

## FORTY-THIRD DAY

## Monday, April 5, 2004

The Senate of the Twenty-Second Legislature of the State of Hawaii, Regular Session of 2004, convened at 11:40 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by Mr. Jerry Rauckhorst, Catholic Charities, after which the Roll was called showing all Senators present with the exception of Senator Ige who was excused.

The President announced that he had read and approved the Journal of the Forty-Second Day.

At 11:50 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:59 o'clock a.m.

## MESSAGE FROM THE GOVERNOR

Gov. Msg. No. 428, informing the Senate that on March 31, 2004, she signed into law House Bill No. 1113 as Act 2, entitled: "RELATING TO DRIVERS' LICENSES," was read by the Clerk and was placed on file.

## HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 315 to 321) were read by the Clerk and were disposed of as follows:

Hse. Com. No. 315, transmitting H.C.R. No. 138, H.D. 1, which was adopted by the House of Representatives on April 2, 2004, was placed on file.

By unanimous consent, action on H.C.R. No. 138, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF HEALTH, HAWAII MEDICAL ASSOCIATION, AND AMERICAN CANCER SOCIETY TO SUPPORT ADEQUATE LEVELS OF REIMBURSEMENT FOR MAMMOGRAPHY SERVICES AND TO SUPPORT PHYSICIANS TO BE ALLOWED TO PROVIDE MORE ACCESS TO TECHNOLOGY," was deferred until Tuesday, April 6, 2004.

Hse. Com. No. 316, informing the Senate that the House has disagreed to the amendments proposed by the Senate to the following House bills:

H.B. No. 2140 H.D. 1 (S.D. 1);  
H.B. No. 2147 H.D. 1 (S.D. 1); and  
H.B. No. 2421 (S.D. 1),

was placed on file.

Hse. Com. No. 317, returning S.B. No. 3238, S.D. 2, which passed Third Reading in the House of Representatives on April 2, 2004, in an amended form, was placed on file.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the Senate disagreed to the amendments proposed by the House to S.B. No. 3238, S.D. 2, and requested a conference on the subject matter thereof.

Hse. Com. No. 318, informing the Senate that the House has disagreed to the amendments proposed by the Senate to the following House bills:

H.B. No. 1103 H.D. 2 (S.D. 1);  
H.B. No. 1824 (S.D. 1);  
H.B. No. 2002 H.D. 2 (S.D. 1);  
H.B. No. 2003 H.D. 1 (S.D. 1);  
H.B. No. 2004 H.D. 1 (S.D. 1);  
H.B. No. 2196 H.D. 1 (S.D. 1);  
H.B. No. 2300 H.D. 1 (S.D. 1);  
H.B. No. 2375 H.D. 1 (S.D. 1);  
H.B. No. 2379 H.D. 1 (S.D. 1);  
H.B. No. 2380 H.D. 1 (S.D. 1);  
H.B. No. 2411 H.D. 1 (S.D. 1);  
H.B. No. 2683 (S.D. 1);  
H.B. No. 2743 H.D. 2 (S.D. 1);  
H.B. No. 2789 H.D. 1 (S.D. 1); and  
H.B. No. 2796 H.D. 1 (S.D. 2),

was placed on file.

Hse. Com. No. 319, informing the Senate that the Speaker on April 2, 2004, appointed conferees on the part of the House for the consideration of amendments proposed by the Senate to the following House bills:

H.B. No. 2002, H.D. 2 (S.D. 1):

Representatives Takumi, Takamine, co-chairs; Evans, Kawakami, Ching.

H.B. No. 2003, H.D. 1 (S.D. 1):

Representatives Hamakawa, Takamine, co-chairs; B. Oshiro, Kawakami, Pendleton.

H.B. No. 2004, H.D. 1 (S.D. 1):

Representatives Takamine, chair; Kawakami, Nishimoto, Meyer.

H.B. No. 2300, H.D. 1 (S.D. 1):

Representatives Takamine, Hamakawa, co-chairs; Kaho`ohalahala, Karamatsu, Kawakami, Magaoay, Mindo, Nakasone, Nishimoto, Shimabukuro, Wakai, Waters, Bukoski, Jernigan, Meyer, Moses.

In accordance therewith, the President appointed Senators Hanabusa, Taniguchi, co-chairs; Aduja, English, Espero, Hooser, Inouye, Kanno, Kawamoto, Kim, Kokubun, Sakamoto, Tsutsui, Hemmings, Slom, Trimble as managers on the part of the Senate at such conference.

H.B. No. 2743, H.D. 2 (S.D. 1):

Representatives Takamine, chair; Kawakami, Nakasone, Jernigan.

H.B. No. 2796, H.D. 1 (S.D. 2):

Representatives Kahikina, Arakaki, Takamine, co-chairs; Kawakami, Finnegan,

was placed on file.

Hse. Com. No. 320, informing the Senate that the Speaker on April 2, 2004, appointed conferees on the part of the House for the consideration of amendments proposed by the Senate to the following House bill:

H.B. No. 2280 (S.D. 1):

Representatives Takamine, chair; Kawakami, Moses,

was placed on file.

Hse. Com. No. 321, informing the Senate that the Speaker on April 5, 2004, appointed conferees on the part of the House for the consideration of amendments proposed by the House to the following Senate bill:

S.B. No. 3238, S.D. 2 (H.D. 2):

Representatives Takumi, M. Oshiro, Takai, co-chairs; Ching,

was placed on file.

#### STANDING COMMITTEE REPORTS

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 3106) recommending that H.B. No. 1259, H.D. 1, as amended in S.D. 1, pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the report of the Committee was adopted and H.B. No. 1259, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE UNIFORM COMMERCIAL CODE," passed Second Reading and was placed on the calendar for Third Reading on Wednesday, April 7, 2004.

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 3107) recommending that H.B. No. 2408, H.D. 2, as amended in S.D. 1, pass Third Reading.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the report of the Committee was adopted and H.B. No. 2408, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INSURANCE," passed Second Reading and was placed on the calendar for Third Reading on Wednesday, April 7, 2004.

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 3108) recommending that H.B. No. 2013, S.D. 1, as amended in S.D. 2, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 3108 and H.B. No. 2013, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO POLYBROMINATED DIPHENYL ETHERS," was deferred until Wednesday, April 7, 2004.

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 3109) recommending that H.B. No. 2223, S.D. 1, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 3109 and H.B. No. 2223, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO BOXING," was deferred until Wednesday, April 7, 2004.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 3110) recommending that H.B. No. 1765, H.D. 1, S.D. 1, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 3110 and H.B. No. 1765, H.D. 1, S.D. 1, entitled: "A BILL FOR AN

ACT RELATING TO GOVERNMENT BOARDS, COMMISSIONS, AND AGENCIES," was deferred until Wednesday, April 7, 2004.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 3111) recommending that H.B. No. 1859, H.D. 2, as amended in S.D. 1, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 3111 and H.B. No. 1859, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CHILD ABUSE," was deferred until Wednesday, April 7, 2004.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 3112) recommending that H.B. No. 1926 pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 3112 and H.B. No. 1926, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," was deferred until Wednesday, April 7, 2004.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 3113) recommending that H.B. No. 1987, H.D. 1, S.D. 1, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 3113 and H.B. No. 1987, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MOTOR VEHICLES," was deferred until Wednesday, April 7, 2004.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 3114) recommending that H.B. No. 1991, H.D. 1, S.D. 1, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 3114 and H.B. No. 1991, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO AUTOMATIC EXTERNAL DEFIBRILLATORS," was deferred until Wednesday, April 7, 2004.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 3115) recommending that H.B. No. 2020, H.D. 1, S.D. 1, as amended in S.D. 2, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 3115 and H.B. No. 2020, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO PROSTITUTION," was deferred until Wednesday, April 7, 2004.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 3116) recommending that H.B. No. 2098, H.D. 1, S.D. 1, as amended in S.D. 2, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 3116 and H.B. No. 2098, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO MEDICAL RECORDS," was deferred until Wednesday, April 7, 2004.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 3117) recommending that H.B. No. 2142, H.D. 2, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 3117 and H.B. No. 2142, H.D. 2, entitled: "A BILL FOR AN ACT

RELATING TO BUSINESS PRACTICES," was deferred until Wednesday, April 7, 2004.

Senator Hanabusa, for the majority of the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 3118) recommending that H.B. No. 2290, H.D. 1, S.D. 1, as amended in S.D. 2, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 3118 and H.B. No. 2290, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO DRIVER LICENSING," was deferred until Wednesday, April 7, 2004.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 3119) recommending that H.B. No. 2472, H.D. 2, S.D. 1, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 3119 and H.B. No. 2472, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE SALE OF STERILE SYRINGES FOR THE PREVENTION OF DISEASE," was deferred until Wednesday, April 7, 2004.

**ORDER OF THE DAY**  
**REFERRAL OF**  
**HOUSE CONCURRENT RESOLUTION**  
**MATTER DEFERRED FROM**  
**FRIDAY, APRIL 2, 2004**

The President made the following committee assignment of a House concurrent resolution that was received on Friday, April 2, 2004:

House Concurrent Resolution	Referred to:  No. 36, H.D. 1      Committee on Transportation, Military Affairs, and Government Operations
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**ADVISE AND CONSENT**

Stand. Com. Rep. No. 3100 (Gov. Msg. Nos. 217, 218, 219, 220 and 221):

Senator English moved that Stand. Com. Rep. No. 3100 be received and placed on file, seconded by Senator Kokubun and carried.

Senator English then moved that the Senate advise and consent to the nominations to the Environmental Council of the following:

MICHAEL A. FAYE, term to expire June 30, 2007 (Gov. Msg. No. 217);

D'ARCY KERRIGAN, term to expire June 30, 2007 (Gov. Msg. No. 218);

VICTOR T. KIMURA, term to expire June 30, 2007 (Gov. Msg. No. 219);

CHESTER SAITO, term to expire June 30, 2007 (Gov. Msg. No. 220); and

BRANT T. TANAKA, term to expire June 30, 2007 (Gov. Msg. No. 221),

seconded by Senator Kokubun.

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

Ayes, 24. Noes, none. Excused, 1 (Ige).

Stand. Com. Rep. No. 3101 (Gov. Msg. Nos. 301, 303, 304, 305 and 306):

Senator English moved that Stand. Com. Rep. No. 3101 be received and placed on file, seconded by Senator Kokubun and carried.

Senator English then moved that the Senate advise and consent to the nominations to the Board of Certification of Operating Personnel in Wastewater Treatment Plants of the following:

MANSFIELD DACAY, term to expire June 30, 2007 (Gov. Msg. No. 301);

MARSHALL LUM, term to expire June 30, 2007 (Gov. Msg. No. 303);

EASSIE M. MILLER, term to expire June 30, 2007 (Gov. Msg. No. 304); and

VICTOR D. MORELAND, terms to expire June 30, 2004, and June 30, 2008 (Gov. Msg. Nos. 305 and 306),

seconded by Senator Kokubun.

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

Ayes, 24. Noes, none. Excused, 1 (Ige).

Stand. Com. Rep. No. 3102 (Gov. Msg. No. 308):

Senator English moved that Stand. Com. Rep. No. 3102 be received and placed on file, seconded by Senator Kokubun and carried.

Senator English then moved that the Senate advise and consent to the nomination of DANIEL K. MASUNO to the Board of Certification of Public Water System Operators, term to expire June 30, 2007, seconded by Senator Kokubun.

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

Ayes, 24. Noes, none. Excused, 1 (Ige).

Stand. Com. Rep. No. 3103 (Gov. Msg. No. 378):

Senator English moved that Stand. Com. Rep. No. 3103 be received and placed on file, seconded by Senator Kokubun and carried.

Senator English then moved that the Senate advise and consent to the nomination of SHAD S. KANE to the Environmental Council, term to expire June 30, 2008, seconded by Senator Kokubun.

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

Ayes, 24. Noes, none. Excused, 1 (Ige).

## THIRD READING

Stand. Com. Rep. No. 3098 (H.B. No. 2198, H.D. 1):

On motion by Senator Sakamoto, seconded by Senator Hooser and carried, Stand. Com. Rep. No. 3098 was adopted and H.B. No. 2198, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO SCHOOL HEALTH," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Ige).

H.B. No. 2511, S.D. 1:

Senator Taniguchi moved that H.B. No. 2511, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Kokubun.

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

"Mr. President, I rise in opposition to this bill.

"The original idea, which was an administration objective, was to make the state law the same as the federal law. The federal law has certain requirements at a \$50,000 level. The bill came in at \$40,000. It was amended in the Senate to \$20,000. The point is, whatever the amount, it's going to impact and affect small businesses the most. It's going to be most difficult for them.

"And as I've said before, really, business is the tax collector in this state. We in business do all of the tax collecting, the cost, the personnel, and everything else and we just turn over the money to the state.

"This will be more of a burden and I urge a 'no' vote on it. Thank you."

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

The motion was put by the Chair and carried, H.B. No. 2511, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INCOME TAX WITHHOLDING," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 19. Noes, 5 (Hemmings, Hogue, Slom, Trimble, Whalen). Excused, 1 (Ige).

H.B. No. 2397, H.D. 1, S.D. 1:

On motion by Senator Taniguchi, seconded by Senator Kokubun and carried, H.B. No. 2397, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT MAKING AN EMERGENCY APPROPRIATION FOR THE HAWAII STATE DISASTER REVOLVING LOAN FUND," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Ige).

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

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

"I brought up an issue in the Ways and Means Committee this morning that at first looked rather innocuous. There was a problem – a constituent called about a vote that was taken on Friday, one of the many bills that we voted on in Ways and Means. And in getting the bill status off the computer, I noticed that the bill said that everyone was present at the Ways and Means Committee, all 15 votes – 12 Democrats voted aye; 3 Republicans voted nay. The problem with that, Mr. President, is, as I pointed out to the Ways and Means Committee this morning, that in fact was not the case.

"Those of you that know what I do, from the time that I've been in here, I take copious notes when I'm at the committee hearing, including when people are there so that you look at the different vote totals just as the Senate Clerk has to do here – people walk in; they walk out; they're not here; they are here – and in Ways and Means and other Committees too. And sometimes it's a daunting problem.

"Calling that to the attention, however, I did volunteer to share my notes with the Chair at the time, and he later said that he had checked and they found that there was an error that was made and that was it. I was curious, though, because we had some instances last year where incorrect votes had shown up on the computer on the public website, and people look to that website for accuracy. I've had people call me and say how come you voted no on something or how come you voted yes when in fact it was the wrong vote. Again, usually it was a mistake and the error was corrected.

"I'm concerned, however, because I had one of our researchers go through all of the bills on Friday and what I have in my possession is that of the 36 votes that were taken, 35 of the votes were incorrect. I think this is significant because this is what's on the website. Again, this is what the public downloads. This is the information they have.

"There is a consistency though it seems, and I was joking about it this morning. If a Republican gets up and leaves the room, all of a sudden there's a great deal of activity to have a lot of votes. When members of the Majority Party are not even in the room, they are counted as having voted.

"Now, I raise this point of personal privilege not to criticize or to point fingers at anyone, because I know, for example, in Ways and Means the Vice Chairman who usually does the recordation is very accurate in terms of looking around the room. The first vote is always a direct roll call vote for everyone. After that, there's plenty of opportunity for people to have reservations or noes and he, like I, look around the room and I actually do a physical count. I put it down on my sheet. But 35 errors out of 36 bills is not good.

"I guess my real question is, How accurate is all this information and has it happened in other Committees and other times? And I'm suggesting, because this website is so important and because this is the only way that the public has of looking at what we've actually done, that we should take a look at this. I don't know whether we need an investigation or what we need, but we need to make sure that these figures and this information once published is absolutely accurate.

"I remember last year there were a couple of questions that arose during crossover time and the issue was, well that's how the vote was taken and all of that. When my office pointed out that we had videotapes of the Session and we reviewed the videotapes, changes were subsequently made. We have some additional video tapes and if anyone would like to view them or review them, as well as the sheets that I have in terms of who was in the room at the time the voting was taken, I think that's an important point, Mr. President, because as we saw in this

latest survey that rated the Governor and the Legislature, that there is continuing criticism of the Legislature.

“I think that we should do everything in our power to make sure that the things that we do in here and the things that we put out for the public for public consumption are as accurate as possible. So, I’ll be very happy to work with anyone and share information I have, but I’m very concerned that the magnitude of this problem seems to be a lot larger than just an occasional mistake.

“Thank you, Mr. President.”

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

The Senate reconvened at 12:16 o’clock p.m.

Senator Kokubun rose to speak on a point of personal privilege and said:

“Mr. President, I rise on a point of personal privilege just to clarify the situation that the good Senator from Hawaii Kai raised.

“I think that is very good constructive criticism. I take it in that manner, and I think that this is something that we’re going to have to work on with staff just to be sure that accuracy is the most important part of our process in Ways and Means. I will certainly work toward that end.

“I appreciate the input, though. Thank you.”

#### **APPOINTMENT OF CONFEREES**

S.B. No. 3238, S.D. 2 (H.D. 2):

In accordance with the disagreement of the Senate to the amendments proposed by the House to S.B. No. 3238, S.D. 2, and the request for a conference on the subject matter thereof, the President appointed Senators Sakamoto, Taniguchi, co-chairs; Chun Oakland, Hooser, Kokubun, Tsutsui, Hogue as managers on the part of the Senate at such conference.

#### **ADJOURNMENT**

At 12:17 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, April 6, 2004.

Respectfully submitted,

Clerk of the Senate

Approved:

President of the Senate