

FIFTY-SIXTH DAY

Wednesday, April 27, 2016

The Senate of the Twenty-Eighth Legislature of the State of Hawai'i, Regular Session of 2016, convened at 11:38 a.m. with the President in the Chair.

The Roll was called showing all Senators present with the exception of Senators Nishihara and Slom who were excused.

The President announced that he had read and approved the Journal of the Fifty-Fifth Day.

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 1113 to 1125) were read by the Clerk and were placed on file:

Gov. Msg. No. 1113, informing the Senate that on April 25, 2016, the Governor signed into law Senate Bill No. 2775 as Act 13, entitled: "RELATING TO THE AFFORDABLE CARE ACT SECTION 1332 STATE INNOVATION WAIVER."

Gov. Msg. No. 1114, informing the Senate that on April 25, 2016, the Governor signed into law Senate Bill No. 2341, S.D. 1 as Act 14, entitled: "RELATING TO RESPIRATORY THERAPISTS."

Gov. Msg. No. 1115, informing the Senate that on April 25, 2016, the Governor signed into law Senate Bill No. 2934, S.D. 2 as Act 15, entitled: "RELATING TO DRIVER LICENSING."

Gov. Msg. No. 1116, informing the Senate that on April 26, 2016, the Governor signed into law Senate Bill No. 2312, S.D. 1, H.D. 1 as Act 16, entitled: "RELATING TO THE PENAL CODE."

Gov. Msg. No. 1117, informing the Senate that on April 26, 2016, the Governor signed into law Senate Bill No. 2246 as Act 17, entitled: "RELATING TO TESTING FOR INTOXICANTS."

Gov. Msg. No. 1118, informing the Senate that on April 26, 2016, the Governor signed into law Senate Bill No. 2862 as Act 18, entitled: "RELATING TO NURSING."

Gov. Msg. No. 1119, informing the Senate that on April 26, 2016, the Governor signed into law Senate Bill No. 2813, S.D. 1 as Act 19, entitled: "RELATING TO GUARDIANSHIP."

Gov. Msg. No. 1120, informing the Senate that on April 26, 2016, the Governor signed into law Senate Bill No. 2885, S.D. 1 as Act 20, entitled: "RELATING TO BIRTH DEFECTS."

Gov. Msg. No. 1121, informing the Senate that on April 26, 2016, the Governor signed into law Senate Bill No. 2874 as Act 21, entitled: "RELATING TO CERTIFIED NURSE AIDES."

Gov. Msg. No. 1122, informing the Senate that on April 26, 2016, the Governor signed into law Senate Bill No. 2873 as Act 22, entitled: "RELATING TO ORDERS FOR IMMEDIATE PROTECTION."

Gov. Msg. No. 1123, informing the Senate that on April 26, 2016, the Governor signed into law Senate Bill No. 2511 as Act 23, entitled: "RELATING TO TELECOMMUNICATIONS."

Gov. Msg. No. 1124, informing the Senate that on April 26, 2016, the Governor signed into law Senate Bill No. 2256, S.D. 1 as Act 24, entitled: "RELATING TO MOTOR VEHICLE DRIVER LICENSING."

Gov. Msg. No. 1125, informing the Senate that on April 26, 2016, the Governor signed into law Senate Bill No. 305, S.D. 1, H.D. 1 as Act 25, entitled: "RELATING TO USE OF TOBACCO PRODUCTS AND E-CIGARETTES ON HAWAII HEALTH SYSTEMS CORPORATION PREMISES."

HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 658 to 660) were read by the Clerk and were placed on file:

Hse. Com. No. 658, informing the Senate that on April 26, 2016, the House agreed to the amendments proposed by the Senate and passed the following bills on Final Reading:

H.B. No. 27, S.D. 1;
H.B. No. 625, H.D. 1, S.D. 1;
H.B. No. 1044, H.D. 1, S.D. 1;
H.B. No. 1541, H.D. 1, S.D. 1;
H.B. No. 1705, S.D. 1;
H.B. No. 2082, H.D. 1, S.D. 1;
H.B. No. 2084, H.D. 2, S.D. 1;
H.B. No. 2217, H.D. 1, S.D. 1;
H.B. No. 2218, H.D. 1, S.D. 1;
H.B. No. 2281, S.D. 1;
H.B. No. 2293, H.D. 1, S.D. 1;
H.B. No. 2295, H.D. 1, S.D. 1;
H.B. No. 2311, S.D. 1;
H.B. No. 2415, S.D. 1;
H.B. No. 2448, H.D. 1, S.D. 1; and
H.B. No. 2466, H.D. 1, S.D. 1.

Hse. Com. No. 659, informing the Senate that on April 26, 2016, the Speaker made the following change to the conferees on the following bill:

H.B. No. 1176, H.D. 2 (S.D. 1):

Representative Luke added as co-chair.

Hse. Com. No. 660, informing the Senate that on April 26, 2015, the Speaker appointed conferees on the part of the House for the consideration of amendments proposed by the House to the following Senate bills:

S.B. No. 676, S.D. 2 (H.D. 1):

Representatives Luke, chair; Johanson, Pouha.

S.B. No. 979, S.D. 2 (H.D. 1):

Representatives Morikawa, Kobayashi, co-chairs; DeCoite, Thielen.

CONFERENCE COMMITTEE REPORTS

Senator Baker, for the Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House to S.B. No. 2540, presented a report (Conf. Com. Rep. No. 8-16) recommending that S.B. No. 2540, H.D. 1, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15 of the Constitution of the State of Hawai'i, action on Conf. Com. Rep. No. 8-16 and S.B. No. 2540, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE DEPARTMENT OF HEALTH," was deferred for a period of 48 hours.

Senator Baker, for the Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House to S.B. No. 2861, S.D. 2, presented a report (Conf. Com. Rep. No. 9-16) recommending that S.B. No. 2861, S.D. 2, H.D. 1, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15 of the Constitution of the State of Hawai'i, action on Conf. Com. Rep. No. 9-16 and S.B. No. 2861, S.D. 2, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE JOINT FORMULARY ADVISORY COMMITTEE," was deferred for a period of 48 hours.

Senator Keith-Agaran, for the Committee on Conference on the disagreeing vote of the House to the amendments proposed by the Senate to H.B. No. 1585, H.D. 2, presented a report (Conf. Com. Rep. No. 10-16) recommending that H.B. No. 1585, H.D. 2, S.D. 1, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15 of the Constitution of the State of Hawai'i, action on Conf. Com. Rep. No. 10-16 and H.B. No. 1585, H.D. 2, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO GUARDIANSHIP," was deferred for a period of 48 hours.

Senator Baker, for the Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House to S.B. No. 2886, S.D. 2, presented a report (Conf. Com. Rep. No. 11-16) recommending that S.B. No. 2886, S.D. 2, H.D. 2, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15 of the Constitution of the State of Hawai'i, action on Conf. Com. Rep. No. 11-16 and S.B. No. 2886, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO AGE OF CONSENT FOR ADOLESCENT MENTAL HEALTH SERVICES," was deferred until Tuesday, May 3, 2016.

STANDING COMMITTEE REPORT

Senator Baker, for the Committee on Commerce, Consumer Protection and Health, presented a report (Stand. Com. Rep. No. 3716) recommending that the Senate advise and consent to the nominations to the State Council on Mental Health of the following:

CHAD KOYANAGI, in accordance with Gov. Msg. No. 574; and

WANDA VORSINO, in accordance with Gov. Msg. No. 579.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3716 and Gov. Msg. Nos. 574 and 579 was deferred until Thursday, April 28, 2016.

ORDER OF THE DAY

AGREE/DISAGREE

MATTERS DEFERRED FROM TUESDAY, APRIL 26, 2016

S.C.R. No. 20, S.D. 1 (H.D. 1):

Senator English moved that the Senate agree to the amendments proposed by the House to S.C.R. No. 20, S.D. 1, seconded by Senator Green.

Senator English noted:

"Mr. President, members: This is the S.C.R. that establishes a sister-state relationship between the State of Hawai'i and the State of Goa in the Republic of India. The House simply restated one sentence in the resolution that clarified that we are establishing the relationship, so the Senate can agree to those changes."

The motion was put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.C.R. 20, S.D. 1, and S.C.R. No. 20, S.D. 1, H.D. 1, entitled: "SENATE CONCURRENT RESOLUTION ESTABLISHING A SISTER-STATE RELATIONSHIP BETWEEN THE STATE OF HAWAII OF THE UNITED STATES OF AMERICA AND THE STATE OF GOA OF THE REPUBLIC OF INDIA," was placed on the calendar for Final Adoption on Thursday, April 28, 2016.

S.C.R. No. 96, S.D. 2 (H.D. 1):

Senator Shimabukuro moved that the Senate agree to the amendments proposed by the House to S.C.R. No. 96, S.D. 2, seconded by Senator Green.

Senator Shimabukuro noted:

"Thank you. Colleagues, we had amended this resolution on the Senate side, and then the advocates later contacted us and notified us that they actually wanted to return to the previous version for the ali'i memorial task force. And advocates on both sides of the issue preferred the original language, so the House did that, and I'm going to recommend that the Senate agree to those changes. Thank you."

The motion was put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.C.R. No. 96, S.D. 2, and S.C.R. 96, S.D. 2, H.D. 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE ESTABLISHMENT OF AN ALI'I MEMORIAL ART ADVISORY TASK FORCE," was placed on the calendar for Final Adoption on Thursday, April 28, 2016.

S.C.R. No. 125, S.D. 1 (H.D. 1):

Senator Gabbard moved that the Senate agree to the amendments proposed by the House to S.C.R. No. 125, S.D. 1, seconded by Senator Green.

Senator Gabbard noted:

"Mr. President, colleagues: The reso is needed to give guidance to DLNR, who's been working with the West Maui community and people of Kā'anapali to make sure that Hawai'i's most economic beaches are preserved for residents and visitors. Recent storms have caused major beach erosion, creating an imminent need for aggressive action to help fix the problem. The Kā'anapali Beach Resort has committed to the re-nourishment and restoration of Kā'anapali Beach through a 50/50 partnership with DLNR on beach restoration, but that is still several years away due to permitting, so temporary measures are needed until the nourishment is implemented. Mahalo."

The motion was put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.C.R. No. 125, S.D. 1, and S.C.R. 125, S.D. 1, H.D. 1, entitled: "SENATE CONCURRENT RESOLUTION EXPRESSING ENDORSEMENT AND SUPPORT FOR A UNIQUE AND AGGRESSIVE APPROACH BY THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO USE DURABLE AND TEMPORARY GEO-SYNTHETIC MATERIALS AS NECESSARY FOR THE PROTECTION OF THE KAA NAPALI BEACH WALK FROM SHORELINE HAZARDS UNTIL THE BEACH NOURISHMENT PROGRAM AT KAA NAPALI BEACH CAN BE COMPLETED," was placed on the calendar for Final Adoption on Thursday, April 28, 2016.

S.C.R. No. 138 (H.D. 1):

Senator Tokuda moved that the Senate agree to the amendments proposed by the House to S.C.R. No. 138, seconded by Senator Green.

Senator Tokuda noted:

“Thank you, Mr. President. The House has simply added additional items that they would like the Tax Review commissioners to address in their deliberations, and we’d like to keep this moving as they finally actually appointed a commission.”

The motion was put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.C.R. No. 138, and S.C.R. 138, H.D. 1, entitled: “SENATE CONCURRENT RESOLUTION REQUESTING THE TAX REVIEW COMMISSION TO EVALUATE THE IMPACTS OF GENERAL EXCISE AND USE TAX INCREASES PROPOSED DURING THE REGULAR SESSION OF 2016 AND GENERAL EXCISE TAX PYRAMIDING AS APPLIED TO TRANSIENT ACCOMMODATIONS,” was placed on the calendar for Final Adoption on Thursday, April 28, 2016.

ADVISE AND CONSENT

Stand. Com. Rep. No. 3708 (Gov. Msg. Nos. 878, 880, 881, 882, 883, and 884):

Senator Shimabukuro moved that Stand. Com. Rep. No. 3708 be received and placed on file, seconded by Senator English and carried.

Senator Shimabukuro then moved that the Senate advise and consent to the nominations to the Island Burial Council, Islands of Kaua’i and Niihau of the following:

RICHARD NESMITH, term to expire June 30, 2017 (Gov. Msg. No. 878);

KEITH YAP, term to expire June 30, 2016 (Gov. Msg. No. 880);

KEITH YAP, term to expire June 30, 2020 (Gov. Msg. No. 881);

THEODORE BLAKE, term to expire June 30, 2016 (Gov. Msg. No. 882);

THEODORE BLAKE, term to expire June 30, 2020 (Gov. Msg. No. 883); and

SANDRA QUINSAAT, term to expire June 30, 2020 (Gov. Msg. No. 884),

seconded by Senator English.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Nishihara, Slom).

Stand. Com. Rep. No. 3710 (Gov. Msg. No. 603):

Senator Keith-Agaran moved that Stand. Com. Rep. No. 3710 be received and placed on file, seconded by Senator Shimabukuro and carried.

Senator Keith-Agaran then moved that the Senate advise and consent to the nomination of LINDA KRIEGER to the Civil Rights Commission, term to expire June 30, 2019, seconded by Senator Shimabukuro.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Nishihara, Slom).

Stand. Com. Rep. No. 3711 (Gov. Msg. Nos. 638 and 661):

Senator Keith-Agaran moved that Stand. Com. Rep. No. 3711 be received and placed on file, seconded by Senator Shimabukuro and carried.

Senator Keith-Agaran then moved that the Senate advise and consent to the nominations to the Hawai’i Workforce Development Council of the following:

ALAN HAYASHI, term to expire June 30, 2019 (Gov. Msg. No. 638); and

KAREN ELIZABETH WHITEHEAD, term to expire June 30, 2019 (Gov. Msg. No. 661),

seconded by Senator Shimabukuro.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Nishihara, Slom).

Stand. Com. Rep. No. 3712 (Gov. Msg. Nos. 697 and 698):

Senator Keith-Agaran moved that Stand. Com. Rep. No. 3712 be received and placed on file, seconded by Senator Shimabukuro and carried.

Senator Keith-Agaran then moved that the Senate advise and consent to the nominations to the Commission to Promote Uniform Legislation of the following:

KEVIN SUMIDA, term to expire June 30, 2020 (Gov. Msg. No. 697); and

PETER HAMASAKI, term to expire June 30, 2020 (Gov. Msg. No. 698),

seconded by Senator Shimabukuro.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Nishihara, Slom).

Stand. Com. Rep. No. 3713 (Gov. Msg. No. 742):

Senator Keith-Agaran moved that Stand. Com. Rep. No. 3713 be received and placed on file, seconded by Senator Shimabukuro and carried.

Senator Keith-Agaran then moved that the Senate advise and consent to the nomination of MARIE LADERTA to the Labor and Industrial Relations Appeals Board, term to expire June 30, 2026, seconded by Senator Shimabukuro.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Nishihara, Slom).

Stand. Com. Rep. No. 3714 (Gov. Msg. Nos. 844 and 845):

Senator Keith-Agaran moved that Stand. Com. Rep. No. 3714 be received and placed on file, seconded by Senator Shimabukuro and carried.

Senator Keith-Agaran then moved that the Senate advise and consent to the nominations to the Hoisting Machine Operators Advisory Board of the following:

TRISTAN ALDEGUER, term to expire June 30, 2020 (Gov. Msg. No. 844); and

JOHN MIHLBAUER, JR., term to expire June 30, 2018 (Gov. Msg. No. 845),

seconded by Senator Shimabukuro.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Nishihara, Slom).

Stand. Com. Rep. No. 3715 (Gov. Msg. No. 855):

Senator Keith-Agaran moved that Stand. Com. Rep. No. 3715 be received and placed on file, seconded by Senator Shimabukuro and carried.

Senator Keith-Agaran then moved that the Senate advise and consent to the nomination of J MUSTO to the Hawai'i Labor Relations Board, term to expire June 30, 2022, seconded by Senator Shimabukuro.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Nishihara, Slom).

At this time, Senator Keith-Agaran introduced Marie Laderta, newly confirmed member of the Labor and Industrial Relations Appeals Board, who was seated in the gallery.

Stand. Com. Rep. No. 3709 (Jud. Com. No. 8):

Senator Keith-Agaran moved that Stand. Com. Rep. No. 3709 be received and placed on file, seconded by Senator Shimabukuro and carried.

Senator Keith-Agaran then moved that the Senate consent to the nomination of DARIEN W.L. CHING NAGATA to the District Court of the Third Circuit, term to expire in 6 years, seconded by Senator Shimabukuro.

Senator Keith-Agaran rose to speak in support of the nominee as follows:

"Thank you, Mr. President. I rise in support of the nomination of Darien W.L. Ching Nagata to serve as a district court judge of the Third Circuit for a term of six years. Ms. Ching Nagata was born and raised on O'ahu, attended 'Iolani School, and graduated from Santa Clara University. After studying in Shanghai and Singapore, she returned to Hawai'i to attend the William S. Richardson School of Law, where she was a student of the year and served as president of the Student Bar Association.

"She joined the Office of the Prosecuting Attorney of the County of Hawai'i in 1998. She currently oversees litigation in district court and family court, including domestic violence and juvenile cases. Her career has also included serving as a violent crimes unit litigator and circuit court unit supervising attorney litigator. She has been cross-deputized since 2008 to serve as a Special Assistant to the United States Attorney's Office to assist with their Project Safe Neighborhoods initiative.

"Throughout her career as a public litigator, she has shown patience, compassion, diligence, and a willingness to put in the long hours necessary to seek justice for the people of the Big Island. At the same time as she was building her legal career in Hilo, she and her husband, Ron, have created a family, including three young children.

"In addition to her work and family obligations, Ms. Ching Nagata has found the time to provide volunteer and leadership services to the local YWCA, Kamehameha Schools Hawai'i, and even the Hilo Junior Tennis Club, where she is, no doubt, a drill volunteer who commands attention and respect.

"Mr. President, I have no doubt that the Third Circuit court as a whole, and the district court to which she has been nominated, will benefit greatly from Darien Ching Nagata's experience, energy, and dedication. I urge all my colleagues to support this nomination and congratulate her in reaching this important new stage in her legal career."

Senator Kahele rose to speak in strong support of the nominee as follows:

"Thank you, Mr. President. Mr. President and colleagues, over the last few weeks, I have gotten to know Mrs. Nagata, her husband, her family, and I find her to be extremely competent and prepared for this new opportunity in her career and the opportunity to serve the residents of this State of Hawai'i and also Hawai'i island.

"As Senator Keith-Agaran said, her résumé speaks for itself: two-time president of the Hawai'i County Bar Association; graduate of the William S. Richardson School of Law; Special Assistant to the United States Attorney; and, most recently, the deputy prosecuting attorney for the County of Hawai'i.

"She has a very, very extensive professional résumé, amongst other things, but that's not all that impressed me. What impressed me is her dedication to our Hilo community; commitment to her family; her volunteer time that she gives to the Hilo Junior Tennis Club, the Kamehameha Schools, and the YWCA. And so, Mr. President, on behalf of the Hilo community, it is with overwhelming pride that I strongly support her nomination as a judge for the District Court of the Third Circuit, and I look forward to working with her in the future. Mahalo. Thank you, Mr. President."

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Nishihara, Slom).

At this time, Senator Keith-Agaran introduced Judge Darien Ching Nagata, who was accompanied in the gallery by her husband, Ron; her children, Denby, Dara, and Damon; her mother, Linda; her grandmother, Loretta Lou; her father, Darwin Ching, former deputy attorney general and former director of the Department of Labor and Industrial Relations; and her brother, Darren Ching, Assistant U.S. Attorney.

At 11:49 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:59 a.m.

FINAL READING

Conf. Com. Rep. No. 1-16 (H.B. No. 2362, H.D. 2, S.D. 1, C.D. 1):

On motion by Senator Keith-Agaran, seconded by Senator Kahele and carried, Conf. Com. Rep. No. 1-16 was adopted and H.B. No. 2362, H.D. 2, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII WORKFORCE DEVELOPMENT COUNCIL," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Nishihara, Slom).

S.B. No. 2878, S.D. 1, H.D. 1:

On motion by Senator Chun Oakland, seconded by Senator Green and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 2878, S.D. 1, and S.B. No. 2878, S.D. 1, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO YOUTH TRANSITIONING FROM FOSTER CARE," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Nishihara, Slom).

ADJOURNMENT

At 12:01 p.m., on motion by Senator Green, seconded by Senator English and carried, the Senate adjourned until 6:30 p.m., Thursday, April 28, 2016.