

## TWENTY-EIGHTH DAY

**Monday, March 10, 2014**

The Senate of the Twenty-Seventh Legislature of the State of Hawai'i, Regular Session of 2014, convened at 11:39 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 Twenty-Seventh Day.

At this time, Senator Kouchi welcomed a delegation from Vietnam who were attending the Asia Pacific Clean Energy Summit in Hawai'i, including Dr. Nguyen Huu Ninh, winner of the Nobel Peace Prize for climate research with Vice President Al Gore; Ms. Nguyen Thi Hai; Ms. Dang Kim Ngoc; Mr. Nguyen Hong Quang; and Mr. Nguyen Gia Lap.

Senator Chun Oakland introduced participants in this year's March for Meals, sponsored by Lanakila Pacific's Meals on Wheels Program, Hawai'i's largest and only island-wide meal service for seniors. Senator Chun Oakland recognized Marian Tsuji, CEO of Lanakila Pacific; Uncle Joe Tassill and Auntie June Toguchi-Tassill; as well as volunteers of the Meals on Wheels program.

Senator Kahele honored and recognized the *Hōkūle'a* and her crew for bringing the spirit of Hawai'i and traditional Hawaiian culture around the world, and presented the following remarks:

"Thank you, Madam President. Today, we are proud to have with us representatives from our Polynesian voyaging canoes, the *Hōkūle'a* and the *Hikianalia*, as they prepare to continue with the 'Mālama Honua' worldwide voyage.

"Last May, the worldwide voyage began with a trip through the Hawaiian Islands, and today they embark on their international journey. Once the *Hōkūle'a* is put in the water today, she won't touch dry land here in Hawai'i for the next four years as she carries her crewmembers over 47,000 miles to 26 countries and 85 ports. While all the *Hōkūle'a* voyages spread the spirit of aloha, the Mālama Honua worldwide voyage is not just a goodwill mission: 'Mālama Honua' means 'care for the Earth,' and it defines the *Hōkūle'a*'s and *Hikianalia*'s mission. Over the next four years, crewmembers will raise awareness of the issues confronting Hawai'i's shorelines, reefs, and deep waters while teaching and learning traditional indigenous practices of natural resource management with other members of our Pacific Ocean community. We salute their efforts to bring together indigenous cultures and to cultivate enduring connections based on environmental stewardship.

"Like any big endeavor, the worldwide voyage needs a big team. We only have a handful of representatives with us today, but there are hundreds of others who stand beside them in spirit and are integral to the success of this journey. We honor you and the hundreds of people who couldn't be here today, but without whom this mission would not be possible."

Senator Galuteria rose to present the following remarks:

"Thank you, Madam President and colleague from Moku O Keawe. Colleagues, as proud as I am to be a crewmember here in the State Senate, I'm equally honored to have sailed on *Hōkūle'a* as a crewmember in the 1992 No Nā Mamo voyage for education. I served on the legs between Tahiti, Mo'orea, Huahine, Ra'iātea, Bora Bora, and then headed to the Cook Islands of Ma'uake, Atiu, Aitutaki, and Rarotonga. So, this presentation here today brings back a flood of memories.

"On that particular voyage, as well, back to Hawai'i, the crew of the canoe contacted the crew of the space shuttle

*Columbia* flying overhead. Space shuttle crewmember Lacy Veach spoke with the children of Hawai'i and sail master Nainoa Thompson, and I had the extraordinary honor of facilitating that discussion. It was extraordinary, as are the sailors of *Hōkūle'a*.

"Over the past 35 years, Nainoa Thompson, my good friend here, has inspired and led a revival of the traditional arts associated with long-distance ocean voyaging in Hawai'i. Would you please rise? I know it's too steady here; you need kind of an unsteady ground on *Hōkūle'a*. He's led the revival: he's the first Hawaiian to practice the art of wayfinding on long-distance ocean voyages since such voyaging ended in Hawai'i around the fourteenth century. He studied traditional, non-instrumental navigation under his mentor, Mau Piailug of Satawal – that's in Yap. Nainoa now teaches the system of wayfinding, or non-instrument navigation, that he developed by synthesizing traditional principles of ancient Pacific navigation and modern science. Devoted to education, Nainoa continues to develop and implement a multi-discipline, culturally relevant program focused on teaching children of Hawai'i the values of Polynesian voyaging. The program emphasizes both traditional and modern scientific knowledge of the environment and stresses the importance of eco-cultural principles of conservation.

"Mr. Thompson is a graduate of Punahou and the University of Hawai'i – but we won't hold that against you, Punahou, we won't hold that against him. He's a licensed commercial pilot, a boat pilot, and certified advanced diver. He's received numerous community awards, including the Unsung Hero of Compassion awarded to him in 2001 by His Holiness, the Dalai Lama. He has received the Native Hawaiian Education Association's Manomano Ka 'Ike Educator of the Year Award and he currently serves as a member of the Ocean Elders and as president of the Polynesian Voyaging Society.

"In addition to Nainoa, I would also like to introduce CEO of the Polynesian Voyaging Society; we know of him as the former administrator of the Office of Hawaiian Affairs, Clyde Namuo."

Senator Solomon rose to present the following remarks:

"Mahalo nui. Aloha. I just want to say, on behalf of Senator Clayton Hee and myself, we've been involved with the *Hōkūle'a* since the late seventies, and it's a wonderful day for us to be standing and see you embark on this very – I want to use the word 'memorialized' – memorialized event. Mahalo.

"It gives me great pleasure to introduce Jenna Ishii. Jenna was raised in Hawai'i and graduated from the University of California in San Diego with a degree in communications. She spent a year abroad teaching English in Okinawa, Japan with the Japan Exchange and Teaching Program. In 2007, the *Hōkūle'a* voyaged from Hawai'i to Japan and inspired her to return home and reconnect with her community.

"Since 2008, she has been training as a crewmember and is now the education coordinator for the Polynesian Voyaging Society. Her passion is to inspire the next generation of youth in Hawai'i to become active and engaged leaders of their island communities. It gives me great pleasure to introduce Ms. Ishii to this honorable body. Mahalo."

Senator English rose to present the following remarks:

"Madam President, good morning, members of the Senate. Before I introduce Lehua Kamalu, I'd just like to remind everyone about the symbology of this particular chamber: the blue is of the oceans; this tapestry is showing the canoes that

came from Kahiki; and of course, the chandelier, which is a reflection of the moon. So, all of these are part of our history and our heritage of voyaging across great lands to find Hawai'i.

"Members, today I'm very pleased to introduce Lehua Kamalu. Lehua recently graduated from the University of Hawai'i at Mānoa with a degree in mechanical engineering. She has been serving as the voyaging assistant at the Polynesian Voyaging Society, where she provides a vital support role planning the logistics for *Hōkūle'a's* worldwide voyage. This integral role includes crew training, vessel preparation, sail planning, and facilitating various special projects and connections with the worldwide voyage for *Hōkūle'a* and the newly constructed *Hikianalia*. Without Lehua's dedication to her tasks, these historical voyages would not be possible."

Senator Kidani rose to present the following remarks:

"Aloha. Mahalo, Madam President and honorable colleagues. Our fourth honoree is Marisa Hayase. Marisa is communications coordinator for the worldwide voyage. She has worked with human rights, education, health, and community development organizations in the United States, South America, Mexico, Japan, and Europe. Marisa lives in Kailua with her husband, son, and daughter. She is a graduate of Williams College and received a master's degree in public policy from Harvard University's Kennedy School of Government."

Senator Hee rose to present the following remarks:

"Thank you, Madam President. Today is a terrific day for those of us who have been close to this symbol of Hawai'i and of being Hawaiian, and it's so wonderful to hear surnames that are not Hawaiian that we honor today, and that's the beauty of this day. This canoe was made possible by others that are not too often mentioned anymore; they include Senator Dan Inouye. When I was a member of the Office of Hawaiian Affairs, by law, the chairman of OHA is chairman of the Native Hawaiian Culture and Arts Program administered under the Department of the Interior. The individual who made the funding possible was Nainoa's father, Pinky. Pinky sat on NHCAP with me, and that's how I first got to know Nainoa. NHCAP funding was only made possible because of one person who is no longer with us, and that's Senator Inouye. So, when I see the *Hōkūle'a*, I think of those who have come before us, who made things possible for us, and it's such a wonderful thing to see the next generation of navigators and sailors. And I applaud Nainoa for seeing the wisdom of passing the responsibility and kuleana on to the next generation.

"It gives me great pleasure to honor one who is of my generation. He is surfing royalty, like my colleague to my immediate left. He was a pro competitor. He's a Polynesian voyager. He's a Waimea big wave waterman, and he is all Hawaiian. He cut his hair recently, so I didn't recognize him. He looks so much younger. I would like to introduce Clyde Aikau.

"Clyde's brother Eddie is often known because of his relationship with *Hōkūle'a*; Clyde's relationship is no less than his brother's. He spent many years pulling surfers and tourists out of the storm surf at Waimea as a lifeguard, just like his brother. He's a regular footer and was named a Waikīkī Surfing Legend by the Duke Kahanamoku Foundation. He was on *Hōkūle'a* on the 1995 journey and continues along with so many others. I recently saw Buffalo Keaulana at Mike Wilson's confirmation, and it's very difficult, when you see these icons, to separate them from the ocean and to separate them from all that they symbolized by this voyaging canoe.

"This voyaging canoe, like the 'ōlelo makuahine, are living testaments that Hawaiians are here, we were here before, and we'll be here tomorrow. Thank you for allowing me to honor Clyde Aikau. Mahalo."

Senator Slom rose to present the following remarks:

"Thank you, Madam President. If I may, I just wanted to add a few words in support of the crew. The *Hōkūle'a* makes us all proud; it has nothing to do with partisanship in any way. I've been privileged to have seen and touched the *Hōkūle'a* many times during the 1970s. It was most recently in Hawai'i Kai to visit with us. We are all proud of the things that you have accomplished, and we'll be even prouder with things that you will accomplish. You truly are outstanding for all the people of Hawai'i, and I wanted to add my thanks. Aloha."

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

"I would like to remind our colleagues that immediately following our floor session, there will be a meet and greet with our honorees from the *Hōkūle'a* in the lieutenant governor's ceremonial room, and I hope all of you can join us. Thank you very much."

At 11:59 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:08 p.m.

### SENATE COMMUNICATION

The following communication (Sen. Com. No. 1) was read by the Clerk and was placed on file:

Sen. Com. No. 1, notice to Governor dated March 7, 2014, transmitting S.B. No. 2876, S.D. 2, which proposes an amendment to the Hawai'i State Constitution.

By unanimous consent, the following notice was sent to the Governor:

"March 7, 2014

The Honorable Neil Abercrombie  
Governor of the State of Hawaii  
State Capitol  
Honolulu, Hawaii 96813

Dear Governor Abercrombie:

In accordance with the provisions of Article XVII, Section 3 of the Hawaii State Constitution, written notice is hereby given of the final form of the following bill, a copy of which is attached hereto:

S.B. No. 2876, S.D. 2:

"PROPOSING AN AMENDMENT TO ARTICLE VII, SECTION 12, OF THE HAWAII STATE CONSTITUTION TO ASSIST DAM AND RESERVOIR OWNERS."

Respectfully,

/s/ Carol Taniguchi  
CAROL T. TANIGUCHI  
Clerk of the Senate"

### STANDING COMMITTEE REPORT

Senator Wakai, for the Committee on Technology and the Arts, presented a report (Stand. Com. Rep. No. 2844) recommending that the Senate advise and consent to the nomination of GEORGE CASEN to the Hawaii Historic Places Review Board, in accordance with Gov. Msg. No. 559.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 2844 and Gov. Msg. No. 559 was deferred until Tuesday, March 11, 2014.

**ORDER OF THE DAY****AGREE/DISAGREE****MATTER DEFERRED FROM  
FRIDAY, MARCH 7, 2014**

S.B. No. 60, S.D. 1 (H.D. 1):

On motion by Senator Espero, seconded by Senator Slom and carried, the Senate disagreed to the amendments proposed by the House to S.B. No. 60, S.D. 1, and requested a conference on the subject matter thereof.

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

“Thank you. The Judiciary and Labor Committee recently held a confirmation hearing on the governor’s nominee to be Associate Justice of the Hawai’i Supreme Court, Mike Wilson. During the hearing, it was painfully evident that the Hawaii State Bar Association would not disclose the reasons that they found the nominee unqualified, despite the fact that, as an affiliate of the American Bar Association, the ABA, when finding reason to find a candidate unqualified for the federal bench in fact discloses the reasons why the ABA has found the candidate to be unqualified.

“Well, as it turns out, an article dated January 18, 2011, in the *Star-Advertiser* begins like this: ‘In the wake of the controversy over its negative rating of chief justice nominee Katherine Leonard, the Hawaii State Bar Association has amended its rules to allow for the disclosure of the reasons for its “qualified” or “unqualified” findings for judicial nominees.’ The article goes on to say that, ‘After a review of the responses,’ this from the lawyers who criticized the bar, just as they are doing so now with this particular proceeding, ‘the Hawaii State Bar Association board of directors changed the policy to allow the bar association president’ – that would be Greg Markham – ‘with board approval, to disclose the reasons, Jones said.’ Jones being Hugh Jones, who was the president at the time. Louise Ing, who was the president-elect at the time, said it might not be necessary for the board to disclose reasons for all nominees, but thinks the need might arise for an ‘unqualified’ vote for a nomination that has drawn mixed feedback or negative publicity.

“I raise this point only because this particular proceeding has gone through several messages to the committee and, in particular, myself as chair, most of whom, if anyone watched the closed circuit TV, were from lawyers who were very upset – not so much, I suppose, at the ‘unqualified’ finding, but because of the lack of candor and disclosure, notwithstanding the fact that, in fact, the bar has changed and amended its policies. I have asked the bar to provide the policy, but thus far have not received it.

“I will speak to the committee, but my inclination is to call another hearing and have the bar president explain to the committee, in light of their policy that changed following the hearing on Kate Leonard, how they can continue to hide behind the cloak of anonymity.

“One last thought on this is that the committee has recommended to the full Senate to consent and we’ll – unless something changes, and it may change, but unless something changes – we’ll try to get a vote on the floor by the twenty-eighth day so that we won’t get into some counting discussion, as has happened on the Senate floor in the past. Thank you, Madam President.”

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

“Thank you, Madam President. I’m also rising on a point of personal privilege and I would like to support the remarks of the previous speaker. I felt very uncomfortable, as being part of the committee, because some of those, I felt, whether it be rumor, innuendo, but they had to do with issues of sexual harassment. And I had asked the individual that was testifying on behalf of the board as to, in terms of their criteria, if they had some kind of weighted formula, as to how they decided, and unfortunately, we were never given a straight answer.

“I felt, as a female legislator and a leader, I have always taken sexual harassment in a very serious way. I expressed my sentiments then as I will now: it’s because in most circumstances – not always, but in most circumstances, Madam President – females are the victims, and females feel very intimidated simply because, it’s unfortunate, but we still live in a society where males dominate most of the leadership positions in our society, and they’re fearful of any kind of reprisal.

“And I just want to bring this to your attention, Madam President, that we had dealt with those issues with the University of Hawai’i, and this was when President Simone was the president. And the University of Hawai’i had an affirmative action program, but unfortunately never adopted a sexual harassment procedure as to how women or men could bring forth these complaints, as to whether or not professors are given any kinds of classes to remind them of their duty in terms of any kind of situation that may happen with female students under their guidance. I had discussed this matter with the chairman of the Higher Education Committee, and all of this manifestation was really brought forth by your Judiciary Committee during this hearing.

“So, likewise, I want to support the chairman’s recommendation. I feel very strongly, although I was dismissed – well, I wouldn’t use the word ‘dismissed,’ but challenged – by the person representing the board as to whether or not the Supreme Court, whoever’s being nominated for that position, I feel very strongly that they have a higher standard simply because, Madam President, as we all know, many of the issues dealing with women’s rights have not been settled in the lower courts; they’ve been settled in the higher courts. And for me, I feel as a woman that this is of particular interest for us. We owe it to our daughters. We owe it to the future of this state, so that women can really rise to a higher level and a higher calling. You know, we as females in this body have fought these issues from day one that we entered this arena, and unfortunately, many of our fellow women are still in that predicament and still fighting for those same kinds of, what I would call, equality and justice, and this is what’s driving me to support the recommendation of the Judiciary chairman. Thank you very much.”

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

“I want to thank the prior speaker for her comments about supporting women and recognizing the challenges that many women face. I think for those of us who have made it to the Senate, we’re at a point in our careers and in our lives where we, maybe, don’t have to be as fearful of reprisals as other women in society.

“I support the Judiciary chair’s drive to bring the bar association back to the table, because there are indeed some aspects of their reviews that are troubling. My understanding is that the comments that they received from members of the bar were not anonymous. They knew the identities of the people who were making the comments, but they were promised confidentiality. Because of the nature of the topic at hand and because of the fear of reprisals that some people may have, perhaps we may need to have some of those discussions in camera or in an executive session in order to be able to preserve

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the confidentiality. But I agree it's troubling on many levels and would like to support this effort. Mahalo."

**ADJOURNMENT**

At 12:19 p.m., on motion by Senator Espero, seconded by Senator Slom and carried, the Senate adjourned until 11:30 a.m., Tuesday, March 11, 2014.