

NINTH DAY

Wednesday, February 2, 2011

The House of Representatives of the Twenty-Sixth Legislature of the State of Hawaii, Regular Session of 2011, convened at 12:05 o'clock p.m., with Vice Speaker Manahan presiding.

The ecumenical invocation was delivered by Representative Jerry L. Chang, after which the Roll was called showing all Members present with the exception of Representatives Souki and Wooley, who were excused.

By unanimous consent, reading and approval of the Journal of the House of Representatives of the Eighth Day was deferred.

GOVERNOR'S MESSAGES

The following message from the Governor (Gov. Msg. No. 103) was received and announced by the Clerk and was placed on file:

Gov. Msg. No. 103, dated February 1, 2011, in accordance with Section 9, Article VII of the Constitution of the State of Hawaii, requesting immediate consideration and passage of H.B. No. 838, Relating to Reapportionment, to appropriate moneys for the operation of the reapportionment commission for fiscal year 2010-2011.

DEPARTMENTAL COMMUNICATIONS

The following departmental communications (Dept. Com. Nos. 43 through 49) were received by the Clerk and were placed on file:

Dept. Com. No. 43, dated November 22, 2010, from Howard Todo, Vice President for Budget and Finance and Chief Financial Officer, University of Hawaii, transmitting the Biennium Operating and Capital Improvements Program (CIP) Budget Requests for Fiscal Year 2011-2013 as approved by the Board of Regents, pursuant to HRS Chapter 37-68.

Dept. Com. No. 44, dated January 19, 2011, from Kalbert K. Young, Interim Director of Finance, Department of Budget and Finance, transmitting the Summary Program Reports for FB 2011-13 Executive Budget for the Departments of Agriculture, Accounting and General Services, Attorney General, Commerce and Consumer Affairs, Hawaiian Home Lands, Human Resources Development, Public Safety, Taxation, and Transportation; The Hawaii State Public Library System; and the Office of the Lieutenant Governor.

Dept. Com. No. 45, dated December 20, 2010, from Louis M. Kealoha, Chief of Police, City and County of Honolulu, transmitting a letter to serve as the HPD's report to the legislature concerning electric guns and their use during the past year, pursuant to Section 134-16(d), Hawaii Revised Statutes.

Dept. Com. No. 46, dated December 20, 2010, from Louis M. Kealoha, Chief of Police, City and County of Honolulu, transmitting the 2010 annual report to the Legislature, which includes a summary of the facts, the nature of the misconduct for each incident which resulted in the suspension or discharge of a police officer, and the disciplinary action imposed; and indicated the number of police officers suspended and discharged during 2010 under certain Standards of Conduct: Malicious Use of Physical Force; Mistreatment of Prisoners; Use of Drugs and Narcotics; and Cowardice.

Dept. Com. No. 47, dated January 10, 2011, from Gary Yabuta, Chief of Police, County of Maui, transmitting a letter stating that, pursuant to Act 242, relating to Uniform Information Practices, during the calendar year 2010, the Department did not suspend any Police Officer for: Malicious use of physical force; Mistreatment of a prisoner/arrested person; Use and/or possession of drugs and/or narcotics; or Cowardice. Also transmitting a summary of all incidents and violations of Department Policies and Procedures which resulted in the suspension or discharge of

Police Officers during the Period from January 1, 2010 to December 31, 2010.

Dept. Com. No. 48, dated January 11, 2011, from Aaron S. Fujioka, State Procurement Office, transmitting an executive overview of the State Procurement Office's programs, services, issues and concerns.

Dept. Com. No. 49, dated January 7, 2011, from Kalbert K. Young, Interim Director of Finance, Department of Budget and Finance, transmitting Notification to the Legislature, pursuant to Section 37-46, HRS, Transfers from Non-General Funds to General Fund FY 11, December 16, 2010.

INTRODUCTIONS

The following introduction was made to the Members of the House:

Representative Chang introduced Hawaii Farm Bureau Federation Vice President, Mr. Chris Manfredi of the Ka'u Farm & Ranch, and the Hawaii Coffee Association.

ORDER OF THE DAY

REPORTS OF STANDING COMMITTEES

Representative Rhoads, for the Committee on Labor & Public Employment presented a report (Stand. Com. Rep. No. 1) recommending that H.B. No. 166, as amended in HD 1, pass Second Reading and be referred to the Committee on Judiciary.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 166, HD 1, pass Second Reading and be referred to the Committee on Judiciary, seconded by Representative Evans.

Representative Pine rose to speak in support of the measure with reservations, stating:

"Thank you, Mr. Speaker. I just want to note my reservations, or strong reservation on this bill that would raise the civil penalty amounts and additional criminal fines for violations of the Hawaii Occupational, Safety and Health Law. While the penalties are blank at this time, I do actually agree with the Director of Labor who urged caution in not making the penalties too high.

"In this economy when construction, along with tourism, is basically our top market to create jobs, I want to assure that we move cautiously with this bill so that we can ensure that the construction industry can continue to grow jobs for our community."

Representative Fontaine rose to speak in opposition to the measure, stating:

"Mr. Speaker, I stand in opposition to this bill. During the Committee hearings, we heard from a roofing contractor who said that if he received a \$70,000 fine, as what would be proposed in this legislation, that he would have to earn \$7 million in additional business in order to make up the fine because his profit margin is so slim. This is an anti-business bill and I'm against it. Thank you."

Representative Evans rose to speak in support of the measure, stating:

"Mr. Speaker, I rise in support. Thank you. I support this measure continuing on. This is Second Reading, and I want to make note in the Journal that the Committee that passed this out recognizes that workers' safety must remain paramount and notes that the last time penalties and fines were raised was approximately 18 years ago. Thank you, Mr. Speaker."

Representative Ching rose and asked that the Clerk record an aye vote with reservations for her, and the Chair "so ordered."

Representative Ward rose to speak in opposition to the measure, stating:

"Mr. Speaker, I rise in opposition. As to the veracity of the amount of the fines, I know the small business community is saying that, 'We are fined left, right, front and center,' and in good sportsmanship and in worker safety, you don't kick somebody when they're down. And right now the construction and all these people this is going to affect, they're down already. They're hurting. They've got to get back up, and now we're going to penalize them. I think that's bad public policy and wrong timing. Thank you."

Representative Thielen rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. A no vote for me please. And Mr. Speaker, I'd like to note, I think if we looked at what the state of the economy was 18 years ago, we'd find that it was in far better shape than it is today. So I think taking this step now is another signal to small businesses that maybe they just aren't going to be able to survive. Thank you."

Representative Evans rose to respond, stating:

"Thank you. Mr. Speaker, I just want to have additional comments and that is, businesses have nothing to fear if the workplace is safe. So this is basically to let people know that worker safety is really paramount. Thank you."

Representative Cabanilla rose to speak in support of the measure, stating:

"I'm in support of the measure. Thank you, Mr. Speaker. I believe this raise, considering that the last raise was 18 years ago, that this amount is very modest. From \$5,000 to \$5,500; and the top amount, the most is from \$70,000 to \$77,000. So again, in consideration that this is the first raise after 18 years, that we are very conservative with this number."

Representative Ward rose to respond, stating:

"Just a brief rebuttal. To think \$77,000 doesn't mean a lot to a small business is trivializing the fact that the level, the ceiling is so high already. That can't be trivialized."

"Secondly, I think when we say that this is the worker's safety, it implies that the employer is out to get the worker and I think that's the wrong impression to have. That this is something that we ought have to keep these employers in line because they're going to endanger the workers. No employer wants to endanger a worker. The fines are sufficient the way they are and hopefully, the next Committee will look at in a balance way. Again, you don't kick people while they're down. Thank you."

Representative Marumoto rose and asked that the Clerk record a no vote for her, and the Chair "so ordered."

Representative Pine rose in support of the measure with reservations and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Pine's written remarks are as follows:

"Mr. Speaker, it is never a good time to raise fines that are already too high, as well as unreasonably enforced. And it adds insult to injury when such increases are imposed on businesses in this precarious economy – by a current system that, as testimony before the Committee noted, holds an employer liable when the workers disobey the employer's own HOSHL-compliant safety rules and forsaken the safety equipment and mandated safety training that the employer has provided. Further, as the House Labor Committee's own Standing Committee Report (No. 1) noted: "Hawaii's economy is still recovering from the recent recession. The civil penalties and criminal fines imposed for violations of the HOSHL are paid

by businesses and may prove to be a hardship for them, especially small businesses."

"I of course, agree with the Majority Floor Leader's statement, "that worker safety must remain paramount." However, I think many would still legitimately question the wisdom of increasing these fines without any study demonstrating that higher fines do cause higher employer compliance and more worker safety. Since all that these fines do is increase the burden on our employers and our fragile economy -- without advancing this bill's avowed goal -- we should have voted down this measure."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 166, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII OCCUPATIONAL SAFETY AND HEALTH LAW," passed Second Reading and was referred to the Committee on Judiciary, with Representatives Fontaine, Marumoto, Thielen and Ward voting no, and with Representative Wooley being excused.

Representative Rhoads, for the Committee on Labor & Public Employment presented a report (Stand. Com. Rep. No. 2) recommending that H.B. No. 174, pass Second Reading and be referred to the Committee on Finance.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 174, pass Second Reading and be referred to the Committee on Finance, seconded by Representative Evans.

Representative Ward rose to speak in support of the measure with reservations, stating:

"Mr. Speaker, on Stand. Com. No. 2, HB No. 174, just a footnote of reservation. It's good that they're going to increase the number of board members. This increases the ERS Board of Trustees from eight, to ten. If eight is dysfunctional because you've got a hung jury, how, please tell me, can you get ten that's going to make it functional."

"So let's go and be practical, logical. Let's make it seven, nine, eleven, or something that says this is not going to be locked up. So when this goes off to Finance, I hope the Chair of Finance will look at this in a practical way. These Boards have a job to do, but if we structure them to tie their hands and not make it logical, we're actually hindering us, hindering them, with the policy that we're passing here. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 174, entitled: "A BILL FOR AN ACT RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM," passed Second Reading and was referred to the Committee on Finance, with Representative Wooley being excused.

Representative Rhoads, for the Committee on Labor & Public Employment presented a report (Stand. Com. Rep. No. 3) recommending that H.B. No. 175, as amended in HD 1, pass Second Reading and be referred to the Committee on Finance.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 175, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE EMPLOYER-UNION HEALTH BENEFITS TRUST FUND," passed Second Reading and was referred to the Committee on Finance, with Representative Wooley being excused.

Representative Rhoads, for the Committee on Labor & Public Employment presented a report (Stand. Com. Rep. No. 4) recommending that H.B. No. 268, pass Second Reading and be referred to the Committee on Judiciary.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 268, entitled: "A BILL FOR AN ACT RELATING TO CRIMINAL HISTORY RECORD CHECKS FOR COUNTY EMPLOYEES," passed

Second Reading and was referred to the Committee on Judiciary, with Representative Wooley being excused.

Representative Rhoads, for the Committee on Labor & Public Employment presented a report (Stand. Com. Rep. No. 5) recommending that H.B. No. 546, pass Second Reading and be referred to the Committee on Judiciary.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 546, entitled: "A BILL FOR AN ACT RELATING TO CIVIL RIGHTS," passed Second Reading and was referred to the Committee on Judiciary, with Representative Wooley being excused.

Representative Rhoads, for the Committee on Labor & Public Employment presented a report (Stand. Com. Rep. No. 6) recommending that H.B. No. 777, pass Second Reading and be referred to the Committee on Finance.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 777, pass Second Reading and be referred to the Committee on Finance, seconded by Representative Evans.

Representative Pine rose to speak in support of the measure with reservations, stating:

"Mr. Speaker, I'm on Stand. Com. No. 6, with some reservations. I just want to note that if we take money from this particular Fund, that it could jeopardize federal funding. So hopefully the Finance Committee can find other funding sources to accomplish this task."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 777, entitled: "A BILL FOR AN ACT RELATING TO THE HEALTH FUND," passed Second Reading and was referred to the Committee on Finance, with Representative Wooley being excused.

Representative Mizuno, for the Committee on Human Services presented a report (Stand. Com. Rep. No. 7) recommending that H.B. No. 740, as amended in HD 1, pass Second Reading and be referred to the Committee on Judiciary.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 740, HD 1, entitled: "A BILL FOR AN ACT RELATING TO DOMESTIC VIOLENCE," passed Second Reading and was referred to the Committee on Judiciary, with Representative Wooley being excused.

Representative Mizuno, for the Committee on Human Services presented a report (Stand. Com. Rep. No. 8) recommending that H.B. No. 574, as amended in HD 1, pass Second Reading and be referred to the Committee on Labor & Public Employment.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 574, HD 1, entitled: "A BILL FOR AN ACT RELATING TO UNEMPLOYMENT INSURANCE," passed Second Reading and was referred to the Committee on Labor & Public Employment, with Representative Wooley being excused.

At 12:18 o'clock p.m. Representative B. Oshiro requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 12:18 o'clock p.m.

Representative Mizuno, for the Committee on Human Services presented a report (Stand. Com. Rep. No. 9) recommending that H.B. No. 768, as amended in HD 1, be recommitted to the Committee on Human Services.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No.

768, HD 1, entitled: "A BILL FOR AN ACT RELATING TO HUMAN SERVICES," was recommitted to the Committee on Human Services, with Representative Wooley being excused.

ANNOUNCEMENTS

COMMITTEE ASSIGNMENTS

The following measures were referred to committee by the Speaker:

<u>H.R.</u> <u>Nos.</u>	<u>Referred to:</u>
26	Committee on Transportation, then to the Committee on Judiciary
27	Committee on Higher Education, then jointly to the Committee on Water, Land, & Ocean Resources and the Committee on Energy & Environmental Protection
28	Committee on Culture & the Arts

<u>H.C.R.</u> <u>Nos.</u>	<u>Referred to:</u>
30	Committee on Transportation, then to the Committee on Judiciary
31	Committee on Higher Education, then jointly to the Committee on Water, Land, & Ocean Resources and the Committee on Energy & Environmental Protection
32	Committee on Culture & the Arts
33	Committee on Health, then to the Committee on Consumer Protection & Commerce, then to the Committee on Legislative Management

COMMITTEE REASSIGNMENTS

The following measures were re-referred to committee by the Speaker:

<u>H.B.</u> <u>Nos.</u>	<u>Re-referred to:</u>
465	Jointly to the Committee on Labor & Public Employment and the Committee on Economic Revitalization & Business, then to the Committee on Judiciary, then to the Committee on Finance
768, HD1	Committee on Human Services, then to the Committee on Economic Revitalization & Business, then to the Committee on Finance
853	Committee on Economic Revitalization & Business, then to the Committee on Finance
916	Committee on Transportation, then to the Committee on Finance
998	Jointly to the Committee on Energy & Environmental Protection and the Committee on Economic Revitalization & Business, then to the Committee on Finance
1016, HD1	Committee on Transportation, then to the Committee on Energy & Environmental Protection, then to the Committee on Finance
1545	Committee on Consumer Protection & Commerce

ADJOURNMENT

At 12:19 o'clock p.m. on motion by Representative Evans, seconded by Representative Pine and carried, the House of Representatives adjourned until 12:00 o'clock noon tomorrow, Thursday, February 3, 2011. (Representative Wooley was excused.)