

FIFTY-FIRST DAY

Wednesday, April 16, 2008

The Senate of the Twenty-Fourth Legislature of the State of Hawai'i, Regular Session of 2008, convened at 11:41 a.m. with the President in the Chair.

The Divine Blessing was invoked by the Honorable Paul Whalen, Hawai'i State Senate, after which the Roll was called showing all Senators present with the exception of Senators English, Espero, Ige, Ihara, Kim and Menor who were excused.

The President announced that she had read and approved the Journal of the Fiftieth Day.

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 633 to 637) were read by the Clerk and were placed on file:

Gov. Msg. No. 633, dated April 11, 2008, transmitting the Annual Report Summary of the Small Business Utilization Council, pursuant to Chapter 3-124, Hawaii Administrative Rules.

Gov. Msg. No. 634, informing the Senate that on April 15, 2008, she signed into law Senate Bill No. 1809 as Act 13, entitled: "RELATING TO CONDOMINIUMS."

Gov. Msg. No. 635, informing the Senate that on April 15, 2008, she signed into law House Bill No. 3325 as Act 14, entitled: "RELATING TO THE UNIFORM LAND SALES PRACTICES ACT."

Gov. Msg. No. 636, informing the Senate that on April 15, 2008, she signed into law House Bill No. 3343 as Act 15, entitled: "RELATING TO FILIPINO-AMERICAN HISTORY MONTH."

Gov. Msg. No. 637, informing the Senate that on April 15, 2008, she signed into law Senate Bill No. 2399 as Act 16, entitled: "RELATING TO STATUTORY REVISION: AMENDING OR REPEALING VARIOUS PROVISIONS OF THE HAWAII REVISED STATUTES AND THE SESSION LAWS OF HAWAII FOR THE PURPOSE OF CORRECTING ERRORS AND REFERENCES, CLARIFYING LANGUAGE, AND DELETING OBSOLETE OR UNNECESSARY PROVISIONS."

HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 738 to 742) were read by the Clerk and were placed on file:

Hse. Com. No. 738, informing the Senate that the Speaker on April 15, 2008, made the following change to the conferees on the following bill:

S.B. No. 2499 (H.D. 1):

Appointed Representative Takumi as co-chair.

Hse. Com. No. 739, informing the Senate that the House has agreed to the amendments proposed by the Senate to the following House bills and said bills passed Final Reading in the House on April 15, 2008:

H.B. No. 7, H.D. 1, S.D. 1;
H.B. No. 2254, H.D. 2, S.D. 1;
H.B. No. 2559, H.D. 2, S.D. 1; and
H.B. No. 2699, H.D. 1, S.D. 1.

Hse. Com. No. 740, informing the Senate that the Speaker on April 15, 2008, appointed Representatives Ito, Chang, Yamane, M. Oshiro, co-chairs, Finnegan as managers on the part of the House for the consideration of amendments proposed by the Senate to H.B. No. 2429, H.D. 2 (S.D. 2).

Hse. Com. No. 741, informing the Senate that the Speaker on April 15, 2008, appointed conferees on the part of the House for the consideration of amendments proposed by the Senate to the following House bills:

S.B. No. 2842, S.D. 2 (H.D. 2):

Representatives Morita, Carroll, co-chairs; Sagum, Thielen.

S.B. No. 2843, S.D. 2 (H.D. 3):

Representatives Morita, Yamashita, M. Oshiro, co-chairs; Carroll, Wakai, Ward.

S.B. No. 2849, S.D. 1 (H.D. 1):

Representatives Morita, Ito, Tsuji, co-chairs; Thielen.

S.B. No. 3174, S.D. 2 (H.D. 2):

Representatives Shimabukuro, Ito, M. Oshiro, co-chairs; Karamatsu, Rhoads, Ward.

Hse. Com. No. 742, informing the Senate that the amendments proposed by the Senate to H.C.R. No. 111, H.D. 1, were agreed to by the House and H.C.R. No. 111, H.D. 1, S.D. 1, was finally adopted in the House of Representatives on April 15, 2008.

STANDING COMMITTEE REPORTS

Senator Kokubun, for the Committee on Commerce, Consumer Protection and Affordable Housing, presented a report (Stand. Com. Rep. No. 3577) recommending that the Senate advise and consent to the nomination of ROLAND CABALO CASAMINA to the State Boxing Commission of Hawai'i, in accordance with Gov. Msg. No. 455.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3577 and Gov. Msg. No. 455 was deferred until Thursday, April 17, 2008.

Senator Kokubun, for the Committee on Commerce, Consumer Protection and Affordable Housing, presented a report (Stand. Com. Rep. No. 3578) recommending that the Senate advise and consent to the nomination of JOHN K. KAYA to the Board of Veterinary Examiners, in accordance with Gov. Msg. No. 458.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3578 and Gov. Msg. No. 458 was deferred until Thursday, April 17, 2008.

Senator Kokubun, for the Committee on Commerce, Consumer Protection and Affordable Housing, presented a report (Stand. Com. Rep. No. 3579) recommending that the Senate advise and consent to the nominations to the State Board of Public Accountancy of the following:

KEITH ALLEN REGAN, in accordance with Gov. Msg. No. 506; and

EMERITO C. SANIATAN, in accordance with Gov. Msg. No. 507.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3579 and Gov. Msg. Nos. 506, and 507 was deferred until Thursday, April 17, 2008.

Senator Kokubun, for the Committee on Commerce, Consumer Protection and Affordable Housing, presented a report (Stand. Com. Rep. No. 3580) recommending that the Senate advise and consent to the nomination of MATTHEW J. BISHOP to the State Board of Nursing, in accordance with Gov. Msg. No. 533.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3580 and Gov. Msg. No. 533 was deferred until Thursday, April 17, 2008.

Senator Fukunaga, for the Committee on Economic Development and Taxation, presented a report (Stand. Com. Rep. No. 3581) recommending that the Senate advise and consent to the nomination of PATRICK L. ING CPA to the Board of Taxation Review, 2nd Taxation District (Maui), in accordance with Gov. Msg. No. 338.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3581 and Gov. Msg. No. 338 was deferred until Thursday, April 17, 2008.

Senator Fukunaga, for the Committee on Economic Development and Taxation, presented a report (Stand. Com. Rep. No. 3582) recommending that the Senate advise and consent to the nomination of IOANA D. AGASA to the Board of Taxation Review, 3rd Taxation District (Hawai'i), in accordance with Gov. Msg. No. 339.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3582 and Gov. Msg. No. 339 was deferred until Thursday, April 17, 2008.

Senator Fukunaga, for the Committee on Economic Development and Taxation, presented a report (Stand. Com. Rep. No. 3583) recommending that the Senate advise and consent to the nomination of TRACY T. CHIANG to the Board of Taxation Review, 1st Taxation District (Oahu), in accordance with Gov. Msg. No. 469.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3583 and Gov. Msg. No. 469 was deferred until Thursday, April 17, 2008.

Senator Sakamoto, for the Committee on Education, presented a report (Stand. Com. Rep. No. 3584) recommending that the Senate advise and consent to the nomination of GARY K. KAJIWARA to the Hawai'i Medical Education Council, in accordance with Gov. Msg. No. 530.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3584 and Gov. Msg. No. 530 was deferred until Thursday, April 17, 2008.

Senators Sakamoto and Ige, for the Committee on Education and the Committee on Health, presented a joint report (Stand. Com. Rep. No. 3585) recommending that H.C.R. No. 294 be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 3585 and H.C.R. No. 294, entitled: "HOUSE CONCURRENT RESOLUTION URGING THE UNIVERSITY OF HAWAII AND SUPPORTING COMMUNITY MEMBERS TO MOVE EXPEDITIOUSLY TO IMPLEMENT PLANS FOR THE CONSTRUCTION OF THE CANCER RESEARCH CENTER OF HAWAII AT KAKAAKO," was deferred until Thursday, April 17, 2008.

Senators Sakamoto and Ige, for the Committee on Education and the Committee on Health, presented a joint report (Stand. Com. Rep. No. 3586) recommending that H.C.R. No. 126, H.D. 1, as amended in S.D. 1, be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 3586 and H.C.R. No. 126, H.D. 1, S.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE

DEPARTMENT OF EDUCATION AND THE DEPARTMENT OF HEALTH TO JOINTLY STUDY THE FEASIBILITY OF INTEGRATING REHABILITATION PROGRAMS FOR STUDENTS WITH ANGER PROBLEMS," was deferred until Thursday, April 17, 2008.

Senators Sakamoto and Ige, for the Committee on Education and the Committee on Health, presented a joint report (Stand. Com. Rep. No. 3587) recommending that H.C.R. No. 226, as amended in S.D. 1, be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 3587 and H.C.R. No. 226, S.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE UNIVERSITY OF HAWAII'S JOHN A. BURNS SCHOOL OF MEDICINE TO CONDUCT A SURVEY OF CURRENT AND PROSPECTIVE STUDENTS TO EXAMINE AND DEVELOP A PLAN TO ADDRESS RURAL HEALTH PROFESSIONAL SHORTAGE AREAS IN THE STATE," was deferred until Thursday, April 17, 2008.

Senator Inouye, for the Committee on Intergovernmental and Military Affairs, presented a report (Stand. Com. Rep. No. 3588) recommending that H.C.R. No. 114, as amended in S.D. 1, be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 3588 and H.C.R. No. 114, S.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE CIVIL DEFENSE DIVISION OF THE DEPARTMENT OF DEFENSE TO CONDUCT A STUDY TO DETERMINE THE FEASIBILITY OF ALLOWING THE FACILITIES AT LUALUALEI, WHICH ARE OWNED BY THE UNITED STATES NAVY, TO BE USED AS AN EMERGENCY SHELTER FOR CIVILIANS," was deferred until Thursday, April 17, 2008.

ORDER OF THE DAY

AGREE/DISAGREE

MATTER DEFERRED FROM TUESDAY, APRIL 15, 2008

S.C.R. No. 53, S.D. 1 (H.D. 1):

On motion by Senator Ige, seconded by Senator Whalen and carried, the Senate disagreed to the amendments proposed by the House to S.C.R. No. 53, S.D. 1, and requested a conference on the subject matter thereof.

ADVISE AND CONSENT

Stand. Com. Rep. No. 3568 (Gov. Msg. Nos. 329, 463, 464, 465 and 466):

Senator Fukunaga moved that Stand. Com. Rep. No. 3568 be received and placed on file, seconded by Senator Baker and carried.

Senator Fukunaga then moved that the Senate advise and consent to the nominations to the King Kamehameha Celebration Commission of the following:

TREVOR H. KAINOA DAINES, term to expire June 30, 2010 (Gov. Msg. No. 329);

CECILIA K. AKIM, term to expire June 30, 2012 (Gov. Msg. No. 463);

PONI ELLIOT KAMAUU, term to expire June 30, 2012 (Gov. Msg. No. 464);

JACQUELINE LEILANI ROSSETTI, term to expire June 30, 2009 (Gov. Msg. No. 465); and

MAXEEN LAUAAHI SHEA, term to expire June 30, 2012 (Gov. Msg. No. 466),

seconded by Senator Baker.

Senator Taniguchi rose in support and said:

“Madam President, I have written comments in support of Gov. Msg. No. 329 that I’d like inserted into the journal.”

The Chair having so ordered, Senator Taniguchi’s remarks read as follows:

“I rise in support to confirm Trevor H. Kainoa Daines to the King Kamehameha Celebration Commission. I have personally known Mr. Daines for several years. His mother, Poni Daines, and cousin, Lani Kaaa worked in my office. The many times he visited my office, Kainoa has shown great enthusiasm and knowledge for the Hawaiian culture. His demeanor has always been professional and I think he will work well with other members of the commission and make significant contributions to find meaningful ways to celebrate and honor King Kamehameha.”

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

Ayes, 20. Noes, none. Excused, 5 (Bunda, English, Espero, Kim, Menor).

Stand. Com. Rep. No. 3569 (Gov. Msg. No. 337):

Senator Fukunaga moved that Stand. Com. Rep. No. 3569 be received and placed on file, seconded by Senator Baker and carried.

Senator Fukunaga then moved that the Senate advise and consent to the nomination of MICHAEL JOSEPH CHOI to the Board of Taxation Review, 1st Taxation District (Oahu), term to expire June 30, 2012, seconded by Senator Baker.

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

Ayes, 20. Noes, none. Excused, 5 (Bunda, English, Espero, Kim, Menor).

Stand. Com. Rep. No. 3570 (Gov. Msg. Nos. 537 and 582):

Senator Chun Oakland moved that Stand. Com. Rep. No. 3570 be received and placed on file, seconded by Senator Ihara and carried.

Senator Chun Oakland then moved that the Senate advise and consent to the nominations to the State Rehabilitation Council of the following:

GWEN L. KELIIHOOMALU, term to expire June 30, 2010 (Gov. Msg. No. 537); and

CHRISTIAN E. YATES, term to expire June 30, 2011 (Gov. Msg. No. 582),

seconded by Senator Ihara.

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

Ayes, 20. Noes, none. Excused, 5 (Bunda, English, Espero, Kim, Menor).

Stand. Com. Rep. No. 3574 (Gov. Msg. Nos. 365, 366, 367 and 368):

Senator Ige moved that Stand. Com. Rep. No. 3574 be received and placed on file, seconded by Senator Fukunaga and carried.

Senator Ige then moved that the Senate advise and consent to the nominations to the Emergency Medical Services Advisory Committee of the following:

DIANE M. IRONS, term to expire June 30, 2012 (Gov. Msg. No. 365);

IAN T.T. SANTEE, term to expire June 30, 2012 (Gov. Msg. No. 366);

DANIEL E. SCHAAL, term to expire June 30, 2012 (Gov. Msg. No. 367); and

WILLIAM T. WATKINS JR., term to expire June 30, 2012 (Gov. Msg. No. 368),

seconded by Senator Fukunaga.

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

Ayes, 20. Noes, none. Excused, 5 (Bunda, English, Espero, Kim, Menor).

Stand. Com. Rep. No. 3575 (Gov. Msg. No. 381):

Senator Ige moved that Stand. Com. Rep. No. 3575 be received and placed on file, seconded by Senator Fukunaga and carried.

Senator Ige then moved that the Senate advise and consent to the nomination of CARLOS WARTER to the Medical Advisory Board, term to expire June 30, 2009, seconded by Senator Fukunaga.

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

Ayes, 20. Noes, none. Excused, 5 (Bunda, English, Espero, Kim, Menor).

Stand. Com. Rep. No. 3576 (Gov. Msg. Nos. 382, 383 and 384):

Senator Ige moved that Stand. Com. Rep. No. 3576 be received and placed on file, seconded by Senator Fukunaga and carried.

Senator Ige then moved that the Senate advise and consent to the nominations to the Mental Health and Substance Abuse, Kaaui Service Area Board of the following:

THOMAS E. DORSEY PHD, term to expire June 30, 2010 (Gov. Msg. No. 382);

MARDI L. MAIONE, term to expire June 30, 2012 (Gov. Msg. No. 383); and

CANDACE M. SANDAL, term to expire June 30, 2012 (Gov. Msg. No. 384),

seconded by Senator Fukunaga.

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

Ayes, 20. Noes, none. Excused, 5 (Bunda, English, Espero, Kim, Menor).

ADOPTION OF RESOLUTIONS

MATTERS DEFERRED FROM TUESDAY, APRIL 15, 2008

Stand. Com. Rep. No. 3571 (H.C.R. No. 194, S.D. 1):

On motion by Senator Ige, seconded by Senator Whalen and carried, the report of the Committee was adopted and H.C.R. No. 194, S.D. 1, entitled: “HOUSE CONCURRENT RESOLUTION REQUESTING THE U.S. NAVY TO CLEAR

THE COASTLINE OF LOWER WAIPAHAU THAT IS UNDER ITS JURISDICTION FROM INVASIVE PLANT-LIFE AND EXCESSIVE FOLIAGE FOR SAFETY AND AESTHETIC PURPOSES," was adopted.

Stand. Com. Rep. No. 3572 (H.C.R. No. 117, S.D. 1):

On motion by Senator Ige, seconded by Senator Whalen and carried, the report of the Committee was adopted and H.C.R. No. 117, S.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES, LAND DIVISION, TO ASSEMBLE VARIOUS STATE, COUNTY, AND COMMUNITY AGENCIES TO MEET AND DEVELOP A HANAPEPE SALT POND RESOURCE MANAGEMENT PLAN," was adopted.

FINAL READING

S.B. No. 3068, S.D. 1, H.D. 1:

On motion by Senator Ige, seconded by Senator Baker and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 3068, S.D. 1, and S.B. No. 3068, S.D. 1, H.D. 1, entitled: "A BILL FOR AN ACT MAKING AN EMERGENCY APPROPRIATION TO THE DEPARTMENT OF HEALTH FOR THE ADULT MENTAL HEALTH DIVISION," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, none. Excused, 4 (English, Espero, Kim, Menor).

S.B. No. 3074, S.D. 1, H.D. 1

On motion by Senator Ige, seconded by Senator Baker and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 3074, S.D. 1, and S.B. No. 3074, S.D. 1, H.D. 1, entitled: "A BILL FOR AN ACT MAKING AN EMERGENCY APPROPRIATION TO THE DEPARTMENT OF HEALTH FOR THE EMERGENCY MEDICAL SERVICES AND INJURY PREVENTION SYSTEM BRANCH," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, none. Excused, 4 (English, Espero, Kim, Menor).

MISCELLANEOUS COMMUNICATION

Misc.Com. No. 2, from the Honorable Colleen Hanabusa, President of the Senate, and the Honorable Calvin K.Y. Say, Speaker of the House of Representatives, dated April 14, 2008, transmitting a Legislative Communication authorizing an exception to the 2008 Legislative Timetable for S.B. No. 69, S.D. 2, H.D. 2, to process, transmit and receive said measure, as appropriate to meet Constitutional bill passage requirements, was read by the Clerk and was placed on file.

APPOINTMENT AND DISCHARGE OF CONFEREES

S.B. No. 1612, S.D. 2 (H.D. 2):

The President discharged Senator Hooser as chair and appointed him as a member and discharged Senator Menor as a member and appointed him as 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. 1612, S.D. 2.

S.B. No. 2365, S.D. 1 (H.D. 1):

The President discharged Senator Menor as a co-chair and appointed him as a manager and Senator Hooser 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. 2365, S.D. 1.

S.B. No. 2842, S.D. 2 (H.D. 2):

The President discharged Senator Hooser as chair and Senator Menor as a member and appointed him as 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. 2842, S.D. 2.

S.B. No. 2843, S.D. 2, H.D. 3:

The President discharged Senator Hooser as chair and Senator Menor as a member and appointed him as 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. 2843, S.D. 2.

H.B. No. 1365 (S.D. 2):

In accordance with the disagreement of the House to the amendments proposed by the Senate to H.B. No. 1365, and the request for a conference on the subject matter thereof, the President appointed Senators Taniguchi, chair; Baker, co-chair; Slom as managers on the part of the Senate at this conference.

H.B. No. 2521, H.D. 2 (S.D. 3):

The President discharged Senator Fukunaga as a member and appointed her as a co-chair on the part of the Senate at the conference to be held for the consideration of amendments proposed by the Senate to H.B. No. 2521, H.D. 2.

H.B. No. 3422, H.D. 2 (S.D. 1):

In accordance with the disagreement of the House to the amendments proposed by the Senate to H.B. No. 3422, H.D. 2, and the request for a conference on the subject matter thereof, the President appointed Senators Taniguchi, chair; Baker, co-chair; Gabbard as managers on the part of the Senate at such conference.

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

"Madam President, I rise on a point of personal privilege. And of course the prescient President of the Senate knew I was going to rise on this point.

"I reference the decision made by the Intermediate Court of Appeals for the State of Hawai'i two days ago on a case that goes back to 2000, involved the Hawai'i Insurers Council, where they protested a bill and a surcharge that went into a special fund, arguing that in fact it was a tax and therefore violated the State of Hawai'i Constitution and the U.S. Constitution. They won their initial court case—the Circuit Court against the previous Administration. The case was appealed by the present Administration. It's been eight long years. The court ruled the other day that in fact the assessment of the charge was a tax, was in violation of the state and federal constitutions and the creation of the special fund and depositing the money in the special fund was a violation, then transferring the money out of the special fund into the general fund was a violation. And the bottom line is that the State at this moment faces up to \$1.1 billion in lost revenues because of these misappropriations. The Attorney General said that he is looking over the possibility of an appeal. But since the Intermediate Court of Appeals now screens all those measures that would go to the state Supreme Court, it seems unlikely that there will be an appeal and if there is an appeal that it would be successful.

"Why do I bring this all to your attention? In the twelve years now that I've been in this state Senate, many of my colleagues have found it humorous or just boring that I spoke against the creation of special funds all of this time. And I especially spoke against certain bills where we used different words to mean different things. A tax is a tax is a tax. And if we don't follow procedures, we're going to pay the price. And

maybe it doesn't happen the same year or five years later or eight years later, we're going to pay the price.

"So what this court decision tells us, or what it should tell us, is that we've got to be much more careful in our fiscal deliberations, and particularly in the creation of, the deposit of, and the raiding of special funds in this state. Thank you, Madam President."

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

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

"Colleagues, I wonder if you find it curious that somebody that serves at the pleasure of the State Legislature would find that it would not be a conflict of interest for eight legislators—four in the Senate, I believe our Vice President Senator Kim, Senator English, Senator Espero, and Senator Menor—to accept free transportation to the Philippines, free hotel accommodation, and gosh knows what else while the Legislature was in Session and while the Legislature was considering exempting local airlines from the payment of general excise tax, an industry regulation bill, and another bill that might provide loan guarantees.

"I also find it curious and troubling that neither daily newspaper found this newsworthy of reporting in the daily newspaper. Thank you, Madam President."

ADJOURNMENT

At 11:53 a.m., on motion by Senator Ige, seconded by Senator Whalen and carried, the Senate adjourned until 11:30 a.m., Thursday, April 17, 2008.