude a jury to impose a longer term. This bill was proposed by the law enforcement community, including the attorney general’s office and the prosecutor’s office. This bill was thoroughly vetted. But that’s really not why I rose to support the bill; it speaks for itself.

“I have a lot of affection for the previous speaker. Not great, but a lot. It’s easy to stand and pontificate: ‘We make fancy speeches, but we don’t do anything about it.’ ‘We are being hypocritical.’ That sounds nice, but let’s finish the circle. After this bill was heard, which proposes to amend this section, the previous speaker asked me about Jessica’s Law. I said to him after we had the hearing that Jessica’s Law amends the very section that we just heard, but why don’t you propose an amendment on the floor for the members to consider? That way the position that he advocates for and the bill that imposes a longer minimum would be given the opportunity by every member on the floor. That was my suggestion.

“So, yeah, we can say, ‘We make fancy speeches, but we don’t do anything about it.’ Then do something about it! I offer to the previous speaker: offer an amendment on the floor. It’s

the same section of the law. We're being hypocritical? Well, who's being hypocritical? It's not too late. We can defer this. You can make your amendment. But to stand up and make a fancy speech and call everybody else hypocritical, I think, is calling the kettle black.

"So, if the previous speaker wishes to defer this measure, he has my support. But let's not be 'hypocritical.' Let's not just make a fancy speech and sit down for the media to report on the pontification. But if the previous speaker has no amendment to offer, then I guess we should go forward and do as we discussed in the Judiciary Committee, of which the previous speaker was offered an alternative. Thank you."

Senator Slom rose to speak in response as follows:

"As reluctant as I am to stand up and speak again – knowing now that the chairman has great affection for me, or at least a lot of affection – I would just remind him of one thing because I think he's getting older and maybe his memory is a little weak: that I had asked for the hearing on Jessica's Law prior to the hearing on S.B. No. 880, and then repeated that request. But knowing now, Madam Chair, that the Senate Judiciary Chairman will support me in my efforts for an amendment to change this bill, I would formally request that we defer it, and then I will make an amendment to be seconded and supported by the Judiciary Chair. Thank you."

At 12:09 p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:10 p.m.

By unanimous consent, action on S.B. No. 880, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO SENTENCE OF IMPRISONMENT FOR SEXUAL ASSAULT OF A MINOR UNDER THE AGE OF TWELVE YEARS," was deferred until Wednesday, February 20, 2013.

Senator Hee rose to make the following remarks:

"You know, I don't want to get into who said what, but the reason I know we heard this before his request is because I pointed out that we just heard a bill on Section 706. Now, it's easy for him to stand back up on a point of personal privilege and say, 'Well, no, that's not what happened.' But in fact, that is what happened, and that's why the offer was made to him to amend the bill, and an offer was made by me to defer the bill. So I appreciate your patience and understanding of what happened. Thank you."

S.B. No. 890, S.D. 1:

On motion by Senator Hee, seconded by Senator Shimabukuro and carried, S.B. No. 890, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII LABOR RELATIONS BOARD," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

S.B. No. 1016, S.D. 1:

On motion by Senator Hee, seconded by Senator Shimabukuro and carried, S.B. No. 1016, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO REGISTRATION OF COVERED OFFENDERS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Stand. Com. Rep. No. 453 (S.B. No. 707, S.D. 2):

On motion by Senator Ige, seconded by Senator Kidani and carried, Stand. Com. Rep. No. 453 was adopted and S.B. No. 707, S.D. 2, entitled: "A BILL FOR AN ACT RELATING

TO ECONOMIC DEVELOPMENT," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

#### RE-REFERRAL OF A SENATE BILL

The Chair re-referred the following Senate bill that was introduced:

S.B. No.:	Re-referred to:
S.B. No. 946	Jointly to the Committee on Judiciary and Labor and the Committee on Ways and Means

At this time, Senator Green rose to speak on a point of personal privilege as follows:

"Members, I just wanted to tell a tale, tell a story of something that happened to me this weekend and that I was a part of, and it kind of doubles back on our life here at the Capitol.

"On Sunday, a very nice gentleman was playing baseball on the Big Island in Kohala, and he was hit in the eye with a baseball. He was the clerk's husband – a very sweet 60-year-old guy – and his eye exploded, basically, and so it was all blood, oozing, and he couldn't see. It was very difficult to find a specialist for him; the only specialist that we have on the Big Island was actually doing her one four-day stretch in California, which she works once a month to go and keep her skills up and provide care in the urban Los Angeles area. So we really couldn't get him care and we're hopeful his eye will be saved – I think it can be. But it was that difficult to get him care.

"And then last night at about 2 in the morning, I was finishing up my shift at 8 this morning, and a gentleman (this story's pretty wild, kind of a classic Big Island story) he was – it was a bunch of kids – 32, and he was tinting his windows in the middle of the night, which is a strange thing. But he fell off his car onto a scythe and cut his leg off, just barely attached. And fortunately, due to the good graces of our colleagues here, we funded the Ali'i Health Center on the Big Island that does provide for some support for specialists that otherwise wouldn't stay in the neighbor islands, and he was able to get his leg reattached this morning.

"So, I just say these things because they happened this weekend – it's kind of a typical shift, for the most part, that I experience every weekend when I leave you here. We needed the help of those specialists, and some bills are pertinent to this this year. It's why we're moving S.B. No. 664, which is the pipeline bill, to create scholarships for Native Hawaiian scholars ultimately going to medical school and then stay here in Hawai'i. Some of the best and brightest young Hawaiian and Polynesian students become physicians because of that bill. S.B. No. 665, which is the corollary to our loan repayment bill for primary care, which is a \$300,000 appropriation which creates scholarships to keep physicians here in the State of Hawai'i; and then a much larger piece of legislation, S.B. No. 1306, which is a very broad discussion about how to better manage the HHSC system for the neighbor islands and how we might keep specialists and keep our hospitals open.

"So, I just want you to know that these issues are very pertinent, they're very real, and I wanted to say that, kind of on behalf of the Big Island colleagues that we have here at the Capitol, because that is not an uncommon circumstance – we don't have Queen's or Kapi'olani or other hospitals to get to quickly, and those two cases were really something that we see quite often. Thank you for your support, and that's why we're

considering some of these measures. Thank you, Madam President.”

Senator Baker rose to announce that the Women’s Legislative Caucus was sponsoring a drive for Welcome Home Easter Baskets to benefit folks who were moving from the Institute for Human Services shelter to transitional housing, and encouraged the members and staff to participate.

**ADJOURNMENT**

At 12:17 p.m., on motion by Senator Espero, seconded by Senator Slom and carried, the Senate adjourned until 11:30 a.m., Wednesday, February 20, 2013.