

TWENTY-FIRST DAY

Monday, February 23, 2004

The Senate of the Twenty-Second Legislature of the State of Hawaii, Regular Session of 2004, convened at 11:57 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by the Reverend Grace Ripple, United Methodist Church, Hawaii District, after which the Roll was called showing all Senators present with the exception of Senators Menor, Sakamoto and Whalen who were excused.

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

ORDER OF THE DAY

THIRD READING

S.B. No. 2246, S.D. 1:

Senator Inouye moved that S.B. No. 2246, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Espero.

Senator Kokubun rose to speak in support of the measure with reservations and stated:

"Mr. President, I stand in support of this bill with reservations.

"Mr. President, as you know, this legislation was adopted last Session and, in fact, was subject to a gubernatorial veto, and this body voted to override that veto. I think the concerns that were raised at that time had to do with what was covered, in terms of the restrictions, and I believe when the bill was originally developed, that was taken into account by allowing the counties to participate and allow any restrictions that were meant to be placed on any agricultural lands to be provided through county ordinance. That is still within the bill.

"I think that's the viable way of providing for restrictions with public notification and citizen participation, but I will vote in support with reservations. Thank you."

Senators Hooser, Ihara and Ige requested their votes be cast "aye, with reservations," and the Chair so ordered.

The motion was put by the Chair and carried, S.B. No. 2246, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO AGRICULTURE," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Menor, Sakamoto, Whalen).

S.B. No. 2825:

Senator Kawamoto moved that S.B. No. 2825, having been read throughout, pass Third Reading, seconded by Senator Hanabusa.

Senator Hemmings rose to speak in favor of the measure and said:

"Mr. President, I'm rising to speak in favor of the bill, but wish to ask a point of clarification.

"Mr. President, in the purpose clause of the bill it clearly states that they submit to a biannual performance evaluation report to the Legislature in even numbered years, but in amending the bill, it says that the performance evaluation to the Legislature in odd number years. My question is, in order for it to pass the scrutiny of the courts, does the purpose clause have to be amended to comply with the intent of the bill?"

The President inquired:

"Are you asking the question to Senator Hanabusa?"

Senator Hemmings replied:

"Yes, I'd like to ask the Chair of the Committee that is passing the bill out, the good Senator from Waianae."

Senator Hanabusa rose and responded:

"Mr. President, Senator Kawamoto is lead on this, but I will take it.

"This is an administration measure, and I assume that the administration had it reviewed by the Attorney General. So, my understanding of it is that it does meet the requirements of our laws.

"Thank you. You can check with the Attorney General."

The motion was put by the Chair and carried, S.B. No. 2825, entitled: "A BILL FOR AN ACT RELATING TO THE ELECTIONS APPOINTMENT AND REVIEW PANEL," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Menor, Sakamoto, Whalen).

S.B. No. 2522:

On motion by Senator Taniguchi, seconded by Senator Kokubun and carried, S.B. No. 2522, entitled: "A BILL FOR AN ACT RELATING TO STATE BONDS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Menor, Sakamoto, Whalen).

S.B. No. 2523:

On motion by Senator Taniguchi, seconded by Senator Kokubun and carried, S.B. No. 2523, entitled: "A BILL FOR AN ACT RELATING TO STATE FINANCES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Menor, Sakamoto, Whalen).

S.B. No. 2524:

On motion by Senator Taniguchi, seconded by Senator Kokubun and carried, S.B. No. 2524, entitled: "A BILL FOR AN ACT RELATING TO STATE FINANCES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Menor, Sakamoto, Whalen).

S.B. No. 2525:

On motion by Senator Taniguchi, seconded by Senator Kokubun and carried, S.B. No. 2525, entitled: "A BILL FOR AN ACT RELATING TO STATE FUNDS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Menor, Sakamoto, Whalen).

S.B. No. 2526:

On motion by Senator Taniguchi, seconded by Senator Kokubun and carried, S.B. No. 2526, entitled: "A BILL FOR AN ACT RELATING TO STATE PROPERTIES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Menor, Sakamoto, Whalen).

S.B. No. 2527:

On motion by Senator Taniguchi, seconded by Senator Kokubun and carried, S.B. No. 2527, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Menor, Sakamoto, Whalen).

S.B. No. 2529:

On motion by Senator Taniguchi, seconded by Senator Kokubun and carried, S.B. No. 2529, entitled: "A BILL FOR AN ACT RELATING TO SECURITIES FOR THE PROTECTION OF PUBLIC FUNDS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Menor, Sakamoto, Whalen).

S.B. No. 3179:

On motion by Senator Taniguchi, seconded by Senator Kokubun and carried, S.B. No. 3179, entitled: "A BILL FOR AN ACT RELATING TO GOVERNMENT," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Menor, Sakamoto, Whalen).

S.B. No. 3182:

On motion by Senator Taniguchi, seconded by Senator Kokubun and carried, S.B. No. 3182, entitled: "A BILL FOR AN ACT RELATING TO THE STATE OF HAWAII," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Menor, Sakamoto, Whalen).

S.B. No. 2759:

At 12:05 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:06 o'clock p.m.

By unanimous consent, S.B. No. 2759, entitled: "A BILL FOR AN ACT RELATING TO REAL PROPERTY TAXES ON KULEANA LAND," was recommitted jointly to the Committee on Judiciary and Hawaiian Affairs and the Committee on Transportation, Military Affairs, and Government Operations.

S.B. No. 3125, S.D. 1:

By unanimous consent, action on S.B. No. 3125, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," was deferred until Tuesday, February 24, 2004.

S.B. No. 2427, S.D. 1:

On motion by Senator Hooser, seconded by Senator Chun Oakland and carried, S.B. No. 2427, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TEACHERS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Menor, Sakamoto, Whalen).

Stand. Com. Rep. No. 2506 (S.B. No. 245, S.D. 2):

Senator Kawamoto moved that Stand. Com. Rep. No. 2506 be adopted and S.B. No. 245, S.D. 2, having been read throughout, pass Third Reading, seconded by Senator Espero.

Senator Ihara rose to speak in favor of the measure as follows:

"Mr. President, I am in favor of this bill, but I want to note my concern about this bill being possibly a county mandate, which is not permissible by the Constitution, and the county of Honolulu is opposed to this bill as well.

"Thank you."

Senator Hogue rose to speak in opposition to this measure and said:

"Mr. President, I rise in opposition to this one. I'm trying to figure out exactly why this is moving forward.

"This Vanpool Hawaii program is an excellent program. I know I have many constituents who appreciate it, and they are concerned about the future of it. As you know, colleagues, it's federally funded; it's consumer financed. So, this isn't about funding. It's about moving it over from the state to the city and county. And the state, in its testimony, said that they would approve this legislation if the city and county wanted to gain access over this very worthy program, Vanpool Hawaii. Well, the city and county of Hawaii testified against that.

"So, I can't quite figure out why it is that we're trying to move this bill forward, which could have the unintended consequences of killing this very worthy program. So, I would urge all my colleagues to think twice about voting in favor of it. I'm going to vote in opposition.

"Thank you."

Senator Kawamoto rose to speak in favor of the measure and said:

“Mr. President, I rise in favor of this bill.

“Mr. President, we’re taking the lead from the administration. The administration has indicated to us that transit and those kind of activities should be home rule and left to the counties.

“As the previous speaker said, it has no state funding concerns. It’s all federally funded. It’s run by Vanpool, private sector, and that’s the reason why the opposition was there. The concern was about the future of Vanpool. We’re not doing anything to jeopardize the future of Vanpool. We’re just allowing the counties to have jurisdiction over Vanpool and who will receive the federal funding directly from the federal government. We are just a pass-on; we just pass on the monies to Vanpool Hawaii.

“So therefore, Mr. President, I favor this administration bill, really, and their wishes. In fact, they already have an RFP going at which time they will have the RFP made in April of this year and we will turn everything over to them.

“I urge my colleagues to vote ‘aye’ on this bill. Thank you.”

Senator Slom rose to speak in opposition to the measure and stated:

“Mr. President, I, too, rise in opposition to the bill.

“Again, this is one of those funny bills where you vote ‘no’ because you want to be ‘yes,’ and you want to be positive. As the Minority Floor Leader had stressed before, we are in support of the Vanpool program because it is an option to other government programs. It’s been very successful – they have people waiting in line to do it.

“The problem is I read the testimony. I’m not on the Committee, but I read the testimony from the Department of Transportation. It was one line. And it said that the Department of Transportation supports this legislation if the respective counties want the legislation. Then I read the testimony from the City and County of Honolulu, Department of Transportation Services, and they said they don’t want it. So, it would lead me to believe that if that were the rationale for turning it over, acceptance by the county, and since the county has been pushing more governmental and tax related programs, such as the BRT and mass transit, it would seem to me that no one really is concerned about continuing the Vanpool.

“In addition to that, I believe that the S.D. 1, the current bill that we have, has pushed back the date from April 1 of this year to April 1 of 2005. So, only because there has not been a clarification of this, and again to reiterate our support of the Vanpool program itself, as it’s constituted, I will be voting ‘no.’

“Thank you.”

Senator Ihara rose and said

“Mr. President, I am persuaded by the Minority’s comments. Actually, I’m not serving on the Transportation Committee, but I noticed the testimony. I just received it and it does, in fact, say that the Department of Transportation supports the transfer of the Vanpool program to the counties upon respective acceptance by the counties. And therefore, all the testifiers testified against this bill.

“Thank you.”

Senator Baker requested her vote be cast “aye, with reservations,” and the Chair so ordered.

Senator Kim rose and said:

“Reservations. I’m afraid the Mayor might want to try and drive these vans.” (Laughter.)

Senators Tsutsui, English, Aduja, Hooser and Ige requested their votes be cast “aye, with reservations,” and the Chair so ordered.

The motion was put by the Chair and carried, Stand. Com. Rep. No. 2506 was adopted and S.B. No. 245, S.D. 2, entitled: “A BILL FOR AN ACT RELATING TO TRANSPORTATION,” having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 15. Noes, 7 (Chun Oakland, Hemmings, Hogue, Ihara, Inouye, Slom, Trimble). Excused, 3 (Menor, Sakamoto, Whalen).

HOUSE COMMUNICATIONS

MATTERS DEFERRED FROM FRIDAY, FEBRUARY 20, 2004

H.B. No. 2683 (Hse. Com. No. 9):

By unanimous consent, action on H.B. No. 2683, entitled: “A BILL FOR AN ACT RELATING TO DEFERRED ACCEPTANCE OF GUILTY PLEA AND DEFERRED ACCEPTANCE OF NOLO CONTENDERE PLEA,” was deferred until Tuesday, February 24, 2004.

H.B. No. 2685 (Hse. Com. No. 10):

By unanimous consent, action on H.B. No. 2685, entitled: “A BILL FOR AN ACT RELATING TO BAIL JUMPING,” was deferred until Tuesday, February 24, 2004.

H.B. No. 2689 (Hse. Com. No. 11):

By unanimous consent, action on H.B. No. 2689, entitled: “A BILL FOR AN ACT RELATING TO STALKING,” was deferred until Tuesday, February 24, 2004.

Senator Kawamoto rose on a point of personal privilege and said:

“Mr. President, I rise on a point of personal privilege.

“Mr. President, I had a very exciting weekend, this weekend. First of all, I had an opportunity to witness one of the first in the nation, a project labor agreement on the Army USS Missouri. As quoted by Senator Inouye and Congressman Abercrombie, this is the ‘first of its kind in the nation.’ I like to think we played a small role – we, meaning the Chairman of ECD and myself. I think we put the pressure on as far as our concern for the Davis Bacon Act of using and following the state and county laws. I think we got the private sector and all the building trades together under one roof and agreed on this thing we now call the ‘Aloha Stabilization Agreement.’ So, again, congratulations to our Body for putting the pressure on.

“The second thing I’d like to talk about is that I had the opportunity to address the Hawaii National Guard at Hickam Air Force Base at their annual business meeting. Again, we discussed the many bills that are going through the Legislature – the status and where they are and so forth. In appreciation, I

accepted a certificate on behalf of the Senate. The certificate is from the Hawaii Air National Guard in appreciation for our efforts in the Legislature.

“Thirdly, on Sunday, I had the opportunity to represent the Senate at the Order of the Purple Heart at Punchbowl. What was there was the normal annual gathering, but there was one speaker there that was truly outstanding. I would say, of the all the years I’ve been to Punchbowl, he was the best speaker we’ve ever heard, in the last ten years. Basically, you could feel the gratitude of the many, many thousands of Koreans who have become naturalized U.S. citizens and their gratitude for the men and women that fought in the Korean War. It was a very moving speech and we had the opportunity to do that. I’d like to say thank you for the opportunity again to go to this memorial service.

“So, again, I thank the Body for allowing me to do this. Thank you.”

Senator Trimble rose on a point of personal privilege as follows:

“Mr. President, I rise on a point of personal privilege.

“The chaos that has characterized the first month of this Legislative Session reflects poorly upon this institution and its ability to fulfill the purpose for which it was intended.

“A few Fridays past, I commented that our bureaucracies are organic, creatures of our own making and that if we were dissatisfied with their outputs, then we should consider changing the reward structure. These comments are germane to this institution.

“When I was young, winning the race was the only thing that mattered. With age, I find that merely finishing the race can also be a certain source of satisfaction.

“Much time last Session was spent with talk of bridges, as if our work were engineering problems and not a human process. If it were an engineering problem, then all we need to do is select one engineer and give him the problem. If the project involves several bridges, then we select several engineers and tell them to design-build. To act thusly is not democratic but autocratic. It may be an efficient way of churning out hundreds of laws. And if this is what we as individual Senators truly believe constitutes victory, each having a bill that we can call our own with its modicum of photo opportunities at the end of the Session, then I think we have failed in our responsibility to represent our constituents. We have failed because we have not taken advantage of our greatest strength, which is our diversity in collective dialogue to express the range of our experience and the values that we separately hold in the crafting of legislation.

“If I can be permitted to use another analogy I would turn to the allegory of the five blind men who happened upon an elephant and were trying to determine what it was that they had encountered. This allegory recognizes that what is being considered is not an engineering problem but a human process whose solution depends upon the effective dialogue of the five blind men separately describing the essential nature of the beast before them.

“I want to thank the Chairpersons of the Committees upon which I serve. I thank them for their thoughtfulness and inclusiveness in both the informational briefings and committee hearings. But Mr. President, the importance of these informational briefings and hearings is in the discussions that follow the canned presentations. Our informal deliberations matter. Participation in these meetings enable us to make better

law. We cannot do this when scheduling does not allow each member of the Committee to participate in the meetings of the Committees to which they are assigned.

“At one hearing last week, I was the only Senator in the room. After waiting half an hour, I went to my next scheduled hearing where I was one of two Senators. When our constituents take time off to come to testify, I believe they have a right to be heard by every member of the Committee. When they see only one or two Senators present, they are apt to believe that their views expressed in public do not have the same weight as those of some professional lobbyist who may be arm twisting in private. It demeans our public process as it results in a loss of public trust in the integrity of the work that we do.

“I missed several decision-making sessions not because of a lack of interest on my part, but because these decision-making sessions were scheduled at the same time. This practice denies my constituents their right to know not only on which side of a particular issue I stand, but why. It denies them the opportunity to hear the open dialogue in the Committee as it makes its decision.

“When the people do not see the discussion and open deliberation, first in Committee and then before our final vote on the Floor of this Chamber, they are apt to view what we do with suspicion and mistrust.

“Consider the following tale as it could unfold if told by an unsympathetic media. In 2001, we enacted Act 221, which was intended to be a five-year experiment to be carefully evaluated with hard facts in the light of day. This has not yet happened. Instead, rumors and anecdotal evidence of abuse abound. Some have suggested that a one-dollar investment may result in two dollars of tax credits. Why on God’s good earth would you need two dollars back for every one dollar invested? Others have commented that Blue Crush shouldn’t have qualified and wouldn’t have qualified but for the pressure applied on the Department of Taxation by people from the Governor’s office. Others suggest a connection between Blue Crush and the HGEA and UPW and Royal Insurance. Interesting fodder for an already suspicious public.

“The next question is obvious. If a one-dollar investment results in tax credits of more than one dollar, then what was the extra money used for? Did it work its way back into the political process? Was Act 221 merely to generate new money? Was it used as a funding mechanism for campaign contributions? Is this what our constituents pay taxes for – to pay the campaign expenses of selected politicians?

“Gossipers assume the conclusion and move immediately to the next set of questions. Was this a pay back for support in the 2000 election or was this money to be used in the 2002 election? Who benefited at taxpayer expense? Was it someone in this room? Inquiring minds want to know.

“When the poster boy of the new look of the Democratic Party not only carries on a long and acrimonious dispute with the executive director of the State Ethics Commission but seeks to shield the identity of those receiving tax credits from public scrutiny, the public’s trust in this institution continues to erode.

“I do not think that anyone in this room anticipated that their good intentions would result in these suspicions. But we should not remain silent to allow the answers to these questions be ones of speculation and suspicion that fester and gnaw at the public’s trust in this institution.

"I also believe that this is the type of legislation that is a natural by-product of a system that is designed to churn out legislation too quickly without allowing sufficient public scrutiny to the process. We need to end this practice because of its innate reliance upon the Committee Chair to be the engineer designing a bridge instead of viewing it as a human process of a committee of the blind men trying to determine the essence of the elephant.

"Mr. President, we need to end the current practice of scheduling hearings in a manner as to preclude the attendance of all members of that Committee at that hearing.

"Mr. President, I request that I be allowed to finish the race. We must end the practice of scheduling decision making in a manner that precludes all members of that Committee from participating in the dialogue and the rendering of their vote as a part of the public record.

"Thank you, Mr. President."

ADJOURNMENT

At 12:26 o'clock p.m., on motion by Senator Kawamoto, seconded by Senator Hogue and carried, the Senate adjourned until 11:30 o'clock a.m., Tuesday, February 24, 2004.

Respectfully submitted,

Clerk of the Senate

Approved:

President of the Senate