

TWENTIETH DAY

Monday, February 22, 2016

The Senate of the Twenty-Eighth Legislature of the State of Hawai'i, Regular Session of 2016, convened at 11:36 a.m. with the President in the Chair.

The Roll was called showing all Senators present with the exception of Senators Galuteria, Harimoto, and Keith-Agaran who were excused.

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

At this time, Senator Kim welcomed a group of 140 eighth-grade students and their 12 teachers and chaperones from Moanalua Middle School, and acknowledged teachers and chaperones Ester Tanton, Kristi Choi, Mimi James, and Sue Bersola.

SENATE CONCURRENT RESOLUTIONS

The following concurrent resolutions (S.C.R. Nos. 30 to 37) were read by the Clerk and were deferred:

S.C.R. No. 30 "SENATE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENTS OF HEALTH AND EDUCATION TO COLLABORATE ON EDUCATIONAL INFORMATION AND MATERIALS ABOUT THE HUMAN PAPILLOMAVIRUS VACCINE THAT CAN BE PROVIDED TO PARENTS OF PUBLIC MIDDLE AND INTERMEDIATE SCHOOL CHILDREN."

Offered by: Senators Baker, Chun Oakland, Shimabukuro, Thielen, Tokuda, Espero, Ihara, Kidani, Kim, Nishihara, Riviere.

S.C.R. No. 31 "SENATE CONCURRENT RESOLUTION SUPPORTING THE EXECUTIVE OFFICE ON AGING'S EFFORTS TO INCORPORATE A NO WRONG DOOR SYSTEM APPROACH INTO THE AGING AND DISABILITY RESOURCE CENTER HAWAII NETWORK."

Offered by: Senators Baker, Chun Oakland, Taniguchi, Espero, Kidani.

S.C.R. No. 32 "SENATE CONCURRENT RESOLUTION REQUESTING THE GOVERNOR TO RENAME A SECTION OF KAPULE HIGHWAY IN THE COUNTY OF KAUA'I AS THE KAUA'I VETERANS MEMORIAL HIGHWAY."

Offered by: Senator Kouchi, by request.

S.C.R. No. 33 "SENATE CONCURRENT RESOLUTION REQUESTING HAWAII'S CONGRESSIONAL DELEGATION TO ASSIST THE STATE IN NEGOTIATING WITH THE FEDERAL GOVERNMENT FOR THE ACQUISITION OF THE FEDERAL DETENTION CENTER, HONOLULU."

Offered by: Senators Nishihara, Chun Oakland, Espero, Kidani, Tokuda, Dela Cruz, Galuteria, Green, Inouye, Keith-Agaran, Riviere, Shimabukuro, Taniguchi, Wakai.

S.C.R. No. 34 "SENATE CONCURRENT RESOLUTION URGING THE UNITED STATES CONGRESS TO SUPPORT LEGISLATION GRANTING BUDGET AUTONOMY, LEGISLATIVE AUTONOMY, AND STATEHOOD TO THE DISTRICT OF COLUMBIA."

Offered by: Senators Nishihara, Chun Oakland, Espero, Inouye, Keith-Agaran, Kidani, Dela Cruz, Galuteria, Ruderman, Shimabukuro, Tokuda, Wakai.

S.C.R. No. 35 "SENATE CONCURRENT RESOLUTION REQUESTING THE FEDERAL GOVERNMENT AND THE ATTORNEY GENERAL OF THE STATE TO EXAMINE WAYS TO REMOVE DEFAMATORY STATEMENTS FROM THE INTERNET."

Offered by: Senators Green, Chun Oakland, Espero, Ruderman, Wakai.

S.C.R. No. 36 "SENATE CONCURRENT RESOLUTION URGING HAWAII'S CONGRESSIONAL DELEGATION TO PROPOSE AND PASS A PROPOSED AMENDMENT TO THE UNITED STATES CONSTITUTION CLARIFYING THAT CORPORATIONS ARE NOT PEOPLE WITH CONSTITUTIONAL RIGHTS, AND THAT UNLIMITED CAMPAIGN SPENDING IS NOT FREE SPEECH."

Offered by: Senators Green, Espero, Ruderman, Chun Oakland, Harimoto, Thielen.

S.C.R. No. 37 "SENATE CONCURRENT RESOLUTION ENCOURAGING THE HAWAII TOURISM AUTHORITY AND STATE HISTORIC PRESERVATION DIVISION TO WORK WITH COMMUNITY ORGANIZATIONS TO ASSIST IN THE ESTABLISHMENT OF HISTORICAL MARKERS AND TRAILS."

Offered by: Senators Dela Cruz, Baker, Chun Oakland, English, Espero, Gabbard, Galuteria, Inouye, Kahele, Keith-Agaran, Kidani, Nishihara, Tokuda, Shimabukuro, Thielen, Wakai.

SENATE RESOLUTIONS

The following resolutions (S.R. Nos. 12 to 17) were read by the Clerk and were deferred:

S.R. No. 12 "SENATE RESOLUTION REQUESTING THE DEPARTMENTS OF HEALTH AND EDUCATION TO COLLABORATE ON EDUCATIONAL INFORMATION AND MATERIALS ABOUT THE HUMAN PAPILLOMAVIRUS VACCINE THAT CAN BE PROVIDED TO PARENTS OF PUBLIC MIDDLE AND INTERMEDIATE SCHOOL CHILDREN."

Offered by: Senators Baker, Chun Oakland, Shimabukuro, Thielen, Tokuda, Espero, Ihara, Kidani, Kim, Nishihara, Riviere.

S.R. No. 13 "SENATE RESOLUTION SUPPORTING THE EXECUTIVE OFFICE ON AGING'S EFFORTS TO INCORPORATE A NO WRONG DOOR SYSTEM APPROACH INTO THE AGING AND DISABILITY RESOURCE CENTER HAWAII NETWORK."

Offered by: Senators Baker, Chun Oakland, Kidani, Espero, Taniguchi.

S.R. No. 14 "SENATE RESOLUTION REQUESTING THE GOVERNOR TO RENAME A SECTION OF KAPULE HIGHWAY IN THE COUNTY OF KAUA'I AS THE KAUA'I VETERANS MEMORIAL HIGHWAY."

Offered by: Senator Kouchi, by request.

S.R. No. 15 "SENATE RESOLUTION REQUESTING HAWAII'S CONGRESSIONAL DELEGATION TO ASSIST THE STATE IN NEGOTIATING WITH THE FEDERAL GOVERNMENT FOR THE ACQUISITION OF THE FEDERAL DETENTION CENTER, HONOLULU."

Offered by: Senators Nishihara, Chun Oakland, Espero, Kidani, Tokuda, Dela Cruz, Galuteria, Inouye,

Keith-Agaran, Riviere, Shimabukuro, Taniguchi, Wakai.

S.R. No. 16 “SENATE RESOLUTION REQUESTING THE FEDERAL GOVERNMENT AND THE ATTORNEY GENERAL OF THE STATE TO EXAMINE WAYS TO REMOVE DEFAMATORY STATEMENTS FROM THE INTERNET.”

Offered by: Senators Green, Chun Oakland, Espero, Ruderman, Wakai.

S.R. No. 17 “SENATE RESOLUTION ENCOURAGING THE HAWAII TOURISM AUTHORITY AND STATE HISTORIC PRESERVATION DIVISION TO WORK WITH COMMUNITY ORGANIZATIONS TO ASSIST IN THE ESTABLISHMENT OF HISTORICAL MARKERS AND TRAILS.”

Offered by: Senators Dela Cruz, Baker, Chun Oakland, English, Espero, Gabbard, Galuteria, Inouye, Kahele, Keith-Agaran, Kidani, Nishihara, Tokuda, Shimabukuro, Thielen, Wakai.

ORDER OF THE DAY

THIRD READING

S.B. No. 2585, S.D. 1:

On motion by Senator Inouye, seconded by Senator Gabbard and carried, S.B. No. 2585, S.D. 1, entitled: “A BILL FOR AN ACT RELATING TO THE STATEWIDE TRAFFIC CODE,” having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Galuteria, Harimoto, Keith-Agaran).

S.B. No. 2107:

On motion by Senator Shimabukuro, seconded by Senator Wakai and carried, S.B. No. 2107, entitled: “A BILL FOR AN ACT RELATING TO PEN REGISTERS,” having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Galuteria, Harimoto, Keith-Agaran).

S.B. No. 2647, S.D. 1:

Senator Gabbard moved that S.B. No. 2647, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Shimabukuro.

Senator Slom rose to speak in opposition to the measure as follows:

“Yes, Mr. President, reluctantly, I rise to speak against this bill. I say ‘reluctantly’ because I’ve always supported the basic intent of the bill and, as I’ve told the sponsors for the last several years, who would not want to defend a Republican elephant more than me? But what I said was, I was very concerned then, as I am concerned now, about some of the things that happen to people who already have in their possession mementoes or jewelry or pianos or something else, and the bill is not really clear as to what can happen except that we know that we’re using a 100-year time frame. We’re asking people to have receipts for a long period of time. We’re saying that people who were legitimate legacies of an estate may possess the ivory, whether it’s in a piano or jewelry or something else; they may give it away, but they may not sell it.

“Two points that I always made to the supporters of this bill and that I still make: Number one, it should be prospective; we should be starting from now because quite frankly, I don’t know

how we’re going to enforce a bill like this. But secondarily, what’s the real problem? The problem is that in those nations that harbor the elephants, there has been a great deal of corruption by government and by others allowing for poachers. The first thing that we should do is stop the poaching! The second thing we should do is make those governments be responsible for their animals.

“So again I say, Mr. President, I’m all in favor of a prospective bill stopping, banning, controlling anything in the future, but not to harm or to criminalize those who have things from the past. Thank you.”

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

“Colleagues, at eight to ten billion dollars per year, the illegal wildlife trade ranks as the fourth most lucrative international criminal activity, behind narcotics, counterfeiting, and human trafficking. According to a 2008 study, Hawai‘i was the nation’s third-largest market for ivory, after New York and California. Both of these states have shut down their in-state market for ivory in 2014 and 2015, respectively; this means that we are likely to become the largest market in the U.S.

“Earlier this year, the International Fund for Animal Welfare partnered with the Wildlife Conservation Society, Vulcan Inc., the Natural Resources Defense Council, and the Humane Society International on a market survey of Hawai‘i’s online ivory trade. Over the course of this six-day investigation, they found approximately \$1.2 million worth of ivory and related wildlife products for sale in Hawai‘i, with the vast majority of retailers, 46 out of 47, failing to provide documentation that would indicate that these sales are legal under federal law.

“You may have seen a news story over the weekend on KITV on this legislation; within hours, it was removed from their website and social media sites because of its inaccuracies. To be clear, this bill contains **no** language or provisions related to seizure of ivory products in someone’s home and will have **no** effect on ivory possession. However, this bill would give DLNR’s Division of Conservation and Resources Enforcement the ability to partner with federal authorities, like NOAA and U.S. Fish and Wildlife, to seek criminal and civil penalties against those who actively participate in the illegal wildlife trade. The bill has exemptions for antiques, inheritance, museums, musical instruments, guns and knives, and traditional Native Hawaiian practices.

“Colleagues, as you’re aware, in September our state has the honor of hosting the World Conservation Congress, which, as you know, is the Super Bowl of conservation put on by the International Union for Conservation of Nature, and it will bring together 8,000 delegates and 160 countries who will come here to paradise. This legislation would be ideal to showcase Hawai‘i’s commitment to conservation on the world stage. Passing this bill is a step in the right direction to protect wildlife species on our planet, so I urge you to join me in supporting S.B. 2647. You’ll notice we have defected the date, in case you are thinking about going WR, so we can continue this conversation. Mahalo.”

Senator Baker rose to speak in opposition to the measure as follows:

“Thank you, Mr. President. I rise with very strong reservations, perhaps even opposition, to this measure. If I thought that eliminating any sales of ivory products in Hawai‘i was going to stop people from poaching in Africa, I suspect that I would probably join the bandwagon – I don’t think that’s true.

“I never thought I would want to echo the sentiments of my colleague from Hawai‘i Kai, but I find that this measure doesn’t really take into account some of the business realities that exist

in Hawai'i. I represent the Gold Coast of Maui, the area from Makena in the south to Kapalua in the north, and one of the vibrant businesses is scrimshaw. I have scrimshaw in my office, on old piano keys; there are other pieces of ivory that I've been given over the years. These pieces were legally acquired but this bill would make such possession illegal. Also, this bill does not take into account the ability of people to continue to sell things that they have legally acquired or the ivory that has been legally acquired prior to the ban. So, we're going to be putting lots of people out of business; we're going to be making a hardship on many others who may find, at some point in their life, they'd like or need to sell an heirloom.

"I have no problem with making sure that the federal law is upheld, but I do believe that this measure is being rushed and is not really taking into account some of the accommodations that could be made for small-business owners, who have legal ivory and sell it as art and as other items that people can appreciate and enjoy.

"The other thing that bothers me about this is the prohibition on the possession or sale of any kind of fossil or materials that might wash up, like shark teeth washing up on the shore. You can't possess them; you can't use them; you can't trade them; you can't sell them. Those are things that have naturally occurred, particularly if you have mammoth tusk or other material that's very, very old, and I'm told that you can differentiate between the kinds of raw products, if you will, that would fall under the jurisdiction of this bill and not be able to be sold or exchanged.

"I'm all for saving the elephants; I just don't believe that this bill is going to do that and, I guess, in the final analysis, I'll vote 'no.' Thank you."

Senator English rose to speak in opposition to the measure as follows:

"Thank you, President. I'm following my colleague from Maui; I have strong reservations which may be a 'no.' While I appreciate that the bill guarantees what's already guaranteed in the constitution – that Native Hawaiian customary rites are protected and would be exempted under this – that's already protected in the constitution, but I'm happy for the reiteration of it.

"The problem comes in with all of the other traditional cultures that exist in Hawai'i. You know that in the Samoan and Tongan traditions, certain offenses between families are settled by the exchange of whale's tooth. This is not protected by the Hawaiian constitution; only Hawaiian practices are. And we have a large Samoan and large Tongan and even Fijian and other Melanesian and Micronesian and Polynesian cultures here that rely on the use of whale bone, whale tooth, to settle very, very deep differences between families, clans, villages. You know, in certain traditions, the only way to stop an escalating family war is by the exchange and acceptance of these types of items. I'm very concerned that this would make that illegal here and that these cultures are not protected; only the Hawaiian use of it is protected under this bill, which is already protected by state constitution. So, you know, the words of the previous speaker from Lahaina echo my sentiments, that, yes, we want to protect the living animals; we want to make sure that the trade in tusk and ivory and all of those things comes to an end, but we also have to protect the legitimate traditional uses for these items.

"We also have to protect the people who own old items and inherit them, pass them down. I know one question that came up for me was, should someone inherit an ivory piece and then the feds come after them for a huge estate tax, what's the value of it? Because if we declared the value of it to be zero, I'm sure the federal assessors would say, 'No, no, no, this is worth quite

a bit more.' How do we deal with that? Because the feds want their tax on the estate, and an ancient ivory piece could be very, very valuable. Have we declared it in these bills to be of no value?

"So, I agree with the previous speaker that, while the intent is good, I think that it leaves too many cultures, too many traditions, and too much left unsaid. So with that, I'll more than likely be voting 'no.' Thank you, Mr. President."

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

"Colleagues, I'd just like to ask you to allow this bill to move forward. It's a work in progress; we have about eight weeks to determine whether we want to look at a measure – which came up last year and in previous years, so it is not a new bill – and if we want to save our planet, save animals. We live in a global society now, and what happens in the United States of America has an impact across the world. And our measure with the shark fins was a clear example of that. And other measures from social issues for the last 20, 30 years, Hawai'i has been a leader; we have taken the first step; we have tried to set the example and set the trend, and this is the same case.

"If we don't pass this measure, it's possible that elephants will be extinct in our lifetime, and ironically, we are, in terms of the United States of America, we are the extinction capital of the U.S., so we understand what it means to lose a species, to lose a plant, to lose an animal. And elephants and other animals which are in this bill need to be protected by humans, by us. Yes, we can ask the countries in Africa, the governments, to stop the poaching. And they are; there are efforts. But at the same time, there are evil people out there who will do anything for greed.

"And all the issues that were brought up are legitimate issues. We need to make certain that the cultural side, that those groups or people who utilize these items, are protected. The intention of this is not to put anybody in prison, not to put anyone in jail, but to certainly look at a way that we can maybe provide... I think there's some compromise in this measure, still. And hopefully, these items can be worked out in the House or in conference, and then if not, we'll have to take it up again, but I think it's too early to be taking this measure and throwing it aside. Thank you very much."

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

"Before I talk about the measure, though, I just want to say this is great that we're having this policy discussion in the open, and I'm going to take this as a change in the Senate cultural practices so that we're going to have more discussion on policy. But I'm actually only being partly tongue in cheek.

"I think the concerns that were raised by people on the floor and earlier are valid concerns, and by discussing them, we're going to be able to come up with some ideas for amendments for the bill that will be able to address these concerns. There was some very good discussion earlier about how you can have a registry for artifacts that people currently have so that there may not be that ban on them being able to transfer them later on. There were amendments made to the bill in the hearing, and there could be additional amendments to address some of the concerns raised.

"But in speaking to the point raised by the senator to my right, my far right, the current laws are not working, and there are efforts to try and stop the poaching in Africa. But the poachers are so driven by the market, they're killing people, not just the elephants – they're killing the people who are trying to stop the poaching. They're cutting tusks off of elephants while they're still alive and leaving them to die. It's just horrific,

what's going on. And so we need to do something, and part of what we can do in the United States is to help reduce the market for new ivory products.

“And there's an effort to try and find a way to do that that avoids the loopholes and the difficulties of enforcing because, in some of these ivory products, once they are processed it's practically impossible – according to the federal agents who came to testify – to tell whether they are old ivory or new ivory. So, we just ask for an opportunity to be able to try and address the concerns raised in moving this bill forward and do for future amendments. Thank you, Mr. President.”

The motion was put by the Chair and carried, S.B. No. 2647, S.D. 1, entitled: “A BILL FOR AN ACT RELATING TO NATURAL RESOURCES,” having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 15; Ayes with Reservations (Chun Oakland, Dela Cruz, Kahele, Nishihara, Riviere, Shimabukuro). Noes, 7 (Baker, English, Inouye, Kidani, Kim, Slom, Taniguchi). Excused, 3 (Galuteria, Harimoto, Keith-Agaran).

ADJOURNMENT

At 11:57 a.m., on motion by Senator Green, seconded by Senator Slom and carried, the Senate adjourned until 11:30 a.m., Tuesday, February 23, 2016.