

## TWELFTH DAY

## Monday, February 6, 2012

The Senate of the Twenty-Sixth Legislature of the State of Hawai'i, Regular Session of 2012, convened at 11:33 a.m. with the President in the Chair.

The Roll was called showing all Senators present with the exception of Senator Kahele who was excused.

The President announced that he had read and approved the Journal of the Eleventh Day.

At this time, Senator Ihara introduced Dr. John Kindt, professor at the University of Illinois and national expert on the economic and social impacts of gambling. Accompanying Dr. Kindt was Mr. Bill Kumia, member of the Hawaii Coalition Against Legalized Gambling.

## MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 208 and 618 to 628) were read by the Clerk and were disposed of as follows:

Gov. Msg. No. 208, dated December 23, 2011, transmitting the 2011 Annual Report of the Office of Language Access, prepared by the Department of Labor and Industrial Relations pursuant to Act 290, SLH 2006, was placed on file.

Gov. Msg. No. 618, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Health Connector, the nomination of SHERRY MENOR-MCNAMARA, term to expire June 30, 2015 (Replaces Gov. Msg. No. 607), was referred to the Committee on Commerce and Consumer Protection.

Gov. Msg. No. 619, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Health Connector, the nomination of MARY ONEHA, term to expire June 30, 2014 (Replaces Gov. Msg. No. 608), was referred to the Committee on Commerce and Consumer Protection.

Gov. Msg. No. 620, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Health Connector, the nomination of ROBERT HIROKAWA, term to expire June 30, 2014 (Replaces Gov. Msg. No. 609), was referred to the Committee on Commerce and Consumer Protection.

Gov. Msg. No. 621, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Health Connector, the nomination of CLIFFORD ALAKAI, term to expire June 30, 2016 (Replaces Gov. Msg. No. 610), was referred to the Committee on Commerce and Consumer Protection.

Gov. Msg. No. 622, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Health Connector, the nomination of GWEN RULONA, term to expire June 30, 2014 (Replaces Gov. Msg. No. 611), was referred to the Committee on Commerce and Consumer Protection.

Gov. Msg. No. 623, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Health Connector, the nomination of CHRISTINE SAKUDA, term to expire June 30, 2015 (Replaces Gov. Msg. No. 612), was referred to the Committee on Commerce and Consumer Protection.

Gov. Msg. No. 624, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Health

Connector, the nomination of JOAN DANIELEY, term to expire June 30, 2015 (Replaces Gov. Msg. No. 613), was referred to the Committee on Commerce and Consumer Protection.

Gov. Msg. No. 625, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Health Connector, the nomination of JENNIFER DIESMAN, term to expire June 30, 2014 (Replaces Gov. Msg. No. 614), was referred to the Committee on Commerce and Consumer Protection.

Gov. Msg. No. 626, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Health Connector, the nomination of MICHAEL GLEASON, term to expire June 30, 2015 (Replaces Gov. Msg. No. 615), was referred to the Committee on Commerce and Consumer Protection.

Gov. Msg. No. 627, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Health Connector, the nomination of HARRIS NAKAMOTO, term to expire June 30, 2015 (Replaces Gov. Msg. No. 616), was referred to the Committee on Commerce and Consumer Protection.

Gov. Msg. No. 628, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Health Connector, the nomination of FAYE KURREN, term to expire June 30, 2014 (Replaces Gov. Msg. No. 617), was referred to the Committee on Commerce and Consumer Protection.

## HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 8 and 9) were read by the Clerk and were disposed of as follows:

Hse. Com. No. 8, informing the Senate that on February 3, 2012, H.B. No. 608, H.D. 3, S.D. 1, C.D. 2 passed Final Reading in the House of Representatives, was placed on file.

Hse. Com. No. 9, transmitting H.B. No. 101, H.D. 2, which passed Third Reading in the House of Representatives on February 3, 2012, was placed on file.

On motion by Senator Espero, seconded by Senator Slom and carried, H.B. No. 101, H.D. 2, entitled: "A BILL FOR AN ACT RELATING TO TRANSPORTATION," passed First Reading by title and was deferred.

## STANDING COMMITTEE REPORTS

Senator Gabbard, for the Committee on Energy and Environment, presented a report (Stand. Com. Rep. No. 2017) recommending that S.B. No. 2291, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Commerce and Consumer Protection.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 2291, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO SOLAR ENERGY," passed Second Reading and was referred to the Committee on Commerce and Consumer Protection.

Senator Gabbard, for the Committee on Energy and Environment, presented a report (Stand. Com. Rep. No. 2018) recommending that S.B. No. 2966, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Commerce and Consumer Protection.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 2966, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO RENEWABLE ENERGY," passed Second Reading and was referred to the Committee on Commerce and Consumer Protection.

Senator Gabbard, for the Committee on Energy and Environment, presented a report (Stand. Com. Rep. No. 2019) recommending that S.B. No. 2287 pass Second Reading and be referred to the Committee on Commerce and Consumer Protection.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 2287, entitled: "A BILL FOR AN ACT RELATING TO RENEWABLE ENERGY," passed Second Reading and was referred to the Committee on Commerce and Consumer Protection.

Senator Nishihara, for the Committee on Agriculture, presented a report (Stand. Com. Rep. No. 2020) recommending that S.B. No. 2695, as amended in S.D. 1, pass Second Reading and be referred 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. 2695, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO LIVESTOCK FEED," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Nishihara, for the Committee on Agriculture, presented a report (Stand. Com. Rep. No. 2021) recommending that S.B. No. 2692, as amended in S.D. 1, pass Second Reading and be referred 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. 2692, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO AGRICULTURE," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Chun Oakland, for the Committee on Human Services, presented a report (Stand. Com. Rep. No. 2022) recommending that S.B. No. 2308, as amended in S.D. 1, pass Second Reading and be referred 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. 2308, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO LONG TERM CARE," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Espero, for the Committee on Public Safety, Government Operations, and Military Affairs, presented a report (Stand. Com. Rep. No. 2023) recommending that S.B. No. 2777, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Judiciary and Labor.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 2777, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CRIME," passed Second Reading and was referred to the Committee on Judiciary and Labor.

Senator Espero, for the Committee on Public Safety, Government Operations, and Military Affairs, presented a report (Stand. Com. Rep. No. 2024) recommending that S.B. No. 2581, as amended in S.D. 1, pass Second Reading and be referred 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. 2581, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO AN AUTOMATED VICTIM NOTIFICATION SYSTEM," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Espero, for the Committee on Public Safety, Government Operations, and Military Affairs, presented a report (Stand. Com. Rep. No. 2025) recommending that S.B. No. 2396, as amended in S.D. 1, pass Second Reading and be referred 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. 2396, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII PAROLING AUTHORITY," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Espero, for the Committee on Public Safety, Government Operations, and Military Affairs, presented a report (Stand. Com. Rep. No. 2026) recommending that S.B. No. 2250, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Judiciary and Labor.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 2250, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PAROLE," passed Second Reading and was referred to the Committee on Judiciary and Labor.

Senator Tokuda, for the Committee on Education, presented a report (Stand. Com. Rep. No. 2027) recommending that S.B. No. 2540, as amended in S.D. 1, pass Second Reading and be referred 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. 2540, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Tokuda, for the Committee on Education, presented a report (Stand. Com. Rep. No. 2028) recommending that S.B. No. 2542, 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. 2542, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," passed Second Reading and was placed on the calendar for Third Reading on Wednesday, February 8, 2012.

Senator Tokuda, for the Committee on Education, presented a report (Stand. Com. Rep. No. 2029) recommending that S.B. No. 2543 pass Second Reading and be referred 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. 2543, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," passed Second Reading and was referred to the Committee on Ways and Means.

## ORDER OF THE DAY

### THIRD READING

S.B. No. 2205:

Senator Hee moved that S.B. No. 2205, having been read throughout, pass Third Reading, seconded by Senator Shimabukuro.

Senator Hee rose to speak in support of the measure as follows:

“Thank you, Mr. President, I rise to speak in favor of the action before the Senate. This is not a new idea; in fact, it was proposed when I served as Judiciary Chairman in the Senate in 1987. What this does, basically, is it takes the politics out of selecting individuals by the Judicial Selection Commission prior to sending the names to the Governor. This proposal compels the Judicial Selection Commission to pick the very best three candidate applicants, as opposed to the best four or five or six. This is in keeping with trying to improve the Judiciary. I urge my colleagues to allow the people of Hawai‘i to consider a favorable vote at the next election. Thank you.”

The motion was put by the Chair and carried, S.B. No. 2205, entitled: “A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE VI, SECTION 3, OF THE HAWAII STATE CONSTITUTION TO LOWER THE NUMBER OF NOMINEES PRESENTED BY THE JUDICIAL SELECTION COMMISSION TO FILL STATE COURT JUDICIAL VACANCIES,” having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Fukunaga, Kahele).

S.B. No. 2206:

Senator Hee moved that S.B. No. 2206, having been read throughout, pass Third Reading, seconded by Senator Shimabukuro.

Senator Hee rose to speak in support of the measure as follows:

“Thank you, Mr. President. Again, this is a constitutional amendment for the electorate to consider. What it does is for prospective judges—none seated presently—it raises the retirement age from 70 to 80.

“As I believe all of you know, we will be considering the Governor’s selection to be nominated to fill a vacancy on the Supreme Court for Justice Jim Duffy, who will turn 70 in June. Justice Duffy is perhaps the best example of someone who should remain on the Supreme Court. If any of you know, and I’m sure most of you know, his integrity and his character, the caliber of service that he has contributed to the Supreme Court of Hawai‘i, and also to the people of Hawai‘i.

“I would note here that, as all of you know, federal judges serve for life. The state judges, on the other hand, by the state’s own choosing selected age 70 as the mandatory age of retirement. I was not here when that was done, but evidently I have concluded that there is very little that is magical about age 70.

“So, I hope that all of you will consider allowing the electorate to consider this raising of the mandatory age for all judges prospectively. Thank you.”

Senator Baker rose to speak in support of the measure as follows:

“Thank you, Mr. President. I, too, rise in support of this measure, with one caveat: I would hope that the chair of Judiciary might consider another constitutional amendment that would allow judges who have retired past the age of 70 but are still interested in serving as maybe a per diem capacity or on some specialty courts, to allow that because we will have a number of very fine judges who are meeting the threshold, even if this amendment were to be adopted by the voters, and we’re losing a lot of talent because that barrier is in our Constitution. And even if judges want to serve in a volunteer or per diem capacity after they pass age 70, they’re prohibited. Thank you.”

Senator Hee rose in response and said:

“Thank you, Mr. President. I agree with the previous speaker. I invite her to write the con amendment and commit to her that I will hear the constitutional amendment. I will support the amendment, and I will do what I can to encourage the Judiciary Committee to also support it.

“I will note that a perfect example of the previous speaker’s suggestion is a bill that the Committee on Judiciary heard regarding electronic TROs, primarily for domestic abuse cases, and primarily for women who get beat up by their drunk spouse on Friday night and cannot file for a TRO but wait until Monday during business hours to take time off to catch the bus to the courthouse in Kapolei to find out if a judge will hear it. The retired judge that the previous speaker spoke about is a perfect example, the perfect remedy, to engage the wisdom of someone who technically retires at age 70. So, we look forward to the proposal and we will do what we can to pass it. Thank you.”

Senator Kim rose to speak in support of the measure with reservations as follows:

“This matter was put on the ballot before and the voters voted it down. And while I’m not sure what the magic age is, I am in favor of raising it, but I’m not sure that 80 might be the right age. At the same time, the fact that I’m not sure how often we’re going to put it on the ballot until we get a positive vote on it, but the voters did in fact vote this measure down. Thank you.”

The motion was put by the Chair and carried, S.B. No. 2206, entitled: “A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE VI, SECTION 3, OF THE HAWAII STATE CONSTITUTION TO INCREASE THE MANDATORY RETIREMENT AGE FOR STATE JUSTICES AND JUDGES,” having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24; Ayes with Reservations (Kim, Solomon). Noes, none. Excused, 1 (Kahele).

#### MISCELLANEOUS COMMUNICATION

The following communication (Misc. Com. No. 3) was read by the Clerk and was placed on file:

Misc. Com. No. 3, from the Hawaii State Center for Nursing transmitting its 2011 Annual Report.

At this time, the Chair made the following announcement:

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

#### RE-REFERRAL OF SENATE BILLS

The Chair re-referred the following Senate bills that were introduced:

S.B. No.:	Re-referred to:
S.B. No. 2871	Committee on Transportation and International Affairs, then to the Committee on Ways and Means
S.B. No. 2876	Jointly to the Committee on Water, Land, and Housing and the Committee on Transportation and International Affairs, then to the Committee on Ways and Means

#### ADJOURNMENT

At 11:45 a.m., on motion by Senator Espero, seconded by Senator Slom and carried, the Senate adjourned until 11:30 a.m., Tuesday, February 7, 2012.