

TWENTY-THIRD DAY

Wednesday, February 23, 2011

The Senate of the Twenty-Sixth Legislature of the State of Hawai'i, Regular Session of 2011, convened at 11:35 a.m. with the President in the Chair.

The Roll was called showing all Senators present.

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

At this time, Senator Espero introduced his son Jason Espero, who works with the Waikiki Health Center's Homeless Program. Senator Espero also introduced his son 2nd Lieutenant Sean Espero with the Marine Wing Support Squadron 272 based out of Marine Corps Air Station New River, who will be going to Afghanistan to join the many young men and women who are fighting in the Middle East.

Senator Gabbard recognized and commended Blue Planet Foundation for its hard work, determination, and aloha in working towards energy transformation through public education, providing effective energy solutions, and advocating smart policies to foster Hawai'i's clean energy future. Representing Blue Planet Foundation were Founder and Chairman Henk Rogers, who was unable to attend and was represented by his wife Akemi; Executive Director Jeff Mikulina; various members of the Board of Directors including former Governor George Ariyoshi, Dr. Peter Crouch, Stanley Hong, Esq., Bob Lloyd, Expert Consultant Mike Champley, Special Projects Director Francois Rogers, and Program Specialist Ivory McClintock; and Blue Planet Foundation staff Matt Matsunaga, Government Relations Associate; Doug Codiga, PUC Counsel; Becky Dunning, Director of Operations and Advancement; Catharine Lo, Communications Director; and Eric Batalon, Volunteer Manager.

At 11:42 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:48 a.m.

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 165 to 166 and 526) were read by the Clerk and were disposed of as follows:

Gov. Msg. No. 165, dated February 22, 2011, transmitting the Budget in Brief - Amendments to the FB 2011-2013 Executive Biennium Budget, prepared by the Office of the Governor, was placed on file.

Gov. Msg. No. 166, letter dated February 22, 2011, transmitting proposed changes to the General Appropriations Act (H.B. No. 200), prepared by the Office of the Governor, was placed on file.

Gov. Msg. No. 526, submitting for consideration and confirmation as the Director for the Office of Environmental Quality Control, the nomination of GARY HOOSER, term to expire June 30, 2015, was referred to the Committee on Energy and Environment.

DEPARTMENTAL COMMUNICATION

The following communication (Dept. Com. No. 63) was read by the Clerk and was placed on file:

Dept. Com. No. 63, from the Department of Business, Economic Development and Tourism dated February 2, 2011, transmitting a request to expend additional federal funds for the

Hawaii Center for Advanced Transportation Technologies (HCATT).

HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 11 to 18) were read by the Clerk and were disposed of as follows:

Hse. Com. No. 11, returning S.B. No. 8, S.D. 1, as amended in H.D. 2, which passed Third Reading in the House of Representatives on February 22, 2011, was placed on file.

Senator Tokuda moved that the Senate agree to the amendments proposed by the House to S.B. No. 8, S.D. 1, seconded by Senator Kidani.

Senator Tokuda noted:

"We circulated the H.D. 2 to all offices last week, and upon careful review and consideration we strongly agree with the changes made by the House."

The motion was put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 8, S.D. 1, and S.B. No. 8, S.D. 1, H.D. 2, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," was placed on the calendar for Final Reading on Thursday, March 3, 2011.

Hse. Com. No. 12, returning S.B. No. 1286, S.D. 1, which passed Third Reading in the House of Representatives on February 22, 2011, was placed on file.

Hse. Com. No. 13, transmitting H.B. No. 243, H.D. 1, which passed Third Reading in the House of Representatives on February 22, 2011, was placed on file.

On motion by Senator Espero, seconded by Senator Slom and carried, H.B. No. 243, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ANIMAL CRUELTY," passed First Reading by title and was deferred.

Hse. Com. No. 14, transmitting H.B. No. 298, H.D. 1, which passed Third Reading in the House of Representatives on February 22, 2011, was placed on file.

On motion by Senator Espero, seconded by Senator Slom and carried, H.B. No. 298, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO COURT INTERPRETERS," passed First Reading by title and was deferred.

Hse. Com. No. 15, transmitting H.B. No. 555, H.D. 1, which passed Third Reading in the House of Representatives on February 22, 2011, was placed on file.

On motion by Senator Espero, seconded by Senator Slom and carried, H.B. No. 555, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO GRAFFITI," passed First Reading by title and was deferred.

Hse. Com. No. 16, transmitting H.B. No. 593, H.D. 1, which passed Third Reading in the House of Representatives on February 22, 2011, was placed on file.

On motion by Senator Espero, seconded by Senator Slom and carried, H.B. No. 593, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO NOMINATION PAPERS," passed First Reading by title and was deferred.

Hse. Com. No. 17, transmitting H.B. No. 827, H.D. 1, which passed Third Reading in the House of Representatives on February 22, 2011, was placed on file.

On motion by Senator Espero, seconded by Senator Slom and carried, H.B. No. 827, H.D. 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS TO PROVIDE FOR THE EXPENSES OF THE LEGISLATURE, THE AUDITOR, THE LEGISLATIVE REFERENCE BUREAU, THE OMBUDSMAN, AND THE ETHICS COMMISSION," passed First Reading by title and was referred to the Committee on Ways and Means.

Hse. Com. No. 18, transmitting H.B. No. 838, H.D. 2, which passed Third Reading in the House of Representatives on February 22, 2011, was placed on file.

On motion by Senator Espero, seconded by Senator Slom and carried, H.B. No. 838, H.D. 2, entitled: "A BILL FOR AN ACT RELATING TO REAPPORTIONMENT," passed First Reading by title and was deferred.

SENATE CONCURRENT RESOLUTIONS

The following concurrent resolutions (S.C.R. Nos. 34 to 39) were read by the Clerk and were deferred:

S.C.R. No. 34 "SENATE CONCURRENT RESOLUTION REQUESTING THE CONVENING OF A WORKING GROUP TO EXPLORE THE POSSIBILITY OF ESTABLISHING A CHARTER SCHOOL THAT FOCUSES ON AGRICULTURAL BUSINESS."

Offered by: Senator Nishihara.

S.C.R. No. 35 "SENATE CONCURRENT RESOLUTION REQUESTING THE CONVENING OF A WORKING GROUP TO EXPLORE WAYS TO ENCOURAGE STUDENT INTEREST IN FARMING AND AGRICULTURE."

Offered by: Senator Nishihara.

S.C.R. No. 36 "SENATE CONCURRENT RESOLUTION URGING ONLY THE PURCHASE, SALE, OFFER FOR SALE, TRADE, OR DISTRIBUTION OF HUMANELY PRODUCED FOIE GRAS."

Offered by: Senator Nishihara.

S.C.R. No. 37 "SENATE CONCURRENT RESOLUTION REQUESTING THE UNIVERSITY OF HAWAII SEA GRANT COLLEGE PROGRAM TO REVIEW THE EFFECTS OF CLIMATE CHANGE ON HAWAII'S COASTAL AND MARINE RESOURCES."

Offered by: Senator Nishihara.

S.C.R. No. 38 "SENATE CONCURRENT RESOLUTION URGING THE UNITED STATES CONGRESS TO PROPOSE AN AMENDMENT TO THE UNITED STATES CONSTITUTION FOR THE STATES' CONSIDERATION TO PROVIDE THAT CORPORATIONS ARE NOT PERSONS UNDER THE LAWS OF THE UNITED STATES OR ANY OF ITS JURISDICTIONAL SUBDIVISIONS."

Offered by: Senator Shimabukuro.

S.C.R. No. 39 "SENATE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF TRANSPORTATION, WITH ASSISTANCE FROM THE OAHU METROPOLITAN PLANNING ORGANIZATION, TO CONDUCT A STUDY ON THE FEASIBILITY OF USING KOLEKOLE PASS ROAD AS AN ALTERNATIVE MEANS OF ACCESS TO AND FROM THE LEEWARD COAST OF OAHU."

Offered by: Senator Shimabukuro.

SENATE RESOLUTIONS

The following resolutions (S.R. Nos. 14 to 18) were read by the Clerk and were deferred:

S.R. No. 14 "SENATE RESOLUTION URGING ONLY THE PURCHASE, SALE, OFFER FOR SALE, TRADE, OR DISTRIBUTION OF HUMANELY PRODUCED FOIE GRAS."

Offered by: Senator Nishihara.

S.R. No. 15 "SENATE RESOLUTION REQUESTING THE UNIVERSITY OF HAWAII SEA GRANT COLLEGE PROGRAM TO REVIEW THE EFFECTS OF CLIMATE CHANGE ON HAWAII'S COASTAL AND MARINE RESOURCES."

Offered by: Senator Nishihara.

S.R. No. 16 "SENATE RESOLUTION URGING THE UNITED STATES CONGRESS TO PROPOSE AN AMENDMENT TO THE UNITED STATES CONSTITUTION FOR THE STATES' CONSIDERATION TO PROVIDE THAT CORPORATIONS ARE NOT PERSONS UNDER THE LAWS OF THE UNITED STATES OR ANY OF ITS JURISDICTIONAL SUBDIVISIONS."

Offered by: Senator Shimabukuro.

S.R. No. 17 "SENATE RESOLUTION REQUESTING THE DEPARTMENT OF TRANSPORTATION, WITH ASSISTANCE FROM THE OAHU METROPOLITAN PLANNING ORGANIZATION, TO CONDUCT A STUDY ON THE FEASIBILITY OF USING KOLEKOLE PASS ROAD AS AN ALTERNATIVE MEANS OF ACCESS TO AND FROM THE LEEWARD COAST OF OAHU."

Offered by: Senator Shimabukuro.

S.R. No. 18 "SENATE RESOLUTION URGING THE CITY AND COUNTY OF HONOLULU TO EXPEND MONIES ALREADY DEDICATED IN ITS 2010-2011 EXECUTIVE OPERATING BUDGET TO CONDUCT A STUDY TO MAP AND DETERMINE IMPORTANT AGRICULTURAL LANDS ON OAHU, FOR THAT PURPOSE."

Offered by: Senator Dela Cruz.

STANDING COMMITTEE REPORTS

Senator Ige, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 446) recommending that S.B. No. 570, as amended in S.D. 1, be recommitted to the Committee on Ways and Means.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 570, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," was recommitted to the Committee on Ways and Means.

Senator Ige, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 447) recommending that S.B. No. 573, as amended in S.D. 1, be recommitted to the Committee on Ways and Means.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 573, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE STATE BUDGET," was recommitted to the Committee on Ways and Means.

Senator Ige, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 448) recommending that S.B. No. 1055, S.D. 1 pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 448 and S.B. No. 1055, S.D. 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR COLLECTIVE BARGAINING COST ITEMS," was deferred until Thursday, March 3, 2011.

Senator Ige, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 449) recommending that S.B. No. 1061, S.D. 1 pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 449 and S.B. No. 1061, S.D. 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR COLLECTIVE BARGAINING COST ITEMS," was deferred until Thursday, March 3, 2011.

Senator Ige, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 450) recommending that S.B. No. 1062, S.D. 1 pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 450 and S.B. No. 1062, S.D. 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR COLLECTIVE BARGAINING COST ITEMS," was deferred until Thursday, March 3, 2011.

Senator Ige, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 451) recommending that S.B. No. 1063, S.D. 1 pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 451 and S.B. No. 1063, S.D. 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR SALARY INCREASES FOR PUBLIC EMPLOYEES," was deferred until Thursday, March 3, 2011.

Senator Ige, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 452) recommending that S.B. No. 1064, S.D. 1 pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 452 and S.B. No. 1064, S.D. 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR SALARY INCREASES FOR PUBLIC EMPLOYEES," was deferred until Thursday, March 3, 2011.

Senator Ige, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 453) recommending that S.B. No. 1075, S.D. 1 pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 453 and S.B. No. 1075, S.D. 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR SALARY INCREASES FOR PUBLIC EMPLOYEES," was deferred until Thursday, March 3, 2011.

Senator Ige, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 454) recommending that S.B. No. 1077, S.D. 1 pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 454 and S.B. No. 1077, S.D. 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR SALARY INCREASES FOR PUBLIC EMPLOYEES," was deferred until Thursday, March 3, 2011.

Senator Ige, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 455) recommending that S.B. No. 1083, S.D. 1 pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 455 and S.B. No. 1083, S.D. 1, entitled: "A BILL FOR AN ACT

MAKING APPROPRIATIONS FOR COLLECTIVE BARGAINING COST ITEMS," was deferred until Thursday, March 3, 2011.

Senator Ige, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 456) recommending that S.B. No. 1084, S.D. 1 pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 456 and S.B. No. 1084, S.D. 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR COLLECTIVE BARGAINING COST ITEMS," was deferred until Thursday, March 3, 2011.

Senator Ige, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 457) recommending that S.B. No. 1085, S.D. 1 pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 457 and S.B. No. 1085, S.D. 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR COLLECTIVE BARGAINING COST ITEMS," was deferred until Thursday, March 3, 2011.

Senator Ige, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 458) recommending that S.B. No. 1095, S.D. 1 pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 458 and S.B. No. 1095, S.D. 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR COLLECTIVE BARGAINING COST ITEMS," was deferred until Thursday, March 3, 2011.

Senator Ige, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 459) recommending that S.B. No. 1096, S.D. 1 pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 459 and S.B. No. 1096, S.D. 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR SALARY INCREASES FOR PUBLIC EMPLOYEES," was deferred until Thursday, March 3, 2011.

Senator Ige, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 460) recommending that S.B. No. 777, as amended in S.D. 1, pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 777, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PAYMENT FOR GOODS AND SERVICES," passed Second Reading and was placed on the calendar for Third Reading on Thursday, March 3, 2011.

Senator Ige, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 461) recommending that S.B. No. 1356, as amended in S.D. 1, pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 1356, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," passed Second Reading and was placed on the calendar for Third Reading on Thursday, March 3, 2011.

At this time, the Chair made the following announcement:

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

ORDER OF THE DAY

**REFERRAL OF
SENATE CONCURRENT RESOLUTIONS**

The President made the following committee assignments of concurrent resolutions offered on Monday, January 31, 2011; Tuesday, February 1, 2011; Wednesday, February 2, 2011; Thursday, February 3, 2011; Monday, February 14, 2011; Wednesday, February 16, 2011; Thursday, February 17, 2011; Friday, February 18, 2011; and Wednesday, February 23, 2011:

- S.C.R. No.: Referred to:
- S.C.R. No. 21 Committee on Public Safety, Government Operations, and Military Affairs
- S.C.R. No. 22 Committee on Commerce and Consumer Protection, then to the Committee on Ways and Means
- S.C.R. No. 23 Committee on Commerce and Consumer Protection, then to the Committee on Ways and Means
- S.C.R. No. 24 Committee on Commerce and Consumer Protection, then to the Committee on Ways and Means
- S.C.R. No. 25 Committee on Health
- S.C.R. No. 26 Committee on Human Services, then to the Committee on Ways and Means
- S.C.R. No. 30 Committee on Public Safety, Government Operations, and Military Affairs, then to the Committee on Judiciary and Labor
- S.C.R. No. 31 Committee on Economic Development and Technology, then to the Committee on Ways and Means
- S.C.R. No. 32 Committee on Health, then to the Committee on Judiciary and Labor
- S.C.R. No. 33 Jointly to the Committee on Public Safety, Government Operations, and Military Affairs and the Committee on Water, Land, and Housing
- S.C.R. No. 34 Committee on Agriculture, then to the Committee on Education
- S.C.R. No. 35 Committee on Agriculture, then to the Committee on Ways and Means
- S.C.R. No. 36 Committee on Agriculture, then to the Committee on Judiciary and Labor

REFERRAL OF SENATE RESOLUTIONS

The President made the following committee assignments of resolutions offered on Monday, February 14, 2011; Thursday, February 17, 2011; Friday, February 18, 2011; and Wednesday, February 23, 2011:

- S. R. No.: Referred to:
- S.R. No. 11 Committee on Public Safety, Government Operations, and Military Affairs, then to the Committee on Judiciary and Labor
- S.R. No. 12 Committee on Health, then to the Committee on Judiciary and Labor

S.R. No. 13 Jointly to the Committee on Public Safety, Government Operations, and Military Affairs and the Committee on Water, Land, and Housing

S.R. No. 14 Committee on Agriculture, then to the Committee on Judiciary and Labor

RE-REFERRAL OF A SENATE BILL

The Chair re-referred the following Senate bill that was introduced:

- S.B. No.: Re-referred to:
- S.B. No. 146 Jointly to the Committee on Energy and Environment and the Committee on Transportation and International Affairs and the Committee on Ways and Means

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

“Mr. President and colleagues, yesterday I asked for a courtesy delay on the nominee to be Land Board Chair. As it turns out, because of the five-day recess, that meant next week Thursday. Having chaired the Committee on Water, Land, Ag, and Hawaiian Affairs for the last three years, many of you may agree with me how important that committee purview is, how pivotal the department is, and how reliant the people of Hawai‘i are on the leadership of its director. As an aside and for example, I did not participate in the confirmation hearing of the nominee for DBEDT. I did, however, watch it on TV. I was fascinated to hear the request yesterday by a Big Island Senator for a panda bear for the Big Island. I watched it like many of you. Evidently, the chairman of the committee has written to you with some expressions of frustration about the process. It has been my experience that it is up to the chair to ensure that when a nominee comes before this august assembly that the assembly is fully prepared to act upon the confirmation of the nominee. It may be that I am the only one who was not asked if I was prepared, or it may not be; it doesn’t matter. It is a courtesy extended to all members, especially at a time when there is no urgency to confirm the individual.

“As most of you know, when nominees have come before this body, I have been particularly interested in disclosure; most of the time that interest has focused on jurors who would serve on the bench. On February 2, the *Honolulu Civil Beat* wrote an article entitled, ‘Aila Nomination Sails Through Committee.’ I raised the concern at that time because the article also indicated that he had not—as well as others including the attorney general—disclosed and filed the proper paperwork required of them with the State Ethics Commission. I would note in that same article that *Civil Beat* indicated, and I will quote, ‘But some offered their support with “deep” or “grave” reservations.’ And then it went on to explain the concerns of the Association of Hawaiian Civic Clubs. The nominee indicated, and I will quote, ‘I’m held to a higher standard because I’m Native Hawaiian.’ He’s not held to a higher standard by me because he’s a Native Hawaiian. He is held to that standard regardless that he may be Native Hawaiian.

“I would note that on February 12th, the *Civil Beat* said, and I quote, ‘Dela Cruz, who told *Civil Beat* Friday that he had a list of questions ready, stepped out to chair another hearing and missed the question-and-answer section entirely.’ I would note that when I asked for a courtesy one-day delay, the chair asked me, ‘What for?’ My response was, ‘The aquarium fish license.’ The chair said to me in the presence of others, ‘It’s inactive.’ I said, ‘It’s active.’ He said, ‘It’s inactive.’ I said, ‘It’s active.’ Well, either it is or it isn’t. At 11:32, all of you received by email a letter from the nominee, dated February 17 (today’s the 23rd). I will quote: ‘It is true that I did not disclose the fact that my wife and I both hold active commercial marine

licenses. In addition, I maintain an active commercial aquarium fish license.' Either he does or he doesn't. He may be eminently qualified. The plain fact of the matter is if the delay were not requested he may well have been confirmed today for us to go back to our offices to read the letter.

"Today, February 23, *Honolulu Civil Beat*: 'Amid Ethics Questions, Aila Confirmation Delayed.' Evidently, he was asked on February 17 by the chair to respond to the concerns I raised 11 days ago. Evidently, he quickly explained that he did not disclose that he and his wife hold commercial licenses because his position was consistent with testimony provided in years past. What does that have to do with disclosure? That the 'industry is sustainable at current harvest levels.' Really? That statement resembles someone who harvests fish for a living. That's what they say: 'Get plenty fish.' Why then does Guy Tamashiro sell fish from New Zealand. Hawai'i has plenty fish? I don't think so.

"The coup de grâce for me is the committee chair's statement: 'I think if it's brought up later, hopefully it's not because of any kind of political gamesmanship.' Really? What game? What game? The game of playing senator? The game of playing confiner? Or the game of playing obstructionist? What game? These concerns are not legitimate? You know, as the chair of that committee for the last three years, the aquarium fish bill came before it. How will the committee deal with the person who holds a commercial fishing license in his testimony that is 'consistent' with the department's position that it's at sustainable levels? Well, evidently Maui County disagrees because you cannot lay gill nets in Maui County. You cannot collect aquarium fish in Maui County. So, must be sustainable in Maui County. The *Civil Beat* article indicates he's going to surrender those licenses to make it a 'moot point.' Moot point. Moot point? Surrender the license and the issue goes away? Not for me.

"All Senators received this at 11:32 today. It doesn't say he's going to surrender his license in this letter you got today; and even if he were, so what? Because what are we talking about here? We're talking about the character of an individual. In this letter you folks received, he explained that it wasn't his fault that the Ethics Commission didn't receive the disclosure form on time—it was his secretary's fault. Oh, it was the secretary's fault! When's the last time any of us failed to file a campaign spending report or Ethics Commission report and the public bought the excuse, 'Wasn't my fault; was my secretary's fault.' That speaks to character. That's what the gamesmanship is all about. And I asked for one day, Mr. President. Thank you."

Senator Solomon rose on a point of information as follows:

"I had the privilege of chairing the advise and consent portion of Mr. Aila's nomination when he was called to the forefront to share his remarks. It's unfortunate that the Senate has engaged in this format of organization involving joint or triple bills resulting in scheduling conflicts, which makes it impossible for a chairman to be presiding over two meetings at once. This was our situation; Chair Dela Cruz was representing your Committee on Water, Land, and Housing with your Committee on Agriculture.

"I just want to assure the previous speaker that yes, there were testimonies expressing reservations as to Mr. Aila's nomination, remarks that questioned the nominee's integrity and ability to be fair in looking at the issues in a much broader context. When your committee questioned Mr. Aila, we felt he was very receptive and his responses were appropriate in addressing these testifiers' concerns. He assured the committee that he will maintain a broader outlook, that he understands he is in a position that has greater responsibility, and he is no

longer representing positions that are targeted toward narrower interests.

"During a private conversation he admitted that he had a private aquarium license, and we suggested that he should consider giving up the license. We checked with the Ethics Commission and were advised that he was not required to register this license with them or list it in his disclosure statement. With respect to the previous speaker's inquiry as to whether or not Mr. Aila gave up his license, we were unsure and therefore agreed to defer action on Mr. Aila's nomination until this matter was resolved.

"Mr. President, I am hoping that it is leadership's position that when we engage in the advise and consent process, the chairman of a committee—or any member—should have the prerogative to express their concerns to the particular subject matter chair if they have concerns regarding a nominee. I'm most certain that if the previous speaker did bring these concerns to me or the chairman that we would have brought them up by questioning the individual to satisfy any senator and addressing the concerns. We felt that granting the request to defer would have met and addressed his concerns. So with that, Mr. President, I am yielding the floor to Chair Dela Cruz for further clarification. Thank you."

Senator Dela Cruz rose on a point of information as follows:

"Based on the deferral that happened in the Chamber yesterday, I did speak with the interim director. I also called the Ethics Commission. Immediately, the interim director met with Les Kondo to discuss the matter to ensure that everything was above board, that he followed the rules, he followed the guidelines. He did admit that he did not turn in his ethics financial disclosure in time. However, as the previous speaker stated, there is no requirement for any of us to file the kind of licenses we may have. That's not a state requirement; there's no law that requires that.

"Based on his meeting, I followed up with the Ethics Commission director. He notified me that they had a good, thorough meeting. He also said that the interim director was going to give up his license purely to ensure that he was going to avoid any type of negative perception. So, as of today, I think, all of us must have gotten an email, a letter to me from the interim director stating that his commercial license has been terminated, so that is no longer an issue. And as I mentioned, he went out of his way, he met with the ethics director. They had a meeting about it, and he is very intent upon complying with the law and ensuring that everything is above board. Thank you."

Senator Ige, Chair of the Committee on Ways and Means, requested a waiver of the notice requirement pursuant to Senate Rule 21 for the following bills:

S.B. No. 14, S.D. 1;
 S.B. No. 145, S.D. 1;
 S.B. No. 281, S.D. 1;
 S.B. No. 1153;
 S.B. No. 1337, S.D. 1;
 S.B. No. 26, S.D. 1;
 S.B. No. 105, S.D. 1;
 S.B. No. 155, S.D. 1;
 S.B. No. 651, S.D. 1;
 S.B. No. 652, S.D. 1;
 S.B. No. 715;
 S.B. No. 775, S.D. 1;
 S.B. No. 893, S.D. 1;
 S.B. No. 1233, S.D. 1;
 S.B. No. 1270, S.D. 1;
 S.B. No. 1272, S.D. 1;
 S.B. No. 1274, S.D. 1;

S.B. No. 1276, S.D. 1;
 S.B. No. 1277, S.D. 1;
 S.B. No. 1324, S.D. 1;
 S.B. No. 1348, S.D. 1;
 S.B. No. 1453, S.D. 1;
 S.B. No. 1519, S.D. 2;
 S.B. No. 333, S.D. 2;
 S.B. No. 640;
 S.B. No. 752, S.D. 1;
 S.B. No. 753, S.D. 1;
 S.B. No. 756, S.D. 1;
 S.B. No. 772, S.D. 1;
 S.B. No. 796, S.D. 1;
 S.B. No. 831, S.D. 1;
 S.B. No. 1120, S.D. 1;
 S.B. No. 1164, S.D. 1;
 S.B. No. 1285, S.D. 1;
 S.B. No. 1355;
 S.B. No. 1550, S.D. 1;
 S.B. No. 121, S.D. 1;
 S.B. No. 224, S.D. 1;
 S.B. No. 414, S.D. 2;
 S.B. No. 595, S.D. 1;
 S.B. No. 596, S.D. 1;
 S.B. No. 787, S.D. 1;
 S.B. No. 797;
 S.B. No. 925, S.D. 1;
 S.B. No. 1289, S.D. 1;
 S.B. No. 1300, S.D. 1;
 S.B. No. 1458, S.D. 1;
 S.B. No. 1506, S.D. 1;
 S.B. No. 1538;
 S.B. No. 112;
 S.B. No. 119, S.D. 1;
 S.B. No. 141, S.D. 1;
 S.B. No. 165, S.D. 1;
 S.B. No. 169, S.D. 1;
 S.B. No. 258;
 S.B. No. 284, S.D. 1;
 S.B. No. 582, S.D. 1;
 S.B. No. 590;
 S.B. No. 742, S.D. 1;
 S.B. No. 779, S.D. 1;
 S.B. No. 823;
 S.B. No. 879, S.D. 1;
 S.B. No. 883, S.D. 1;
 S.B. No. 1173, S.D. 1;
 S.B. No. 1227, S.D. 1;
 S.B. No. 1426, S.D. 1;
 S.B. No. 1496;
 S.B. No. 2, S.D. 1;
 S.B. No. 903;
 S.B. No. 1241;
 S.B. No. 1247, S.D. 1;
 S.B. No. 1311, S.D. 1;
 S.B. No. 1326, S.D. 1; and
 S.B. No. 1549, S.D. 1.

Senator Ige noted:

“We missed the 48-hour notice requirement by about four hours.”

The Chair granted the waiver.

Senator Gabbard, Chair of the Committee on Energy and Environment, requested a waiver of the notice requirement pursuant to Senate Rule 21 for S.B. No. 631.

Senator Gabbard noted:

“The parties involved came to an agreement on this bill just now.”

The Chair granted the waiver.

Senator Hee rose in rebuttal to the previous speaker’s point of information and said:

“I may not have been clear. The fact that the interim director may or may not, does or does not have a license is superseded by the fact that he did not voluntarily disclose that information to the committee. That’s the issue. I could not care less whether the Ethics Commission required him to disclose a license. We are not the Ethics Commission. And I’ll tell you why: Even if he were to give up that license, how will the panel take his testimony on a measure that says no more night diving because the fish are asleep when you pillage their village, and he says, ‘No, no, no; get plenty fish.’ How will the Senate panel respond to a proposal to ban all gill nets statewide, and he says, ‘No, no, no; get plenty fish. The gill nets can stay.’ Or how will the panel take his response to a concern that there should not be spears in the hands of scuba divers because they stay underwater longer than the fish stay underwater until they get speared. ‘No, no, no; no need. Get plenty fish.’ How will the panel respond to those responses knowing that they’re coming from a former commercial fisherman?”

“That’s the point. The fact you didn’t disclose it to the Ethics Commission, I couldn’t care less. It’s the idea that he did not make that disclosure to the Senate committee in charge of his evaluation. It’s the idea that he would say his testimony is consistent with the department. Well, the department’s out of step. When was the last time you took your mo’opuna to Waikiki Beach to catch a fish? That is why Moloka’i people, like Ni’ihau people, reject the predatory nature of O’ahu fishermen who go to the Penguin Banks and Kaua’i fishermen who go to Ni’ihau. It’s not because they want to take a longer ride; it’s because that’s where the fish are. And why is that? Because the department says, ‘No, no, no; got plenty fish.’ That’s the issue with this director. It’s not about surrendering a license. That issue doesn’t go away with the surrendering of a license. It’s about disclosure. Thank you, Mr. President.”

Senator Shimabukuro rose on a point of information and said:

“I just wanted to respond to some of the previous speaker’s concerns and just say that I was at the confirmation hearing; and that the few people who did testify with grave reservations about William Aila, Jr., ironically, their reason for having concerns about him is the issue of WESTPAC and the fact that Mr. Aila has for a long time held the belief that we should ban fishing in the Northwestern Hawaiian Islands, and WESTPAC has the opposite view. And so, I hope that will allay some of the concerns that were just expressed; and as a resident of the Wai’anae coast community, Mr. Aila’s reputation has been one who has fought very hard to preserve our fish and to have self regulation among the fisherman. So, mahalo.”

ADJOURNMENT

At 12:18 p.m., on motion by Senator Espero, seconded by Senator Slom and carried, the Senate adjourned until 11:30 a.m., Thursday, March 3, 2011.