

FORTY-FIFTH DAY

Thursday, April 7, 2011

The House of Representatives of the Twenty-Sixth Legislature of the State of Hawaii, Regular Session of 2011, convened at 12:06 o'clock p.m., with Vice Speaker Manahan presiding, after which the Roll was called showing all Members present with the exception of Representatives Carroll and M. Oshiro, who were excused.

On motion by Representative Evans, seconded by Representative Pine and carried, reading of the Journal was dispensed with and the Journals of the Twenty-Fourth and Twenty-Fifth Days were approved. (Representatives Carroll and M. Oshiro were excused.)

SENATE COMMUNICATIONS

The following communications from the Senate (Sen. Com. Nos. 398 through 402) were received and announced by the Clerk:

Sen. Com. No. 398, dated April 6, 2011, informing the House that the Senate has disagreed to the amendments proposed by the House to the following Senate Bills:

S.B. No. 105, SD 2, HD 1
S.B. No. 1067, SD 1, HD 2
S.B. No. 1533, SD 1, HD 1

Sen. Com. No. 399, transmitting S.C.R. No. 48, entitled: "SENATE CONCURRENT RESOLUTION URGING CONGRESS TO SUPPORT FEDERAL LEGISLATION PROHIBITING HEALTH INSURERS FROM DENYING COVERAGE TO VICTIMS OF DOMESTIC VIOLENCE ON THE GROUNDS THAT IT IS A PRE-EXISTING CONDITION," which was adopted by the Senate on April 6, 2011.

Sen. Com. No. 400, transmitting S.C.R. No. 134, SD 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE CONVENING OF A WORKING GROUP TO INVESTIGATE THE CREATION OF A LOCALLY-FOCUSED, HAWAII-BASED STOCK EXCHANGE," which was adopted by the Senate on April 6, 2011.

Sen. Com. No. 401, transmitting S.C.R. No. 167, SD 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THAT THE CIVIL DEFENSE DIVISION OF THE HAWAII DEPARTMENT OF DEFENSE IS REQUESTED WORK WITH THE COUNTY CIVIL DEFENSE OR EMERGENCY MANAGEMENT AGENCIES TO EVALUATE THE APPROPRIATENESS OF TSUNAMI EVACUATION SITES IN THE STATE," which was adopted by the Senate on April 6, 2011.

Sen. Com. No. 402, transmitting H.B. No. 1089, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO CONFORMITY OF THE HAWAII INCOME TAX LAW TO THE INTERNAL REVENUE CODE," which passed Third Reading in the Senate on April 6, 2011.

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

H.B. No. 1089, HD 1, (SD 1)

INTRODUCTIONS

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

Representative Mizuno introduced members of the American Massage Therapists Association, and the Massage Therapists Association of Hawaii who were here for the 16th Annual Massage Day at the Capitol:

Ms. Pua Gillespie, President, American Massage Therapists Association;

Ms. Barbara Manni, Vice President, American Massage Therapists Association;
Ms. Mahana Byington, Past President, Massage Therapists Association of Hawaii; and
Mr. Dustin Ebisu, President, Massage Therapists Assn. of Hawaii.

Representative Chang introduced his good friend, Mr. David Shiigi of Hilo.

ORDER OF THE DAY

SUSPENSION OF RULES

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

At 12:12 o'clock p.m. the Chair declared a recess subject to the call of the Chair.

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

UNFINISHED BUSINESS

Representative Keith-Agaran, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 1417) recommending that S.B. No. 1301, SD 1, as amended in HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and S.B. No. 1301, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO FAIR HOUSING EXEMPTIONS," passed Third Reading by a vote of 50 ayes, with Representative M. Oshiro being excused.

Representative Keith-Agaran, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 1418) recommending that S.B. No. 1054, SD 1, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and S.B. No. 1054, SD 1, HD 2, entitled: "A BILL FOR AN ACT RELATING TO TEMPORARY RESTRAINING ORDERS," passed Third Reading by a vote of 50 ayes, with Representative M. Oshiro being excused.

Representative Yamashita, for the Committee on Legislative Management presented a report (Stand. Com. Rep. No. 1419) recommending that S.B. No. 49, SD 1, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and S.B. No. 49, SD 1, HD 2, entitled: "A BILL FOR AN ACT RELATING TO CORRECTIONAL FACILITIES," passed Third Reading by a vote of 50 ayes, with Representative M. Oshiro being excused.

Representative Herkes, for the Committee on Consumer Protection & Commerce presented a report (Stand. Com. Rep. No. 1420) recommending that S.B. No. 1482, SD 1, as amended in HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 1482, SD 1, HD 1, pass Third Reading, seconded by Representative Evans.

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

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 1482, SD 1, HD 1, entitled: "A

BILL FOR AN ACT RELATING TO THE PUBLIC UTILITIES COMMISSION," passed Third Reading by a vote of 50 ayes, with Representative M. Oshiro being excused.

At 12:13 o'clock p.m., the Chair noted that the following bills passed Third Reading:

S.B. No. 1301, SD 1, HD 1
S.B. No. 1054, SD 1, HD 2
S.B. No. 49, SD 1, HD 2
S.B. No. 1482, SD 1, HD 1

REPORTS OF STANDING COMMITTEES

Representative Keith-Agaran, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 1434) recommending that S.B. No. 1068, SD 1, as amended in HD 1, pass Second Reading and be placed on the calendar for Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and S.B. No. 1068, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO ANIMAL CRUELTY," passed Second Reading and was placed on the calendar for Third Reading, with Representative M. Oshiro being excused.

Representative Keith-Agaran, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 1435) recommending that S.B. No. 946, SD 1, as amended in HD 1, pass Second Reading and be placed on the calendar for Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 946, SD 1, HD 1, pass Second Reading and be placed on the calendar for Third Reading, seconded by Representative Evans.

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

Representative M. Lee's written remarks are as follows:

"Mr. Speaker, I rise in strong support of this measure. A public record in this day and age could be broadcast over the Internet and remain online forever. This measure will protect the privacy of individuals suffering from mental illness, substance abuse, domestic violence, and those who are minors as well as the gay community.

"Domestic violence survivors would be spared from reliving the nightmare of abuse as filing for temporary restraining orders, petitions, motions can be dangerous to the victim by exposing sensitive information to the batterer or his/her employer. Victims are often afraid of retaliation.

"Women are the most targeted and vulnerable, and for the LGBT community, we must afford them the privacy they deserve.

"Cyber bullying/ stalking/ harassment are on the rise as technology evolves with social media, blogs and websites. These are outlets used to tarnish reputations and embarrass the victim with derogatory information, revelation of sexual orientation, or revealing photos. As we have seen in the news, bullying may lead to suicide. Sensitive information such as medical records, social security numbers, telephone numbers, and home addresses should be kept private.

"Let's protect vulnerable individuals with compassion."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 946, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE JUDICIARY," passed Second Reading and was placed on the calendar for Third Reading, with Representative M. Oshiro being excused.

Representative Keith-Agaran, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 1436) recommending that S.B. No. 1342, SD 1, HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and S.B. No. 1342, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO PARKING FOR THE DISABLED," passed Third Reading by a vote of 50 ayes, with Representative M. Oshiro being excused.

At 12:14 o'clock p.m., the Chair noted that the following bill passed Third Reading:

S.B. No. 1342, SD 1, HD 1

Representative Chang, for the Committee on Water, Land, & Ocean Resources presented a report (Stand. Com. Rep. No. 1437) recommending that H.R. No. 71, be adopted.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.R. No. 71, entitled: "HOUSE RESOLUTION REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES AND THE CITY AND COUNTY OF HONOLULU TO AGREE TO A FINAL DETERMINATION REGARDING THE OWNERSHIP AND JURISDICTION OF AN UNIMPROVED SECTION OF KAIMAKANI STREET," was adopted, with Representative M. Oshiro being excused.

Representative Chang, for the Committee on Water, Land, & Ocean Resources presented a report (Stand. Com. Rep. No. 1438) recommending that H.C.R. No. 78, be adopted.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.C.R. No. 78, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES AND THE CITY AND COUNTY OF HONOLULU TO AGREE TO A FINAL DETERMINATION REGARDING THE OWNERSHIP AND JURISDICTION OF AN UNIMPROVED SECTION OF KAIMAKANI STREET," was adopted, with Representative M. Oshiro being excused.

THIRD READING

S.B. No. 106, SD 1, HD 1:

Representative B. Oshiro moved that S.B. No. 106, SD 1, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Yes, Mr. Speaker. I stand in opposition to this measure. Basically what we're doing here is we're violating the separation of powers by overwriting a multitude of judicial determinations with a legislative measure, after the fact. Please realize that people who have been sentenced to multiple terms have committed multiple felonies in this case, and is this something that we really want to go back and do.

"Also there's the question of liability, and I believe the Chair tried to address that. But if you have a prisoner who has maybe served two 10-year sentences, and has served already 14 years, and then we go back and we say, 'Oh, you should only serve 10.' There's four years of additional sentencing that this prisoner has served. Does that open the State to liability? Will he then come back to the courts and say, 'You need to pay me for the time that I've spent in jail.' So those are my brief comments in opposition. Thank you."

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

"In opposition. I just want to explain to Members what this means exactly. As the previous speaker had stated, a person that committed multiple crimes and was sentenced by a judge to serve consecutive sentences for those multiple crimes, they can now get off earlier. Let me tell you who that's going to affect in my community.

"A few years ago Karen Ertell was murdered by Vernon Bartley. What Vernon Bartley did to this nice woman who helped him out, his neighbor, was he raped her and then he murdered her, then he stole her car. Of course after breaking into her house to murder and rape her, and then he watched porn from her computer. And then he stole other things.

"He was sentenced to consecutive terms for all those different counts. The judge convicted him on seven counts including murder, burglary, unauthorized computer access, car theft, and credit card fraud. And if this passes and is signed into law by the Governor, I have to go to that family who was counting on him serving the time for the multiple crimes that he did to this wonderful woman and tell them that this Legislature felt that he should get off earlier. That's what I'm going to have to do if this bill passes into law.

"This is a real family who has suffered tremendously, and now this Legislature feels that this person, this awful person, should have more freedom because now he can serve all these seven counts all at the same time. And this family who was counting on, hoping on, praying on, and trusting in the judicial system that he would serve the time for these crimes. They're going to be victimized again by this Body.

"So, Mr. Speaker, I strongly ask the Members to please not let this bill get passed into law. You will find out that there are many cases in your districts that you're going to be letting off a violent criminal free because of this legislation if it becomes law."

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

"Thank you, Mr. Speaker. In support. I can certainly understand the passion of my colleague in Ewa Beach regarding these crimes and that the convicted should pay for that. But I just want to point out something that's a reality that we need to face with this.

"Suppose somebody has to serve a consecutive sentence amounting to 40 years, and they were about 40 years old when that crime happens. That means assuming they live up to the age of 80, we're going to be paying 40 years at \$165 per day. When they turn 65 and they become geriatric, they will now populate our State hospitals in the geriatric ward, and that's what's happening now.

"These precious beds that we have that are supposed to be for regular nursing homes and they are now for inmates. And furthermore, if you hospitalize those inmates in a regular hospital they come with entourages of guards amounting to thousands of dollars per day when they're hospitalized.

"Considering that we are cutting services for valuable nonprofits, are we now going to switch these precious resources to funding nursing homes and hospitalization for inmates whose cost exponentially increases? Thank you, Mr. Speaker."

Representative B. Oshiro rose to speak in support of the measure, stating:

"Mr. Speaker, I rise in support. I think it's important to provide some background on this bill. Specifically if people look at section one, what it talks about is Act 193 of 2008. What that means is back in 2007 our Department of Public Safety found out that the law, as written was actually not being properly interpreted by our Judiciary, as well as our Public Safety Department.

"And what this has to do with is when a judge issues their sentence upon a convicted criminal, when they issue their sentence they have the choice when there is more than one conviction of either saying that the terms will run concurrent, or they will run consecutive. If it's concurrent that means

you lump them all together and it's the maximum amount of time served. If it's consecutive, that means you add them up all together.

"So that has to do with Act 193. And what that had to tell judges to please be specific when they are issuing sentences and say whether a sentence is going to be concurrent or consecutive. Because if you remain silent, then at that point there will be an assumption that is concurrent. And as much as I feel for the Minority Floor Leader and her comments, that has nothing to do with this case because Act 193 did not apply there.

"What this does is, it says any conviction prior to Act 193, prior to 2008, for those sentences where the judge was silent, where the judge did not say whether a sentence will run concurrent or consecutive, it will run concurrent. And that is because that was the assumption and the practice in the entire Judiciary, as well as the entire Public Safety. And so that really was why judges were silent prior to 2008, because they assumed that when they didn't say it, it meant concurrent. And so all this is doing is conforming to what was practiced into law. Thank you."

Representative Pine rose to respond, stating:

"I understand all of that information, but this makes everything concurrent. That is our statement to society, that we want everything to be concurrent. And I'm telling you that many murderers, rapists, people who rape little children, are going to be getting off if the judge that did the sentence, that did maybe life with parole. That person has the opportunity to get out earlier. So when we're talking about maximum sentences, it's not 20 years. It's not 40 years. It could be as early as 5 years, 8 years, 10 years for a violent crime.

"So if we're going to be talking about geriatrics, let's be real. They're never going to have to serve all that time for violent crime. We're making a statement as a legislative body that these people should not be punished for all of their crimes. Because they're not going to be serving the time. They're just going to be punished for the crime that they have the most time, but if the judge gave the opportunity for parole, then that maximum time could be as low as 5 or 6 years for a violent crime."

Representative Har rose in opposition to the measure and asked that the remarks of Representative Fontaine be entered into the Journal as her own, and the Chair "so ordered." (By reference only.)

Representative Ching rose in opposition to the measure and asked that the remarks of Representatives Pine and Fontaine be entered into the Journal as her own, and the Chair "so ordered." (By reference only.)

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

"Thank you, Mr. Speaker. I rise in support. And may I have the words of the Majority Leader as my own. And I also want to add that I think we're all concerned about anybody that has been harmed, and that people will get the punishment they deserve I hope.

"But what I really see in this bill that hasn't been brought up is the that Judiciary still has the discretion. Clearly the court can specify if it's concurrent or not. If it's silent, we're just setting it straight so that you don't have anybody in the Department of Public Safety, a staff person and not a judge, and maybe even the Parole Authority Board trying to interpret and understand what a judge really wants. This really gives that discretion to that body. I think this is really putting the burden more on our Judiciary. I hope the speech that was given by the Minority Floor Leader would be shared with the Judiciary. Thank you."

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

"In opposition. First I'd like to share that the costs should not be the predominate factor. If we've got criminals, we've got to put them away, or we've got to have the justice server serve, just as many other agencies in this government have to operate from what is right and what is wrong.

"As to the ambiguity in the law, as far as I can see, Act 193 did clarify whatever ambiguity that may have existed since 2008 so there should not

be any uncertainty. I would note that the courts do have the ability now to correct or mend anything should it be determined that a judge had meant for it to be concurrent rather than consecutive. I imagine there are procedures in place that could be adjudicated now. So what we're being asked to do here is to make that decision, and go back and make the decision for the judge from this Floor now for all cases. And so I would say that we should not be amending this Act, and let it continue as it is and was adopted three years ago. Thank you."

Representative Johanson rose in opposition to the measure and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Johanson's written remarks are as follows:

"Mr. Speaker, I rise in opposition to SB 106, SD1 HD1 as currently drafted. While I recognize the genesis and intent of this bill is to save our State money by streamlining the time prisoners serve and to potentially make previous legislative intent clear, I believe this bill would have too broad of an effect on prison terms and may undo the rulings by our State courts. I also echo some of the concerns of the Department of Public Safety and City Prosecutor that were raised in their testimony against this bill: retroactive application of this bill on criminals who were purposely sentenced to serve consecutive terms may ultimately lead to criminals serving fewer years because their terms may become concurrent versus consecutive. It is important to ensure justice for all; we must prioritize the rights of victims and justice for the aggrieved."

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

Representative Pine rose in opposition to 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 rebuttal to the House Majority Leader's comments on SB 106 concerning multiple terms of imprisonment under the Hawaii Penal Code, as well as rise in opposition to this bill. What this bill does is require that multiple terms of imprisonment must run concurrently unless the court orders or the law mandates that the terms run consecutively. This shall apply to all sentences including those that were imposed before this bill became law. And the bill directs the Department of Public Safety to recalculate the sentences of inmates who submit written requests and, if warranted by the recalculation, release those inmates.

"The Majority Leader states that this bill will not apply if the sentencing judge is silent and does not declare that the multiple prison terms shall be served concurrently. The Majority Leader is wrong. Silence on the part of the judge -- by the very terms of this bill -- does not have this effect. As the Senate Standing Committee Report points out, the multiple sentencing terms shall be served concurrently -- "unless otherwise ordered by the court." Thus, the silence of the judge shall have the effect of these multiple sentence terms being served concurrently, not consecutively.

"And because this bill applies to all sentences, even for those sentences imposed before it became law, this bill allows prisoners to get out of prison earlier despite their heinous crimes.

"This bill opens the door for convicted murderers, rapists, child molesters, and violent criminals to get out of jail earlier. What Mr. Speaker will we in this Legislature tell the victims of these crimes concerning what we're doing here today? Once again, this Legislature has made it a priority to coddle criminals who don't deserve our support -- and we've thrown to the wayside the feelings of their victims who shall once again be victimized because of the actions we are taking here today. On behalf of these victims and our community, I therefore rise in strong opposition to this bill."

The motion was put to vote by the Chair and carried, and S.B. No. 106, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII PENAL CODE," passed Third Reading by a vote of 37 ayes to 10 noes, with Representatives Ching, Fontaine, Har, Johanson, Marumoto,

McKelvey, Pine, Riviere, Thielen and Ward voting no, and with Representatives Awana, Chang, Mizuno and M. Oshiro being excused.

At 12:28 o'clock p.m., the Chair noted that the following bill passed Third Reading:

S.B. No. 106, SD 1, HD 1

ANNOUNCEMENTS

Representative M. Lee, for the Committee on Finance requested a waiver of the 48-hour advanced notice requirement for the purpose of hearing the following Senate Bills, in order to meet the Second Crossover deadline, on Thursday, April 7, today, at 2:30 p.m. in Conference Room 308, and the Chair "so ordered."

S.B. No. 165, Relating to Aerospace Development,
S.B. No. 596, Relating to Hawaii Health Corps,
S.B. No. 797, Making an Appropriation for Health Information Technology,
S.B. No. 806, Relating to Teachers,
S.B. No. 1078, Relating to Collective Bargaining,
S.B. No. 1219, Relating to the Lanai Watershed,
S.B. No. 1221, Relating to Procurement, and
S.B. No. 1555, Relating to the Department of Land and Natural Resources.

COMMITTEE ASSIGNMENTS

The following measures were referred to committee by the Speaker:

S.C.R. Nos.

Referred to:

14, SD2	Jointly to the Committee on Public Safety & Military Affairs and the Committee on Water, Land, & Ocean Resources, then to the Committee on Finance
80, SD1	Jointly to the Committee on Higher Education and the Committee on Education, then to the Committee on Finance
145	Committee on Education, then to the Committee on Finance
150, SD1	Committee on Human Services, then to the Committee on Finance

COMMITTEE REASSIGNMENTS

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

H.C.R. Nos.

Re-referred to:

128, HD1	Jointly to the Committee on Labor & Public Employment and the Committee on Human Services and the Committee on Health, then to the Committee on Finance
167	Committee on Agriculture, then to the Committee on Finance

ADJOURNMENT

At 12:29 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, Friday, April 8, 2011. (Representatives Awana, Chang, Mizuno and M. Oshiro were excused.)

HOUSE COMMUNICATIONS

House Communication dated April 7, 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 disagreed to the amendments made by the Senate to the following measure:

H.B. No. 1089, HD 1, SD 1