

## FIFTY-THIRD DAY

Friday, April 23, 2004

The Senate of the Twenty-Second Legislature of the State of Hawaii, Regular Session of 2004, convened at 11:46 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by Deacon George Kagehiro, Our Lady of Sorrows Church, Wahiawa, after which the Roll was called showing all Senators present with the exception of Senator Sakamoto who was excused.

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

## MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 481 to 489) were read by the Clerk and were disposed of as follows:

Gov. Msg. No. 481, informing the Senate that on April 22, 2004, she signed into law House Bill No. 2418 as Act 11, entitled: "RELATING TO ABANDONED APPLICATIONS FOR PROFESSIONAL AND VOCATIONAL LICENSES," was placed on file.

Gov. Msg. No. 482, informing the Senate that on April 22, 2004, she signed into law House Bill No. 2417 as Act 12, entitled: "RELATING TO REAL ESTATE LICENSING," was placed on file.

Gov. Msg. No. 483, informing the Senate that on April 22, 2004, she signed into law House Bill No. 2423 as Act 13, entitled: "RELATING TO COSMETOLOGY LICENSE RESTORATION," was placed on file.

Gov. Msg. No. 484, informing the Senate that on April 22, 2004, she signed into law House Bill No. 1737 as Act 14, entitled: "RELATING TO MORTGAGE BROKERS AND SOLICITORS," was placed on file.

Gov. Msg. No. 485, informing the Senate that on April 22, 2004, she signed into law House Bill No. 2139 as Act 15, entitled: "RELATING TO INSURANCE," was placed on file.

Gov. Msg. No. 486, advising the Senate of the withdrawal of the nominations of:

MARGARET TREVOR to the Policy Advisory Board for Elder Affairs, under Gov. Msg. No. 204, dated February 17, 2004;

BARBARA J. PENNIAL to the Health Planning Council, Windward Oahu Subarea, under Gov. Msg. No. 242, dated February 17, 2004;

ANDREW W. CHAR to the Health Planning Council, Honolulu Subarea, under Gov. Msg. No. 387, dated March 15, 2004; and

EDDIE KAMAE to the Hawai'i Television and Film Development Board, under Gov. Msg. No. 471, dated April 16, 2004.

In compliance with Gov. Msg. No. 486, the nominations listed under Gov. Msg. Nos. 204, 242, 387 and 471 were returned.

Gov. Msg. No. 487, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Tourism Authority, the nomination of GAIL Y. HARAGUCHI, term to expire June 30, 2008, was referred to the Committee on Tourism.

Gov. Msg. No. 488, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Tourism Authority, the nomination of KAWAIKAPUOKALANI K. HEWETT, term to expire June 30, 2006, was referred to the Committee on Tourism.

Gov. Msg. No. 489, submitting for consideration and confirmation to the University of Hawaii Board of Regents, the nomination of ANDRES ALBANO JR., term to expire June 30, 2008, was referred to the Committee on Education.

## HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 634 and 635) were read by the Clerk and were placed on file:

Hse. Com. No. 634, informing the Senate that the Speaker on April 22, 2004, made the following changes to the conferees on the following bills:

S.B. No. 2968, S.D. 1 (H.D. 1):

Discharged Representative Kahikina as lead co-chair.  
Appointed Representative Kanoho as lead co-chair.

S.B. No. 3156, S.D. 1 (H.D. 1):

Discharged Representative Meyer as a manager.  
Appointed Representative Bukoski as a manager.

Hse. Com. No. 635, informing the Senate that the amendments proposed by the Senate to H.B. No. 1743, H.D. 2, were agreed to by the House, and H.B. No. 1743, H.D. 2, S.D. 2, passed Final Reading in the House of Representatives on April 22, 2002.

## CONFERENCE COMMITTEE REPORTS

Senator Inouye, for the Committee on Conference on the disagreeing vote of the House to the amendments proposed by the Senate to H.B. No. 1793, H.D. 2, presented a report (Conf. Com. Rep. No. 13-04) recommending that H.B. No. 1793, 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 Hawaii, action on Conf. Com. Rep. No. 13-04 and H.B. No. 1793, H.D. 2, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO LAND EXCHANGE," 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. 3135, S.D. 1, presented a report (Conf. Com. Rep. No. 14-04) recommending that S.B. No. 3135, S.D. 1, 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 Hawaii, action on Conf. Com. Rep. No. 14-04 and S.B. No. 3135, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS TO ASSIST ST.

FRANCIS HEALTHCARE SYSTEM OF HAWAII AND ITS AFFILIATES," was deferred for a period of 48 hours.

#### STANDING COMMITTEE REPORTS

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 3460) recommending that the Senate advise and consent to the nomination of MILTON K. PA to the Hawaiian Homes Commission, in accordance with Gov. Msg. No. 379.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3460 and Gov. Msg. No. 379 was deferred until Monday, April 26, 2004.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 3461) recommending that the Senate advise and consent to the nomination of MAUREEN K. MURAOKA to the Board of Registration of the Island of Oahu, in accordance with Gov. Msg. No. 408.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3461 and Gov. Msg. No. 408 was deferred until Monday, April 26, 2004.

#### ORDER OF THE DAY

##### FINAL READING

S.B. No. 2009, S.D. 1, H.D. 1:

On motion by Senator Menor, seconded by Senator Baker and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 2009, S.D. 1, and S.B. No. 2009, S.D. 1, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CONDOMINIUM PROPERTY REGIMES," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

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

##### THIRD READING

Stand. Com. Rep. No. 3451 (H.B. No. 1919, H.D. 1):

Senator Taniguchi moved that Stand. Com. Rep. No. 3451 be adopted and H.B. No. 1919, H.D. 1, having been read throughout, pass Third Reading, seconded by Senator Kokubun.

Senator Slom rose in opposition to the measure and said:

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

"This bill has a checkered past. It's been making its way through the Legislature each of the last several years and it has the distinction of being honored by Governor Cayetano who vetoed it and by Governor Lingle who has vetoed it.

"This bill is a bad bill. It takes away the choice of heads of departments and also tries to treat every employee the same even though they are similarly situated. We are talking about public employees that are exempt from civil service. They know they're exempt when they enter the service and they are treated on their own individual merits. They are not subject to one-size-fits-all collective bargaining or arbitration, and that means that they are allowed to and are rewarded by different pay scales and different wages.

"What this would do is make them all the same. There is no demonstrated problem here. As I said, it's crossed two

distinctive administrations, and I think it's a bad bill, a bad precedent, and it takes away choice of both the administrators, departments, and the public employees.

"I urge a 'no' vote. Thank you."

The motion was put by the Chair and carried, Stand. Com. Rep. No. 3451 was adopted and H.B. No. 1919, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC EMPLOYEES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 20. Noes, 4 (Hemmings, Hogue, Slom, Trimble). Excused, 1 (Sakamoto).

Stand. Com. Rep. No. 3452 (H.B. No. 2446):

On motion by Senator Taniguchi, seconded by Senator Kokubun and carried, Stand. Com. Rep. No. 3452 was adopted and H.B. No. 2446, entitled: "A BILL FOR AN ACT MAKING AN EMERGENCY APPROPRIATION FOR COLLECTIVE BARGAINING INCREASES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 3453 (H.B. No. 2466):

On motion by Senator Taniguchi, seconded by Senator Kokubun and carried, Stand. Com. Rep. No. 3453 was adopted and H.B. No. 2466, entitled: "A BILL FOR AN ACT MAKING AN EMERGENCY APPROPRIATION FOR THE STATE WORKERS' COMPENSATION PROGRAM," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 3454 (H.B. No. 2293):

On motion by Senator Taniguchi, seconded by Senator Kokubun and carried, Stand. Com. Rep. No. 3454 was adopted and H.B. No. 2293, entitled: "A BILL FOR AN ACT RELATING TO INTERSTATE ADULT OFFENDER SUPERVISION," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 3455 (H.B. No. 2294):

On motion by Senator Taniguchi, seconded by Senator Kokubun and carried, Stand. Com. Rep. No. 3455 was adopted and H.B. No. 2294, entitled: "A BILL FOR AN ACT RELATING TO FEES FOR ADMINISTRATIVE COSTS IN TRAFFIC CASES," 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 (Sakamoto).

Stand. Com. Rep. No. 3456 (H.B. No. 2295, H.D. 1):

Senator Taniguchi moved that Stand. Com. Rep. No. 3456 be adopted and H.B. No. 2295, H.D. 1, having been read throughout, pass Third Reading, seconded by Senator Kokubun.

Senator Trimble rose to speak in opposition and said:

"Mr. President, I rise in opposition to H.B. No. 2295.

"The portion of the bill that bothers me is that we're authorizing the payment of 50 percent of the amount collected to licensed attorneys who serve as bill collectors. I think it's excessive.

"Thank you, Mr. President."

The motion was put by the Chair and carried, Stand. Com. Rep. No. 3456 was adopted and H.B. No. 2295, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO COLLECTIONS ON DELINQUENT COURT-ORDERED PAYMENTS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, 2 (Slom, Trimble). Excused, 1 (Sakamoto).

Stand. Com. Rep. No. 3457 (H.B. No. 2296, H.D. 1):

Senator Taniguchi moved that Stand. Com. Rep. No. 3457 be adopted and H.B. No. 2296, H.D. 1, having been read throughout, pass Third Reading, seconded by Senator Kokubun.

Senator Trimble rose in opposition and stated:

"Mr. President, I rise in opposition to H.B. No. 2296, H.D. 1.

"On the surface this bill is a simple matter, hardly worthy of consideration by such an august body as this. But I ask that you take a second look, a fresh look at the underlying arguments to see if the average voter would see it in the same way. If not, then you should reconsider, lest the average voter find that we are all bereft of reason.

"The underlying argument is also of interest because it highlights how people that have too much power, people that have sufficient power to ignore free market forces, set prices, and present arguments to defend their actions.

"The argument is, at its core, that it would cost government, in the case of the judiciary, more if credit or debit cards are used for the payments of court imposed fees and fines.

"Nothing could be further from the truth. Use of debit and credit cards actually save money. It saves so much money that the judiciary should consider giving a discount to those that use debit and credit cards.

"Let me enumerate how this actually reduced total costs when it was done decades ago in competitive markets where competing firms strove to reduce costs.

"When you swipe a debit card or credit card through the machine, many wonderful things happen:

A receipt is automatically generated.

A computer entry is automatically made to your cash receipts journal.

Simultaneously, another entry updates your accounts receivable.

"When you give consumers choices as to the method of payment, you are more apt to be paid. Being paid means that you will have to refer fewer accounts to licensed attorneys for collection of outstanding balances as provided for in H.B. No. 2295, which we just considered.

"You can receive payment by phone – 24 hours a day, every day of the week.

"Please consider the time value of money. When you swipe the card through the machine, money can be deposited into your account the same day.

"And finally, people that handle credit and debit cards tend to be paid less because there are not the same risks involved with the mishandling of money. Fewer resources are needed to verify that there was no hanky panky with money. There was no loss of confidence in the judiciary when those mishandlings of money come to the light of day.

"If you take a look at the total cost picture and you assume that the judiciary can control their costs as ordinary businesses must do everyday, then you must begin to realize how important these savings could be.

"Let us look at the same transaction, only this time if it involves, instead, the use of money – coin and currency. Currency and coins have to be counted –not once, not twice, but on an average of four times. Then a receipt needs to be issued. The information manually entered into a computer. All of this done by hand takes time and costs money.

"People that handle currency, because of the responsibility involved, are paid more, if only to avoid the embarrassment and loss of respect when the inevitable malfeasance occurs.

"Money can only be received when the right person is behind the right window and only when government is open for business.

"There is a time lag between when the money is received and when it is credited to the proper account.

"Cash must be stored in a secure location and it must be securely transported to the bank for deposit. All this takes time and costs money.

"The first argument presented by the judiciary can only be true if they cannot control their costs.

"The second argument is draconian. It suggests that if one makes compliance less onerous, then we should charge more because you don't have to stand in such a long line. Few people enjoy going to court. We should not be making compliance more difficult than it absolutely must be.

"If the judiciary does not understand that their argument is fallacious and that acceptance of debit and credit cards will lower costs, not raise them, when you look at the entire cost structure, then they may continue to dispense justice, but they will not be considered just.

"If we as Legislators cannot see through these untruths, then the public will question our ability to make law. Please consider your vote on this very simple issue and what it will say in the context of the bigger picture.

"Thank you, Mr. President."

The motion was put by the Chair and carried, Stand. Com. Rep. No. 3457 was adopted and H.B. No. 2296, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE USE OF CREDIT AND DEBIT CARDS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 20. Noes, 4 (Hemmings, Hogue, Slom, Trimble). Excused, 1 (Sakamoto).

Stand. Com. Rep. No. 3458 (H.B. No. 2354):

On motion by Senator Taniguchi, seconded by Senator Kokubun and carried, Stand. Com. Rep. No. 3458 was adopted and H.B. No. 2354, entitled: "A BILL FOR AN ACT MAKING AN EMERGENCY APPROPRIATION TO RISK MANAGEMENT," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 3459 (H.B. No. 2439):

On motion by Senator Taniguchi, seconded by Senator Kokubun and carried, Stand. Com. Rep. No. 3459 was adopted and H.B. No. 2439, entitled: "A BILL FOR AN ACT RELATING TO CIVIL DEFENSE SIRENS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

**FINAL ADOPTION**

S.C.R. No. 30, H.D. 1:

Senator Fukunaga moved that S.C.R. No. 30, H.D. 1, be adopted, seconded by Senator Tsutsui.

Senator Slom rose in opposition to the measure and said:

"Mr. President, I rise in strong opposition to this resolution.

"First of all, I always have a problem when we're telling other countries what to do. We can't even take care of our own State. But that having been said, I wish now that I would have had Senator Trimble help me research this better. He could probably have presented a 45-minute argument against it. (Laughter.)

"While I certainly endorse and support the spirit of Hawaii goodwill, I don't think it extends to the communist People's Republic of North Korea, and that's what it is. I note that this resolution had been held a couple days ago because we systematically changed the name to the Democratic People's Republic of Korea . . . HA! What a joke! There's no democracy in the North Korean communist capital. We found that out yesterday with the accident, so-called, with the two trains and all of that.

"In addition, the resolution says that the communist People's Republic has quote, 'responded favorably and is awaiting further endorsement,' unquote. Who did they respond to? I never heard anything from the communist People's Republic of North Korea. Their own people don't have any free speech. They cut the telephone lines when anything happens there.

"So, we can extend goodwill, but to extend it to a communist nation – the one that has the worst record of human rights in the world, and that's saying an awful lot – I think does this Legislature and our responsibility, I think it does it harm.

"In addition to that, those who took time to read the resolution notes that the House wants to go further and make a cash appropriation of 15 percent of matching funds that somehow the State of Maine is making for the communist People's Republic of North Korea. But I say NO, Mr. President, let's take care of our own people here first.

"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. 30, and S.C.R. No. 30, H.D. 1, entitled: "SENATE CONCURRENT RESOLUTION ENDORSING AND SUPPORTING THE SPIRIT OF HAWAII GOODWILL AND FRIENDSHIP COASTAL KOREA VISIT AND URGING THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA TO SUPPORT JAE KWON LEE AND JONATHAN COWLES ON THEIR JOURNEY TO NORTH KOREA," was Finally Adopted on the following showing of Ayes and Noes:

Ayes, 23. Noes, 1 (Slom). Excused, 1 (Sakamoto).

**RE-REFERRAL OF HOUSE CONCURRENT RESOLUTION**

The Chair re-referred the following House concurrent resolution that was received:

House Concurrent Resolution	Referred to:
No. 73	Committee on Water, Land, and Agriculture

At 12:08 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:27 o'clock p.m.

Senator Ihara rose on a point of inquiry as follows:

"Mr. President, I have a point of inquiry.

"Mr. President, there are three bills that the Governor has not acted on – has not returned and has not signed the bills. These bills, today is the tenth day. I'm not counting the day that they were transmitted. And my question is, What is the time deadline that the Governor has to return these bills if she wanted to veto them?"

President Bunda stated:

"Senator Ihara, could you identify those bills for us."

Senator Ihara replied:

"They are H.B. No. 2689, H.B. No. 2378, and H.B. No. 2685."

President Bunda then said:

"I believe, Senator Ihara, it's our understanding that today is the tenth day, and from our reading, the deadline is midnight. Now, we have some different opinions as to the deadline, but we believe right now that the deadline is midnight. So, she has until midnight to give us those bills."

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

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

"Mr. President, this is in line with the good Senator from Kapahulu's question. I disagree with that opinion, and as everyone is probably aware, I still have the Supreme Court to rule on the case of *Hanabusa v Cayetano*, which is exactly on how you count 10 days.

“It is my understanding that in the recent case of, I think, if I’m not mistaken, it may be *Laborers Intl Union Etal v Linda Lingle Etal*. It was an issue of the veto of the substitute teacher bill that the circuit court rendered a decision that 10 days were to be counted as 12:00 on that tenth day. I believe that the 10 days are 24 hours, or full days, and that’s how it should be counted. And it’s a practical issue, Mr. President, because if that’s the case, we’re required to stay open until 12:00 midnight to receive whatever transmittal that the Governor can give.

“It also is an issue of whether or not the Governor is getting more than 10 days, which is given in the constitution. Say a bill was transmitted at 1:00 in the morning, hypothetically, and she transmits it at midnight on the, quote, ‘tenth day.’ What you end up giving is, in essence, 10 days and 23 hours.

“So, Mr. President, just for the record, I would like to say that I disagree with that interpretation of how we count 10 days.

“Thank you.”

The President then stated:

“What we should also be doing is to be inquiring with the House as to the clock or the time that they clocked it to transmit to the Governor’s office. So, what we will do, both the Senate Clerk and I, is we’ll meet with the House to figure out exactly what time and perhaps we can come up with a different opinion than we have today. Nevertheless, it is midnight.”

**APPOINTMENT OF CONFEREES**

S.B. No. 1318, S.D. 1 (H.D. 2):

The President appointed Senator Taniguchi as a co-chair on the part of the Senate at the conference to be held for the consideration of amendments proposed by the House to S.B. No. 1318, S.D. 1.

S.B. No. 2264, S.D. 1 (H.D. 1):

In accordance with the disagreement of the Senate to the amendments proposed by the House to S.B. No. 2264, S.D. 1, and the request for a conference on the subject matter thereof, the President appointed Senators Sakamoto, Ige, Taniguchi, co-chairs; Hooser, Kokubun, Hogue as managers on the part of the Senate at such conference.

H.B. No. 1824 (S.D. 1):

In accordance with the disagreement of the House to the amendments proposed by the Senate to H.B. No. 1824, and the request for a conference on the subject matter thereof, the President appointed Senators Menor, chair; Espero, Sakamoto, Trimble as managers on the part of the Senate at such conference.

H.B. No. 2140, H.D. 1 (S.D. 1):

In accordance with the disagreement of the House to the amendments proposed by the Senate to H.B. No. 2140, H.D. 1, and the request for a conference on the subject matter thereof, the President appointed Senators Menor, chair; Baker, Hogue as managers on the part of the Senate at such conference.

H.B. No. 2147, H.D. 1 (S.D. 1):

In accordance with the disagreement of the House to the amendments proposed by the Senate to H.B. No. 2147, H.D. 1, and the request for a conference on the subject matter thereof,

the President appointed Senators Menor, chair; Baker, Whalen as managers on the part of the Senate at such conference.

H.B. No. 2421 (S.D. 1):

In accordance with the disagreement of the House to the amendments proposed by the Senate to H.B. No. 2421, and the request for a conference on the subject matter thereof, the President appointed Senators Menor, chair; Baker, Whalen as managers on the part of the Senate at such conference.

Senator Baker then rose on a point of inquiry as follows:

“Mr. President, point of inquiry.

“Then, are we intending to leave the Journal open until midnight tonight so we can receive those messages or transmittals from the Governor? Is there some mechanism that we’re going to use so that we’re sure that we get them?”

At 12:31 o’clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:35 o’clock p.m.

The President then stated:

“Senator Baker, in answer to your question – it was a good question to ask – I don’t think the Legislature, especially the Senate, has ever had an opportunity during Session to override a veto, and traditionally we have not actually kept the Journal open for this kind of message. But nevertheless, I don’t think it would be out of the constitution, so I don’t think it’s necessary for us to keep the Journal open.”

**ADJOURNMENT**

At 12:36 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., Monday, April 26, 2004.

Respectfully submitted,

Clerk of the Senate

Approved:

President of the Senate