

## FIFTY-SIXTH DAY

**Wednesday, April 27, 2011**

The House of Representatives of the Twenty-Sixth Legislature of the State of Hawaii, Regular Session of 2011, convened at 11:41 o'clock a.m., with Vice Speaker Manahan presiding, after which the Roll was called showing all Members present with the exception of Representatives Cabanilla, Carroll, M. Oshiro and Souki, who were excused.

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

## GOVERNOR'S MESSAGES

The following messages from the Governor (Gov. Msg. Nos. 196, 1117 and 1118) were received and announced by the Clerk and were placed on file:

Gov. Msg. No. 196, dated April 15, 2011, transmitting the State Foundation of Culture and Arts' Annual Report July 1, 2009 through June 30, 2010.

Gov. Msg. No. 1117, informing the House that on April 26, 2011, the following bill was signed into law:

S.B. No. 1292, HD 1, entitled: "A BILL FOR AN ACT MAKING AN EMERGENCY APPROPRIATION TO THE DEPARTMENT OF HUMAN SERVICES FOR HEALTH CARE PAYMENTS." (ACT 017)

Gov. Msg. No. 1118, informing the House that on April 26, 2011, the following bill was signed into law:

H.B. No. 1067, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE TRANSFER OF YOUTH TO AN ADULT CORRECTIONAL FACILITY." (ACT 018)

## DEPARTMENTAL COMMUNICATIONS

The following departmental communication (Dept. Com. No. 87) was received by the Clerk and was placed on file:

Dept. Com. No. 87, dated April 8, 2011, from Marion M. Higa, State Auditor, Office of the Auditor, transmitting their 2010 Annual Report, pursuant to Section 23-9, Hawaii Revised Statutes.

## INTRODUCTIONS

The following introductions were made to the Members of the House:

Representative Mizuno introduced members of the Susannah Wesley Community Center. They were accompanied by former Representative Lyla Berg.

Representative Ward also welcomed East Honolulu resident, Ms. Lyla Berg.

## ORDER OF THE DAY

## SUSPENSION OF RULES

At this time, the Chair announced:

"Members, please note that HR No. 170 has been referred solely to the Committee on Higher Education per Committee Referral Sheet No. 68. The Committees on Economic Revitalization & Business, Labor & Public Employment, and Finance waived their referrals to this measure and it is therefore appropriate for the House to consider action for Adoption."

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the rules were suspended to reconsider action previously taken on H.R. No. 170. (Representatives Cabanilla, Carroll and M. Oshiro were excused)

## RECONSIDERATION OF ACTION TAKEN

Representative B. Oshiro moved that the House reconsider its action previously taken pursuant to the recommendation contained in Standing Committee Report No. 1231, recommending referral to the Committees on Economic Revitalization & Business and Labor & Public Employment, seconded by Representative Evans and carried. (Representatives Cabanilla, Carroll and M. Oshiro were excused.)

## UNFINISHED BUSINESS

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, H.R. No. 170, entitled: "HOUSE RESOLUTION SUPPORTING THE WORKFORCE PIPELINE PROGRAM OF THE THIRTY METER TELESCOPE PROJECT," was adopted, with Representatives Cabanilla, Carroll and M. Oshiro being excused.

Representative Wooley, for the Committee on Culture & the Arts presented a report (Stand. Com. Rep. No. 1751), recommending that H.R. No. 197, as amended in HD 1, be referred to the Committee on Water, Land, & Ocean Resources.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.R. No. 197, HD 1, entitled: "HOUSE RESOLUTION REQUESTING THE COUNTIES TO ACTIVATE AND ENFORCE EXISTING ORDINANCES AS WELL AS ADOPT ORDINANCES IDENTIFYING AND PROTECTING CULTURALLY VALUABLE SITES," was referred to the Committee on Water, Land, & Ocean Resources, with Representatives Cabanilla, Carroll and M. Oshiro being excused.

Representatives Hanohano and Wooley, for the Committee on Hawaiian Affairs and the Committee on Culture & the Arts presented a report (Stand. Com. Rep. No. 1752) recommending that S.C.R. No. 55, SD 1, be adopted.

Representative B. Oshiro moved that notwithstanding the recommendations contained in Standing Committee Report No. 1752, that S.C.R. No. 55, SD 1, be recommitted to the Committee on Hawaiian Affairs and the Committee on Culture & the Arts, seconded by Representative Evans.

The motion was put to vote by the Chair and carried, and S.C.R. No. 55, SD 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE GOVERNOR TO SUPPORT LEGISLATION THAT REDESIGNATES DISCOVERERS' DAY IN HAWAII AS INDIGENOUS PEOPLES DAY," was recommitted to the Committee on Hawaiian Affairs and the Committee on Culture & the Arts, with Representatives Cabanilla, Carroll and M. Oshiro being excused.

## SUSPENSION OF RULES

On motion by Representative Evans, seconded by Representative Pine and carried, the rules were suspended for the purpose of considering certain House Bills for Final Reading by consent calendar. (Representatives Cabanilla, Carroll and M. Oshiro were excused.)

**UNFINISHED BUSINESS**

Representative B. Oshiro moved to agree to the amendments made by the Senate to the following House Bills, seconded by Representative Evans and carried: (Representatives Cabanilla, Carroll and M. Oshiro were excused.)

H.B. No. 299, HD 1, (SD 1)  
H.B. No. 519, HD 1, (SD 2)

The Chair addressed the Clerk who announced that the record of votes for the appropriate measure had been received which indicated that the requisite number of House Conferees appointed had agreed to the amendments made by the Senate, and had cast affirmative votes to report said measure to the Floor for final disposition.

**H.B. No. 299, HD 1, SD 1:**

In accordance with the Conference Committee Procedures agreed upon by the House of Representatives and the Senate, the managers on the part of the House recommended that the House agree to the amendments proposed by the Senate to H.B. No. 299, HD 1, on the following showing of Ayes and Noes:

Ayes, 3 (B. Oshiro, Luke and Thielen). Noes, none. Excused, none.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, H.B. No. 299, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO COURTS OF APPEAL," passed Final Reading by a vote of 48 ayes, with Representatives Cabanilla, Carroll and M. Oshiro being excused.

**H.B. No. 519, HD 1, SD 2:**

Representative B. Oshiro moved that H.B. No. 519, HD 1, SD 2 pass Final Reading, seconded by Representative Evans.

Representative Pine rose in support of the measure 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, I rise in support of H.B. 519. Our workers' compensation law provides medical insurance and wage loss protection for employees who suffer work related injuries while also protecting employers from the civil liability resulting from such injuries. For a 50% owner of a business organized as a corporation, that owner may choose to buy coverage for him- or herself, but it's not required. Yet owner-employees of Limited Liability Companies ("LLCs") cannot do this. Under the current law, an owner-employee whose business is organized as an LLC must purchase coverage regardless of how much of a percentage in that business that person owns. There's no logical reason for this difference in treatment — it is simply a historical accident. Our Workers' Compensation law was written before LLCs came into being in Hawaii, so LLCs were not mentioned. The law we presently have reflects the business world of 25 years ago.

"What this bill does then, Mr. Speaker, is modernize our Workers' Compensation law by allowing certain owner-employees to decide whether they should buy Workers' Compensation insurance coverage for themselves. H.B. 519 does this by exempting from the definition of "employment" under the workers' compensation law, those owner-employees who (1) are members of a LLC or a partner of a LLP and who possess a distributional interest in the company or partnership of at least 50%, (2) a partner in a partnership, and (3) a sole proprietor. For such owners it makes sense to opt out of workers' compensation coverage. Mandating coverage for such owner-employees imposes additional costs on businesses, particularly for sole proprietors.

"Further such mandated coverage is irrational: A business owner who is not actively involved in the day-to-day activities of the business will most likely not suffer a work-related injury and would not benefit from workers'

compensation insurance. Even if that owner does work at the business, there's little or no gain to filing a worker's compensation claim, which would increase premium costs borne by his business. It is also highly unlikely for a sole owner of a company to file a claim against his company, and thus himself. And in the case of a sole proprietorship, an injury would likely result in the termination of the business' operations. Worker's compensation insurance imposes additional costs on a business, so this bill would provide additional and much needed financial resources for small businesses.

"The testimony in support of H.B. 519 by DLIR and business organizations representing LLCs is compelling, while the arguments by those who oppose this measure because "coverage gaps" will cause more "costs to the government" lack merit: Worker's Compensation is insurance bought from a private insurance company or is self-insurance, so there is no added cost to the government should some persons not be covered — while conversely, requiring coverage in those owner-employees covered by this bill has added to the workload of our Disability Compensation Division.

"Finally, if this modernization to our workers compensation law is not enacted, our State will look all the more "business-unfriendly" to those businesses we are working to attract to Hawaii. Many states already have statutory provisions making workers' compensation coverage non-mandatory for sole proprietors and LLC members. Hawaii, Mr. Speaker, should do the same.

"The Minority Caucus for many years has worked hard on this bill, and we are justly proud of the fairness that this bill finally brings to our law today. I therefore gladly rise in support of H.B. 519."

The motion was put to vote by the Chair and carried, H.B. No. 519, HD 1, SD 2, entitled: "A BILL FOR AN ACT RELATING TO WORKERS' COMPENSATION," passed Final Reading by a vote of 48 ayes, with Representatives Cabanilla, Carroll and M. Oshiro being excused.

At 11:50 o'clock a.m., the Chair noted that the following bills passed Final Reading:

H.B. No. 299, HD 1, SD 1  
H.B. No. 519, HD 1, SD 2

**REPORTS OF STANDING COMMITTEES**

Representative Chang, for the Committee on Water, Land, & Ocean Resources presented a report (Stand. Com. Rep. No. 1753) recommending that H.R. No. 149, be adopted.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.R. No. 149, be adopted, seconded by Representative Evans.

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

Representative Ichiyama's written remarks are as follows:

"Thank you, Mr. Speaker. I rise in support. HR149 urges the City and County of Honolulu to complete the Salt Lake District Park Master Plan, to connect Salt Lake District Park and Ala Puumalu Park with a walking and biking trail. The families in our neighborhood greatly enjoy our local parks. Our kids play basketball, baseball or football, building teamwork and learning lifelong skills. Our seniors often walk around the park in the evenings or early mornings, getting their daily quota of exercise. This walking and biking trail would provide an additional recreational area for our local families. Thank you, Mr. Speaker."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.R. No. 149, entitled: "HOUSE RESOLUTION URGING THE CITY AND COUNTY OF HONOLULU TO COMPLETE THE IMPLEMENTATION OF SALT LAKE

DISTRICT PARK MASTER PLAN," was adopted, with Representatives Cabanilla, Carroll and M. Oshiro being excused.

#### REPORTS OF CONFERENCE COMMITTEES

Representatives Aquino and Rhoads, for the Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House in S.B. No. 172, SD 2, HD 2, presented a report (Conf. Com. Rep. No. 2) recommending that S.B. No. 172, SD 2, HD 2, as amended in CD 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. 2 and S.B. No. 172, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO FIREWORKS," was deferred for a period of 48 hours.

Representatives Brower and Herkes, for the Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House in S.B. No. 1483, SD 1, HD 1, presented a report (Conf. Com. Rep. No. 3) recommending that S.B. No. 1483, SD 1, HD 1, as amended in CD 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. 3 and S.B. No. 1483, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO HAWAII REVISED STATUTES SECTION 514B-153(E)," was deferred for a period of 48 hours.

Representatives Souki and Rhoads, for the Committee on Conference on the disagreeing vote of the House to the amendments proposed by the Senate in H.B. No. 1094, HD 1, SD 2, presented a report (Conf. Com. Rep. No. 51) recommending that H.B. No. 1094, HD 1, SD 2, as amended in CD 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. 51 and H.B. No. 1094, HD 1, SD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO COMMERCIAL DRIVER LICENSING," was deferred for a period of 48 hours.

Representatives Souki, Herkes and Rhoads, for the Committee on Conference on the disagreeing vote of the House to the amendments proposed by the Senate in H.B. No. 1241, HD 2, SD 2, presented a report (Conf. Com. Rep. No. 52) recommending that H.B. No. 1241, HD 2, SD 2, as amended in CD 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. 52 and H.B. No. 1241, HD 2, SD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO ABANDONED VEHICLES," was deferred for a period of 48 hours.

Representative Rhoads, for the Committee on Conference on the disagreeing vote of the House to the amendments proposed by the Senate in H.B. No. 555, HD 1, SD 1, presented a report (Conf. Com. Rep. No. 53) recommending that H.B. No. 555, HD 1, SD 1, as amended in CD 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. 53 and H.B. No. 555, HD 1, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO GRAFFITI," was deferred for a period of 48 hours.

#### SUSPENSION OF RULES

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the rules were suspended for the purpose of reconsidering action previously taken in disagreeing to amendments made by the Senate to certain House Bills. (Representatives Cabanilla, Carroll, Luke and M. Oshiro were excused.)

#### RECONSIDERATION OF ACTION TAKEN

Representative B. Oshiro moved that the House reconsider its action previously taken in disagreeing to the amendments made by the Senate, and give notice of intent to agree to such amendments for the following House Bills, seconded by Representative Evans and carried: (Representatives Cabanilla, Carroll and M. Oshiro were excused.)

H.B. No. 1130, (SD 1)  
H.B. No. 1376, (SD 1)  
H.B. No. 1447, HD 2, (SD 2)

#### DISPOSITION OF MATTERS PLACED ON THE CLERK'S DESK

Representative B. Oshiro moved to agree to the amendments made by the Senate the following House Concurrent Resolution, seconded by Representative Evans and carried: (Representatives Cabanilla, Carroll and M. Oshiro were excused.)

H.C.R. No. 60, (SD 1)

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, H.C.R. No. 60, SD 1, entitled: "HOUSE CONCURRENT RESOLUTION RECOGNIZING APRIL AS SEXUAL ASSAULT AWARENESS AND PREVENTION MONTH," was Adopted, with Representatives Cabanilla, Carroll and M. Oshiro being excused.

#### ANNOUNCEMENTS

Representative Herkes: "Thank you, Mr. Speaker and Members. On behalf of that little breakfast that we had, that \$100 plate, I think I told you that we raised about \$5,500. Tesoro, yesterday, told me that they were going to give \$5,000 in free gas certificates to those people in the Kona-Kohala Coast that were impacted by the tsunami to help them rebuild their lives, and we thank Tesoro for that."

#### ADJOURNMENT

At 11:55 o'clock a.m. on motion by Representative Evans, seconded by Representative Pine and carried, the House of Representatives adjourned until 6:30 o'clock p.m. tomorrow, Thursday, April 28, 2011. (Representatives Cabanilla, Carroll and M. Oshiro were excused.)

#### HOUSE COMMUNICATIONS

House Communication dated April 27, 2011, from Patricia Mau-Shimizu, Chief Clerk of the House of Representatives, to the Honorable President and Members of the Senate, informing the Senate that the House has reconsidered its action taken in disagreeing to the amendments made by the Senate on April 14, 2011, and gives notice of intent to agree to the following House Bills:

H.B. No. 1130, SD 1  
H.B. No. 1376, SD 1  
H.B. No. 1447, HD 2, SD 2

House Communication dated April 27, 2011, from Patricia Mau-Shimizu, Chief Clerk of the House of Representatives, to the Honorable President and Members of the Senate, informing the Senate that the House has this day agreed to the amendments made by the Senate and passed the following House Bills on Final Reading:

H.B. No. 299, HD 1, SD 1  
H.B. No. 519, HD 1, SD 2

House Communication dated April 27, 2011, from Patricia Mau-Shimizu, Chief Clerk of the House of Representatives, to the Honorable

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President and Members of the Senate, informing the Senate that the House has agreed to the amendments made by the Senate and has this day adopted the following House Concurrent Resolution:

H.C.R. No. 60, SD 1