

FIFTY-FOURTH DAY

Monday, April 27, 2009

The Senate of the Twenty-Fifth Legislature of the State of Hawai'i, Regular Session of 2009, convened at 11:38 a.m. with the President in the Chair.

The Divine Blessing was invoked by the Reverend Alan Urasaki, Pacific Buddhist Academy, after which the Roll was called showing all Senators present.

The President announced that she had read and approved the Journal of the Fifty-Third Day.

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 630 to 631) were read by the Clerk and were placed on file:

Gov. Msg. No. 630, dated April 23, 2009, transmitting a Report on the Employees' Retirement System's Hawaii Venture Capital Investment Program, pursuant to Act 260, SLH 2007.

Gov. Msg. No. 631, informing the Senate that on April 27, 2009, the Governor signed into law Senate Bill No. 856 as Act 19, entitled: "RELATING TO IDENTIFICATION."

HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 678 to 681) were read by the Clerk and were placed on file:

Hse. Com. No. 678, informing the Senate that the House has agreed to the amendments proposed by the Senate to H.B. No. 1059, H.D. 2, and H.B. No. 1059, H.D. 2, S.D. 1, passed Final Reading in the House of Representatives on April 24, 2009.

Hse. Com. No. 679, informing the Senate that the House agreed to the amendments proposed by the Senate to the following House concurrent resolution and said resolutions were finally adopted in the House of Representatives on April 24, 2009:

H.C.R. No. 19, H.D. 1, S.D. 1;
H.C.R. No. 24, S.D. 1;
H.C.R. No. 42, S.D. 1;
H.C.R. No. 56, S.D. 1; and
H.C.R. No. 65, H.D. 1, S.D. 1.

Hse. Com. No. 680, returning S.C.R. No. 45, S.D. 1, which was adopted by the House of Representatives on April 24, 2009.

Hse. Com. No. 681, returning S.C.R. No. 53, S.D. 1, which was adopted by the House of Representatives on April 24, 2009.

**STANDING COMMITTEE REPORTS
AND
ADOPTION OF RESOLUTIONS**

Senator Sakamoto, for the Committee on Education and Housing, presented a report (Stand. Com. Rep. No. 1483) recommending that H.C.R. No. 63 be adopted.

Senator Sakamoto moved that Stand. Comp. Rep. No. 1483 and H.C.R. No. 63 be adopted, seconded by Senator Slom.

Senator Slom requested his vote be cast "no," and the Chair so ordered.

The motion was put by the Chair and carried, the report of the Committee was adopted and H.C.R. No. 63, entitled: "HOUSE CONCURRENT RESOLUTION URGING THE GOVERNOR TO INCLUDE THE KUKUI GARDENS AFFORDABLE HOUSING PROJECT IN THE STATE'S

LIST OF SHOVEL-READY PROJECTS FOR THE PRESIDENT'S PROPOSED ECONOMIC STIMULUS PLAN," was adopted with Senator Slom voting "No".

Senator Sakamoto, for the Committee on Education and Housing, presented a report (Stand. Com. Rep. No. 1484) recommending that H.C.R. No. 89 be adopted.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.C.R. No. 89, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THAT THE HOOKAKOO CORPORATION REPORT ON THE PROGRESS AND IMPACTS OF THE MODELS FOR EXPANDED LEARNING TIME BEING PILOTED BY THE HOOKAKOO CORPORATION'S PARTNER CONVERSION CHARTER SCHOOLS," was adopted.

Senator Sakamoto, for the Committee on Education and Housing, presented a report (Stand. Com. Rep. No. 1486) recommending that H.C.R. No. 282, H.D. 1 be adopted.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.C.R. No. 282, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION URGING THE HAWAII PUBLIC HOUSING AUTHORITY TO INCREASE THE MINIMUM RENT SCHEDULE," was adopted.

Senators Tokuda and Hee, for the Committee on Higher Education and the Committee on Water, Land, Agriculture, and Hawaiian Affairs, presented a joint report (Stand. Com. Rep. No. 1487) recommending that H.C.R. No. 60, as amended in S.D. 1, be adopted.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the joint report of the Committees was adopted and H.C.R. No. 60, S.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE NA ALA HELE ADVISORY COUNCIL TO CONVENE A SERIES OF DISCUSSIONS ON THE SAFE USE OF HUNTING DOGS ON TRAILS THAT CROSS PUBLIC HUNTING AREAS," was adopted.

Senators Ige and Baker, for the Committee on Health and the Committee on Commerce and Consumer Protection, presented a joint report (Stand. Com. Rep. No. 1488) recommending that H.C.R. No. 97, H.D. 1, as amended in S.D. 1, be adopted.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the joint report of the Committees was adopted and H.C.R. No. 97, H.D. 1, S.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE AUDITOR TO ASSESS THE EFFECTS OF REGULATING RESPIRATORY CARE PRACTITIONERS," was adopted.

Senators Chun Oakland and Sakamoto, for the Committee on Human Services and the Committee on Education and Housing, presented a joint report (Stand. Com. Rep. No. 1489) recommending that H.C.R. No. 246, H.D. 1, as amended in S.D. 1, be adopted.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the joint report of the Committees was adopted and H.C.R. No. 246, H.D. 1, S.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF HUMAN SERVICES TO ESTABLISH A TASK FORCE TO DEVELOP A POLICY TO ADDRESS TEEN DATING VIOLENCE AND ABUSE," was adopted.

Senator Chun Oakland, for the Committee on Human Services, presented a report (Stand. Com. Rep. No. 1490)

recommending that H.C.R. No. 157, as amended in S.D. 1, be adopted.

Senator Sakamoto moved that Stand. Comp. Rep. No. 1490 and H.C.R. No. 157, S.D. 1 be adopted, seconded by Senator Slom.

Senator Slom requested his vote be cast “no,” and the Chair so ordered.

The motion was put by the Chair and carried, the report of the Committee was adopted and H.C.R. No. 157, S.D. 1, entitled: “HOUSE CONCURRENT RESOLUTION URGING PUBLIC AND PRIVATE AGENCIES TO ENCOURAGE THEIR PARENT CLIENTS TO TURN ON CLOSED CAPTIONING WHEN THEIR CHILDREN WATCH TELEVISION,” was adopted with Senator Slom voting “No”.

Senators Chun Oakland and Espero, for the Committee on Human Services and the Committee on Public Safety and Military Affairs, presented a joint report (Stand. Com. Rep. No. 1491) recommending that H.C.R. No. 135, as amended in S.D. 1, be adopted.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the joint report of the Committees was adopted and H.C.R. No. 135, S.D. 1, entitled: “HOUSE CONCURRENT RESOLUTION STRONGLY SUPPORTING THE CONCEPT OF ESTABLISHING A SYSTEM OF JUVENILE INTAKE AND ASSESSMENT CENTERS, AS EMBODIED BY THE PROPOSED PILOT BIG ISLAND JUVENILE INTAKE AND ASSESSMENT CENTER, THROUGHOUT THE STATE,” was adopted.

Senator Espero, for the Committee on Public Safety and Military Affairs, presented a report (Stand. Com. Rep. No. 1492) recommending that H.C.R. No. 298, H.D. 1, as amended in S.D. 1, be adopted.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.C.R. No. 298, H.D. 1, S.D. 1, entitled: “HOUSE CONCURRENT RESOLUTION URGING THE UNITED STATES PRESIDENT, SENATE, AND HOUSE OF REPRESENTATIVES TO ENACT LEGISLATION TO EXPEDITE IMMIGRANT VISAS FOR FAMILY REUNIFICATION OF CERTAIN FILIPINO VETERANS OF WORLD WAR II,” was adopted.

Senator Kim, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 1493) recommending that H.C.R. No. 76, H.D. 1, as amended in S.D. 1, be adopted.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.C.R. No. 76, H.D. 1, S.D. 1, entitled: “HOUSE CONCURRENT RESOLUTION REQUESTING THE SENATE PRESIDENT AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES TO ESTABLISH A TASK FORCE ON REINVENTING GOVERNMENT TO EXAMINE THE CURRENT OPERATIONS AND ORGANIZATION OF STATE GOVERNMENT AND MAKE RECOMMENDATIONS ON MAKING STATE GOVERNMENT MORE EFFICIENT,” was adopted.

Senator Baker, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 1494) recommending that H.C.R. No. 171 be adopted.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.C.R. No. 171, entitled: “HOUSE CONCURRENT RESOLUTION REQUESTING THAT THE AUDITOR STUDY THE FEASIBILITY OF REMOVING AMATEUR

BOXING FROM THE JURISDICTION OF THE STATE BOXING COMMISSION OF HAWAII,” was adopted.

Senators Chun Oakland and Ige, for the Committee on Human Services and the Committee on Health, presented a joint report (Stand. Com. Rep. No. 1495) recommending that H.C.R. No. 55, as amended in S.D. 1, be adopted.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the joint report of the Committees was adopted and H.C.R. No. 55, S.D. 1, entitled: “HOUSE CONCURRENT RESOLUTION REQUESTING THE CENTERS FOR MEDICARE & MEDICAID SERVICES TO INCREASE REIMBURSEMENT TO HAWAII PROVIDERS,” was adopted.

Senator Chun Oakland, for the Committee on Human Services, presented a report (Stand. Com. Rep. No. 1496) recommending that H.C.R. No. 37, as amended in S.D. 1, be adopted.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.C.R. No. 37, S.D. 1, entitled: “HOUSE CONCURRENT RESOLUTION REQUESTING RELIGIOUS AND FAITH-BASED ORGANIZATIONS TO DEVELOP APPROPRIATE WAYS TO RESPOND TO THE NEEDS OF VICTIMS OF DOMESTIC VIOLENCE,” was adopted.

Senator Gabbard, for the Committee on Energy and Environment, presented a report (Stand. Com. Rep. No. 1497) recommending that H.C.R. No. 266, as amended in S.D. 1, be adopted.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.C.R. No. 266, S.D. 1, entitled: “HOUSE CONCURRENT RESOLUTION URGING THE COUNTIES TO CONSIDER ADOPTING GRAY WATER PROVISIONS OF THE UNIFORM PLUMBING CODE AND REQUESTING THE DEPARTMENT OF HEALTH TO DEVELOP A PLAN TO AUTHORIZE GRAY WATER RECYCLING SYSTEMS FOR RESIDENTIAL PREMISES UNDER APPROPRIATE CIRCUMSTANCES,” was adopted.

Senator Ige, for the Committee on Health, presented a report (Stand. Com. Rep. No. 1498) recommending that H.C.R. No. 35, as amended in S.D. 1, be adopted.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.C.R. No. 35, S.D. 1, entitled: “HOUSE CONCURRENT RESOLUTION REQUESTING THE AUDITOR TO ANALYZE A PROPOSED MEASURE TO REGULATE HOME CARE AGENCIES BY THE DEPARTMENT OF HEALTH,” was adopted.

Senator Ige, for the Committee on Health, presented a report (Stand. Com. Rep. No. 1499) recommending that H.C.R. No. 51, as amended in S.D. 1, be adopted.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.C.R. No. 51, S.D. 1, entitled: “HOUSE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF HEALTH TO INCREASE EDUCATIONAL EFFORTS TO PREVENT AND ERADICATE CERVICAL CANCER,” was adopted.

Senator Ige, for the Committee on Health, presented a report (Stand. Com. Rep. No. 1500) recommending that H.C.R. No. 215, as amended in S.D. 1, be adopted.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and

H.C.R. No. 215, S.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF HEALTH TO REVIEW AND ASSESS THE POLICIES AND PROCEDURES IMPLEMENTED BY HOSPITALS TO REDUCE ELECTIVE CESAREAN SECTIONS AND INDUCTION OF LABOR," was adopted.

Senators Ige and Fukunaga, for the Committee on Health and the Committee on Economic Development and Technology, presented a joint report (Stand. Com. Rep. No. 1501) recommending that H.C.R. No. 148, as amended in S.D. 1, be adopted.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the joint report of the Committees was adopted and H.C.R. No. 148, S.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION URGING THE GOVERNOR TO DESIGNATE, AND ASSERTING THE LEGISLATURE'S ENDORSEMENT OF, THE HAWAII HEALTH INFORMATION EXCHANGE, INC. TO SERVE AS THE STATE'S QUALIFIED STATE-DESIGNATED ENTITY TO EFFECTIVELY COORDINATE HEALTH INFORMATION EXCHANGE TECHNOLOGY INITIATIVES TO ENSURE THAT HAWAII IS ABLE TO RAPIDLY RESPOND TO AND QUALIFY FOR GRANT FUNDING THROUGH THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 FOR HEALTH CARE INFORMATION EXCHANGE TECHNOLOGY," was adopted.

At 11:44 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:45 a.m.

Senator Sakamoto rose and stated:

"Madam President, before I make a motion, on our desks are H.C.R. No. 94, H.D. 1, but we are actually voting on the S.D. 1 and the S.D. 1 is what the Senate previously...similar to what the Senate previously passed, which is the description on the O.D. as opposed to the broader resolution that is sitting on our desks."

Senator Sakamoto, for the Committee on Education and Housing, presented a report (Stand. Com. Rep. No. 1485), recommending that H.C.R. No. 94, H.D. 1, as amended in S.D. 1, be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.C.R. No. 94, H.D. 1, S.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE AUDITOR TO CONDUCT A REVIEW OF THE PERFORMANCE OF THE MANAGEMENT OF THE PUUWAI MOMI AND WEST OAHU ASSET MANAGEMENT PROJECTS (KNOWN AS AMP 30 AND AMP 44) TO COMPARE THE PERFORMANCE OF STATE OPERATED AND PRIVATELY OPERATED PUBLIC HOUSING PROPERTIES; AND TO DETERMINE THE RELATIVE CONTRIBUTIONS OF FUNDING LEVELS, MISMANAGEMENT, AND TENANT AND VISITOR ACTIONS TO THE FAILURE TO MEET PERFORMANCE STANDARDS FOR THESE PROPERTIES," was referred to the Committee on Ways and Means.

Senator Kim, Chair of the Committee on Ways and Means, requested that the referral of H.C.R. No. 94, H.D. 1, S.D. 1 to the Committee on Ways and Means be waived.

Senator Kim noted:

"Madam President, today is the deadline to return amended House concurrent resolutions to the House, and I am requesting a waiver to bring this resolution to the floor for a vote to meet the crossover deadline."

The Chair granted the waiver.

On motion by Senator Kim, seconded by Senator Tsutsui and carried, H.C.R. 94, H.D. 1, S.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE AUDITOR TO CONDUCT A REVIEW OF THE PERFORMANCE OF THE MANAGEMENT OF THE PUUWAI MOMI AND WEST OAHU ASSET MANAGEMENT PROJECTS (KNOWN AS AMP 30 AND AMP 44) TO COMPARE THE PERFORMANCE OF STATE OPERATED AND PRIVATELY OPERATED PUBLIC HOUSING PROPERTIES; AND TO DETERMINE THE RELATIVE CONTRIBUTIONS OF FUNDING LEVELS, MISMANAGEMENT, AND TENANT AND VISITOR ACTIONS TO THE FAILURE TO MEET PERFORMANCE STANDARDS FOR THESE PROPERTIES," was adopted.

STANDING COMMITTEE REPORTS

Senator Tokuda, for the Committee on Higher Education, presented a report (Stand. Com. Rep. No. 1502) recommending that the Senate advise and consent to the nominations to the Center for Nursing Advisory Board of the following:

JANE K. KADOHIRO DRPH, APRN, CDE, in accordance with Gov. Msg. No. 257;

GARY R. KIENBAUM RN, in accordance with Gov. Msg. No. 259;

ANA M. SILVA RN, CNA, BC, in accordance with Gov. Msg. No. 274;

ALVIN GOO, in accordance with Gov. Msg. No. 526; and

DENISE HOPKINS-CHADWICK, in accordance with Gov. Msg. No. 527.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1502 and Gov. Msg. Nos. 257, 259, 274, 526 and 527 was deferred until Tuesday, April 28, 2009.

Senator Tokuda, for the Committee on Higher Education, presented a report (Stand. Com. Rep. No. 1503) recommending that the Senate advise and consent to the nominations to the Board of Directors of the Research Corporation of the University of Hawai'i of the following:

GUY P. ONTAI, in accordance with Gov. Msg. No. 311; and

ROBERT D. DEWITZ, in accordance with Gov. Msg. No. 525.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1503 and Gov. Msg. Nos. 311 and 525 was deferred until Tuesday, April 28, 2009.

Senator Tokuda, for the Committee on Higher Education, presented a report (Stand. Com. Rep. No. 1504) recommending that the Senate advise and consent to the nomination of ROBERTA M. RICHARDS to the Western Interstate Commission for Higher Education (WICHE), in accordance with Gov. Msg. No. 312.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1504 and Gov. Msg. No. 312 was deferred until Tuesday, April 28, 2009.

Senator Chun Oakland, for the Committee on Human Services, presented a report (Stand. Com. Rep. No. 1505) recommending that the Senate advise and consent to the nomination of DEBORA ANN KAIKALA to the Early Learning Council, in accordance with Gov. Msg. No. 583.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1505 and Gov. Msg. No. 583 was deferred until Tuesday, April 28, 2009.

Senator Chun Oakland, for the Committee on Human Services, presented a report (Stand. Com. Rep. No. 1506) recommending that the Senate advise and consent to the nominations to the State Rehabilitation Council of the following:

NORITA DE LIMA, in accordance with Gov. Msg. No. 523; and

GRETCHEN LAWSON, in accordance with Gov. Msg. No. 524.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1506 and Gov. Msg. Nos. 523 and 524 was deferred until Tuesday, April 28, 2009.

Senator Taniguchi, for the Committee on Judiciary and Government Operations, presented a report (Stand. Com. Rep. No. 1507) recommending that the Senate advise and consent to the nominations to the Language Access Advisory Council of the following:

ANH BROW, in accordance with Gov. Msg. No. 510;

JENNIFER LANI LI, in accordance with Gov. Msg. No. 511; and

AZI TURTURICI, in accordance with Gov. Msg. No. 512.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1507 and Gov. Msg. Nos. 510, 511 and 512 was deferred until Tuesday, April 28, 2009.

Senator Taniguchi, for the Committee on Judiciary and Government Operations, presented a report (Stand. Com. Rep. No. 1508) recommending that the Senate advise and consent to the nomination of SUSAN PIRSCH to the Board of Registration of the Islands of Maui, Molokai, Lanai, and Kaho'olawe, in accordance with Gov. Msg. No. 529.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1508 and Gov. Msg. No. 529 was deferred until Tuesday, April 28, 2009.

Senator Taniguchi, for the Committee on Judiciary and Government Operations, presented a report (Stand. Com. Rep. No. 1509) recommending that the Senate advise and consent to the nominations to the Commission on the Status of Women of the following:

ADRIENNE S. KING, in accordance with Gov. Msg. No. 584; and

CHERIE A. MOOY, in accordance with Gov. Msg. No. 585.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1509 and Gov. Msg. Nos. 584 and 585 was deferred until Tuesday, April 28, 2009.

ORDER OF THE DAY

AGREE/DISAGREE

MATTER DEFERRED FROM FRIDAY, APRIL 24, 2009

S.C.R. No. 121, S.D. 1 (H.D. 1):

On motion by Senator Tokuda, seconded by Senator Hee and carried, the Senate agreed to the amendments proposed by the House to S.C.R. No. 121, S.D. 1, and S.C.R. No. 121, S.D. 1, H.D. 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE UNIVERSITY OF HAWAII COLLEGE OF TROPICAL AGRICULTURE AND HUMAN

RESOURCES, IN COOPERATION WITH THE DEPARTMENT OF AGRICULTURE, DEPARTMENT OF EDUCATION, AND THE HAWAII FARM BUREAU FEDERATION, TO CONVENE A WORKING GROUP OF STAKEHOLDERS TO CONSIDER THE FEASIBILITY OF ESTABLISHING A FARM TO SCHOOL PROGRAM IN HAWAII'S PUBLIC SCHOOLS," was placed on the calendar for Final Adoption on Tuesday, April 28, 2009.

ADVISE AND CONSENT

Stand. Com. Rep. No. 1481 (Gov. Msg. No. 562):

Senator Baker moved that Stand. Com. Rep. No. 1481 be received and placed on file, seconded by Senator Ige and carried.

Senator Baker then moved that the Senate advise and consent to the nomination of CYNTHIA M. MARTIN to the Cable Advisory Committee, term to expire June 30, 2013, seconded by Senator Ige.

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

Ayes, 25. Noes, none.

Stand. Com. Rep. No. 1482 (Gov. Msg. No. 569):

Senator Baker moved that Stand. Com. Rep. No. 1482 be received and placed on file, seconded by Senator Ige and carried.

Senator Baker then moved that the Senate advise and consent to the nomination of GARRETT A. LAU to the Board of Pharmacy, term to expire June 30, 2013, seconded by Senator Ige.

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

Ayes, 25. Noes, none.

FINAL ADOPTION

S.C.R. No. 72, H.D. 1:

Senator Sakamoto rose and said:

"I move for the adoption of said standing committee report."

Senator Slom rose and said:

"I second the motion."

At 11:48 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:48 a.m.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the Senate agreed to the amendments proposed by the House to S.C.R. No. 72, and S.C.R. No. 72, H.D. 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE UNITED STATES DEPARTMENT OF AGRICULTURE AND THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY TO COLLABORATE AND SHARE INFORMATION WITH THE DEPARTMENT OF AGRICULTURE TO PREVENT INVASIVE SPECIES FROM ENTERING THE STATE OF HAWAII," was Finally Adopted.

FINAL READING

Conf. Com. Rep. No. 5 (H.B. No. 1739, H.D. 1, S.D. 1, C.D. 1):

On motion by Senator Kim, seconded by Senator Kokubun and carried, Conf. Com. Rep. No. 5 was adopted and H.B. No. 1739, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN

ACT RELATING TO TAXATION,” passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 53 (S.B. No. 603, S.D. 1, H.D. 1, C.D. 1):

Senator Baker moved that Conf. Com. Rep. No. 53 be adopted and S.B. No. 603, S.D. 1, H.D. 1, C.D. 1 pass Final Reading, seconded by Senator Ige.

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

“You know, initially I supported the bill and I thought it was a good bill because it’s supposed to help in deregulation and to level the playing field between fixed landline communication and Internet and wireless communication. But as the bill has been amended and with the C.D. version, I’m concerned that as a matter of fact it does not level the playing field; what it does is create more regulations. I think it’s going to shift the cost to different parties within our community and actually result in higher cost, and in the long run it looks like it may in fact create monopolies in the wireless and Internet industries just like we’ve had in landline. So, I’m concerned about these and other changes within the bill. I’d be very happy to hear any comforting words from the supporters. Thank you.”

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

Senator Baker rose to speak in support of the measure and stated:

“Members, I appreciate the reservations that some of you may be feeling on this measure. It’s an attempt by your committee in conference, and CPC and CPN committees prior, to provide a little bit more of a level playing field on the retail side, the residential side. This measure tries to give a company that is regulated by the PUC some parity with those companies that are not regulated by the PUC. The PUC has no jurisdiction over voice over internet protocol (VOIP) nor over wireless. If you look on page 5 of the bill, it says, ‘This section shall apply to retail rates charged for services to end-user customers only and shall not apply to wholesale rates charged for services provided by telecommunications carriers to other telecommunications providers, a wireless communications provider, a voice over internet protocol communications provider, or other similar communications providers.’ This language is an attempt to limit the measure solely to residential customers. We know that other folks rely on the landline services in order to deliver their services, and those filings would still have to go to the PUC and those filings would have to run through the whole gamut. What this C.D. 1 does is take that approval from the PUC off of residential rates, but we cap the rates at the current tariff. So if there’s ever an intent to go higher, they will have to come back to the PUC for that. They do have an opportunity with this bill in place to bundle residential services, to offer promotions, to do things and be more nimble like the wireless and the voice over folks can already. This is really an attempt to level the playing field, and I think we all know that it’s important to have a healthy landline operator in the state and this is one way to assist in that endeavor. So I ask my colleagues to vote up on this measure. Thank you.”

The motion was put by the Chair and carried, Conf. Com. Rep. No. 53 was adopted and S.B. No. 603, S.D. 1, H.D. 1, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO PUBLIC UTILITIES,” passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Ayes with Reservations, 2 (Ihara, Slom). Noes, none. Excused, 1 (Bunda).

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

“The Hawaiian word for the day is ‘pua’; used in a sentence, ‘Oh, da pua ting.’ I hope that brings comfort to the Senator who wanted comforting words.

“But the ‘pua ting’ is the public because, oh, the ‘pua ting’, on the front page of yesterday’s Star Bulletin: ‘OHA gets zip from Senate.’ ‘Pua ting’, the public, misinformed. The fact of the matter is the Senate position on OHA is \$15.1 million, as it was last year, the year before, and every year since this present governor was seated as governor. That hasn’t changed. What has changed is that there was no disclosure by the Office of Hawaiian Affairs of a windfall that they received from the Native Hawaiian Legal Corporation in a case which involved the Hokuli’a development when Judge Ibarra awarded attorney fees to NHLC—2.03 something, something, something million dollars. What isn’t known is that NHLC never returned the money to OHA. What we do know, that in a letter dated January 30, 2008 to the executive director of NHLC from Legal Services Corporation, America’s partner for equal justice, from the Office of Compliance and Enforcement... I’ll just read a little bit. It’s to the director, and this person from the Office of Compliance says, ‘Thank you for your response to the July 2, 2007 letter.’ They received the award from Judge Ibarra in an agreement dated March 7, 2006 by the Deputy Attorney General. So over a year later, the Office of Compliance says, ‘Thank you for your response to the July 2, 2007 letter,’ from Legal Services Corporation Office of Compliance and Enforcement requesting information from NHLC about the recording in NHLC’s 2006 audited financial statements, as unrestricted revenue, a court judgment in the amount of \$2,037,733. The letter continues and says, ‘OHA funds must be considered public funds. As such, Legal Services Corporation requests that NHLC take the following actions: divest immediately of attorney fees in that amount by returning this amount plus interest from the date of collection of the amount to OHA.’ There’s two other actions requested, and then the last one says: ‘Submit proof that this has been accomplished by the close of business on February 11, 2008.’ No one knows if NHLC did as was directed by the Office of Compliance and Enforcement, but let us assume that they did. OHA is a state agency; Freddy Rice determined that to be true. Whether we agree or disagree, OHA is a state agency. The Committee on Ways and Means, in their analysis, has said among other things, as a result, the entire amount of the attorney fees and interest represent a windfall to OHA since that amount could not have been budgeted for nor anticipated. It also does not account for the additional interest that was paid by NHLC from March 2006.

“This afternoon at 4:30 p.m., NHLC will be holding a press conference at the Queen’s statue. Among the things they assert in an email written to me, dated Saturday, April 25, it says that ‘the purpose is to publicize this funding issue on Monday, April 27, 4:30 p.m., at the Queen’s statue.’ And it says that ‘it is to call attention to OHA’s budget cuts to NHLC.’ This Legislature in 2005 passed Act 109; the President of the Senate was the Chair of the Committee on Judiciary. Act 109 requires that legal services to the Office of Hawaiian Affairs be procured because OHA is a state agency. After getting ripped in the newspaper, the Senate President, using all the tact that she could muster, said to me, ‘Don’t respond. I’ll respond.’ I would like to read excerpts of her response dated Friday, May 20, 2005: ‘Let there be no question. *Rice v. Cayetano* established that OHA is a state agency. OHA is not exempt from the state’s procurement code. OHA knows and understands this. NHLC is a non-profit corporation. NHLC is not part of OHA. NHLC has enjoyed its special status until this bill became law. NHLC did not have to ‘stand in line’ like others, bid for, or provide explanation to the Senate Ways and Means or House Finance Committee as to how it will use their funds, regardless that the

funds are general funds. The reason for the general fund match is that if NHLC were to receive only trust fund from OHA, then NHLC could only serve 50 percent blood quantum or more.' Then the President says, 'I personally disagree with this position.' And I concur. She finishes with one sentence: 'It is not our job in the Legislature to make a funding entitlement for one non-profit over others.' NHLC, in a letter and in this article, has indicated that OHA has indicated that if the Senate Ways and Means position prevails, their budget will be cut. They must have forgot about Act 109. It's not their budget. They have to go through procurement like all others. The assumption 'that their budget' is incorrect. In fact, what the Committee on Ways and Means has done is keep intact \$15.1 million. That hasn't changed. I asked the Committee on Ways and Means to take \$2.03 million and run it at 8, 10, and 12 percent to get a range of what the interest dividend would be today. All results were over \$3 million regardless because while I yield that the last year has been a pitiful year in the investment market, the same cannot be said for the previous two years. The fact of the matter is the Senate Ways and Means Committee, by leaving the attorney fees plus interest intact and not asking for that money to be returned to the taxpayers, amounts to less than a 20 percent cut from the \$3 million that they should have received. There are some of you who may argue that the \$15.1 million and the \$3 million are \$18.1 million, and 20 percent less of 18.1 million is \$3.65 million. It would be difficult to respond to that argument. Nonetheless, the House and the Senate have not engaged in that argument. I would submit to all of you that the Committee on Ways and Means pored through this information and, in my opinion, took the high road by leaving a larger amount, by leaving the attorney fees in place. What this means on the House position is that \$3.0 less 20 percent is \$2.4. That's in the House position. What's also in the House position are the attorney fees. They have not asked for those funds back. So what OHA received is not a 20 percent cut; it's an increase. And it's an increase at a time when everything else is on the table, and it's very unfortunate that NHLC believes that it's an entitlement to them, evidently has forgotten about Act 109 which requires procurement from a state agency—which I might add has a portfolio of \$300 million. That's part of the record. And if NHLC feels very strongly and OHA concurs, OHA has the funds to not only make up what any perceived, imaginary and wholly false shortfall by adding more trust funds. OHA has said in a letter to Ways and Means that it cannot do so because their portfolio is limited to 5 percent. That's not statute. That's trustees getting together and saying, 'Okay boys and girls, how are we going to limit the portfolio? Five percent.' Well, if you raise 5 percent to 5.1 percent, you can take care of the short fall. It's very unfortunate that when those who complain about the yoke of ward ship are unable to make tough decisions and instead rely on ward ship when the going gets tough, because that's the situation. And colleagues, it is a very sad, in my opinion, day when the complainers come in the face of false data and limited disclosure of information. Thank you."

At this time, the Chair made the following announcement:

"Re-referrals are made in accordance with Order of the Day and the Supplemental Order of the Day that may be distributed to your offices later this afternoon."

APPOINTMENT OF CONFEREES

S.B. No. 636, S.D. 1 (H.D. 2):

In accordance with the disagreement of the Senate to the amendments proposed by the House to S.B. No. 636, S.D. 1, and the request for a conference on the subject matter thereof, the President appointed Senators Hee, chair; Kim, co-chair; Fukunaga, Kokubun, Hemmings as managers on the part of the Senate at such conference.

ADJOURNMENT

At 12:08 p.m., on motion by Senator Sakamoto, seconded by Senator Slom and carried, the Senate adjourned until 11:30 a.m., Tuesday, April 28, 2009.