

## FOURTEENTH DAY

## Wednesday, February 8, 2012

The Senate of the Twenty-Sixth Legislature of the State of Hawai'i, Regular Session of 2012, convened at 11:36 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 Thirteenth Day.

At this time, Senator Kidani introduced her aunt Carol Day who was visiting from Fayetteville, North Carolina. Senator Kidani also recognized her session intern from the University of Hawai'i, Malia Hitch.

Senator Kidani recognized and congratulated Mililani resident Scott Kaneshiro on his winning artwork selected for the Special Hawaii Edition SPAM can label. Accompanying Mr. Kaneshiro were Lynne Kimoto Madden, Executive Vice President of the Madden Corporation; Mikki Fletcher, Mr. Kaneshiro's immediate boss; and Scott Gamble of L H Gamble Co. Ltd., food product broker for all of the SPAM that comes into Hawai'i for distributions into markets island-wide.

Senator Slom rose on a point of information and stated:

"I want to thank the generosity of the good Senator from Mililani, but I wanted to make sure we're not in violation of the ethics law. Is this valued under \$25 per can? If the signature is worth more, we'll have to work that out. Thank you."

Senator Ryan welcomed Ms. Lorri Unumb, Vice President of State Government Affairs for Autism Speaks; Dr. William Bolman, President of Autism Society of Hawaii; and district constituent Ms. Janet Edgehill, Community Advocacy Chair for Autism Speaks Hawaii.

Senator Kidani noted the presence of Scott Kaneshiro's family including his wife Renee; their daughters Skylar and Sierra; his parents Charlene Kaneshiro and Chuck Belbott; and Renee's parents Glenn and Millie Okinaka and her brother Chad.

At 11:45 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:54 a.m.

## SENATE CONCURRENT RESOLUTIONS

The following concurrent resolutions (S.C.R. Nos. 34 to 36) were read by the Clerk and were deferred:

S.C.R. No. 34 "SENATE CONCURRENT RESOLUTION REQUESTING THE AUDITOR TO CONDUCT AN AUDIT OF STATE DEPARTMENTS WITH HIGH RATES OF ADDITIONAL COMPENSATION PAID TO EMPLOYEES."

Offered by: Senators Kim, Green, Kouchi, Tokuda, Espero, Gabbard, Galuteria, Hee, Ige, Ihara, Kidani, Shimabukuro.

S.C.R. No. 35 "SENATE CONCURRENT RESOLUTION REQUESTING THE HAWAII TOURISM AUTHORITY TO STUDY THE FEASIBILITY OF DEVELOPING A HOTEL ABOVE THE HAWAII CONVENTION CENTER FACILITY."

Offered by: Senators Kim, Green, Kouchi, Espero, Gabbard, Galuteria, Hee, Ige, Ihara, Nishihara, Shimabukuro.

S.C.R. No. 36 "SENATE CONCURRENT RESOLUTION REQUESTING DEVELOPMENT OF A PLAN FOR THE EXPANSION OF THE HAWAII FILM STUDIO DIAMOND HEAD CAMPUS TO ACCOMMODATE INCREASED STUDIO CAPACITY."

Offered by: Senators Kim, Espero, Green, Kouchi, Shimabukuro, Galuteria, Hee, Ige, Nishihara.

## SENATE RESOLUTIONS

The following resolutions (S.R. Nos. 14 and 15) were read by the Clerk and were deferred:

S.R. No. 14 "SENATE RESOLUTION REQUESTING THE HAWAII TOURISM AUTHORITY TO STUDY THE FEASIBILITY OF DEVELOPING A HOTEL ABOVE THE HAWAII CONVENTION CENTER FACILITY."

Offered by: Senators Kim, Green, Kouchi, Espero, Galuteria, Hee, Ihara, Nishihara, Shimabukuro.

S.R. No. 15 "SENATE RESOLUTION REQUESTING DEVELOPMENT OF A PLAN FOR THE EXPANSION OF THE HAWAII FILM STUDIO DIAMOND HEAD CAMPUS TO ACCOMMODATE INCREASED STUDIO CAPACITY."

Offered by: Senators Kim, Green, Kouchi, Shimabukuro, Espero, Galuteria, Hee, Nishihara.

## STANDING COMMITTEE REPORTS

Senator Galuteria, for the Committee on Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 2051) recommending that S.B. No. 2268 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. 2268, entitled: "A BILL FOR AN ACT RELATING TO QUEEN LILUOKALANI," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Galuteria, for the majority of the Committee on Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 2052) recommending that S.B. No. 2386, 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 majority of the Committee was adopted and S.B. No. 2386, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE NATIVE HAWAIIAN ROLL COMMISSION," 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. 2053) recommending that S.B. No. 2249, 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. 2249, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CORRECTIONS," 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. 2054) recommending that S.B. No. 2394, 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. 2394, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CONSUMER PROTECTION," passed Second Reading and was referred to the Committee on Commerce and Consumer Protection.

Senator Espero, for the Committee on Public Safety, Government Operations, and Military Affairs, presented a report (Stand. Com. Rep. No. 2055) recommending that S.B. No. 2397, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Water, Land, and Housing.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 2397, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO FIRE SPRINKLERS," passed Second Reading and was referred to the Committee on Water, Land, and Housing.

Senator Espero, for the Committee on Public Safety, Government Operations, and Military Affairs, presented a report (Stand. Com. Rep. No. 2056) recommending that S.B. No. 2489, 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. 2489, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE MILITIA," 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. 2057) recommending that S.B. No. 2583, 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. 2583, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE NATIONAL GUARD," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Espero and Tokuda, for the Committee on Public Safety, Government Operations, and Military Affairs and the Committee on Education, presented a joint report (Stand. Com. Rep. No. 2058) recommending that S.B. No. 2584 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 joint report of the Committees was adopted and S.B. No. 2584, entitled: "A BILL FOR AN ACT RELATING TO TUITION ASSISTANCE," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Espero and Hee, for the majority of the Committee on Public Safety, Government Operations, and Military Affairs and the Committee on Judiciary and Labor, presented a joint report (Stand. Com. Rep. No. 2059) recommending that S.B. No. 2225 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 joint report of the majority of the Committees was adopted and S.B. No. 2225, entitled: "A BILL FOR AN ACT RELATING TO PRISON LITIGATION," passed Second

Reading and was referred to the Committee on Ways and Means.

Senators Espero and Hee, for the Committee on Public Safety, Government Operations, and Military Affairs and the Committee on Judiciary and Labor, presented a joint report (Stand. Com. Rep. No. 2060) recommending that S.B. No. 2253 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 joint report of the Committees was adopted and S.B. No. 2253, entitled: "A BILL FOR AN ACT RELATING TO CORRECTIONS," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Espero and Hee, for the Committee on Public Safety, Government Operations, and Military Affairs and the Committee on Judiciary and Labor, presented a joint report (Stand. Com. Rep. No. 2061) recommending that S.B. No. 2261 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 joint report of the Committees was adopted and S.B. No. 2261, entitled: "A BILL FOR AN ACT RELATING TO THE WEED AND SEED PROGRAM," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Hee, for the Committee on Judiciary and Labor, presented a report (Stand. Com. Rep. No. 2062) recommending that H.B. No. 245, H.D. 1, 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 H.B. No. 245, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO WITNESSES," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Hee, for the Committee on Judiciary and Labor, presented a report (Stand. Com. Rep. No. 2063) recommending that H.B. No. 238, H.D. 2, as amended in S.D. 1, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 2063 and H.B. No. 238, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TEMPORARY RESTRAINING ORDERS," was deferred until Friday, February 10, 2012.

Senator Hee, for the Committee on Judiciary and Labor, presented a report (Stand. Com. Rep. No. 2064) recommending that S.B. No. 2062, 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. 2062, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO USE OF FORCE BY PERSONS WITH SPECIAL RESPONSIBILITY FOR CARE, DISCIPLINE, OR SAFETY OF OTHERS," passed Second Reading and was placed on the calendar for Third Reading on Friday, February 10, 2012.

Senator Hee, for the Committee on Judiciary and Labor, presented a report (Stand. Com. Rep. No. 2065) recommending that S.B. No. 2218, 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. 2218, S.D. 1, entitled: "A BILL FOR AN ACT PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE STATE OF HAWAII RELATING TO RESIDENCY

REQUIREMENTS FOR MEMBERS OF THE LEGISLATURE,” passed Second Reading and was placed on the calendar for Third Reading on Friday, February 10, 2012.

Senator Hee, for the Committee on Judiciary and Labor, presented a report (Stand. Com. Rep. No. 2066) recommending that S.B. No. 2058, 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. 2058, S.D. 1, entitled: “A BILL FOR AN ACT RELATING TO FELONIES FOR WHICH CRIMINAL CHARGES MAY BE INSTITUTED BY WRITTEN INFORMATION,” passed Second Reading and was placed on the calendar for Third Reading on Friday, February 10, 2012.

Senator Baker, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 2067) recommending that S.B. No. 2787, 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. 2787, S.D. 1, entitled: “A BILL FOR AN ACT RELATING TO ELECTRICITY,” passed Second Reading and was referred to the Committee on Ways and Means.

## ORDER OF THE DAY

### THIRD READING

S.B. No. 2542, S.D. 1:

On motion by Senator Tokuda, seconded by Senator Kidani and carried, S.B. No. 2542, S.D. 1, entitled: “A BILL FOR AN ACT RELATING TO EDUCATION,” having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

S.B. No. 2209:

On motion by Senator Hee, seconded by Senator Shimabukuro and carried, S.B. No. 2209, entitled: “A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE VI, SECTION 4, OF THE HAWAII STATE CONSTITUTION TO REQUIRE THE JUDICIAL SELECTION COMMISSION TO DISCLOSE THE NAMES OF AND CERTAIN INFORMATION REGARDING ACTIVE NOMINEES AND APPLICANTS TO FILL JUSTICE AND JUDGE VACANCIES,” having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Senator Hee rose to speak on a point of personal privilege as follows:

“I wanted to call the members’ attention to this morning’s paper. The headline is: ‘Hotels Filling Up: Room revenue \$2.87 billion, up 12.7% from last year, occupancy up 73.4%’. Then the salient one: ‘Average daily room rate up to \$189.62’. The reason I wanted to raise these issues in the article—which is well-written and frankly is a keeper—because it said that ‘strong hotel occupancy and room rates help push the Hawai’i hotel room revenue last year to \$2.87 billion, the highest since 2007.’

“And while this is data out of the article, I want you to think about your friends and neighbors who work for the hotels, and your family who may have worked for the hotels. That, with the exception of last June and July, Hawai’i’s hospitality industry has seen occupancy increases every month since

December ’09. The industry also has experienced 14 consecutive months of average daily room rate growth and 22 consecutive months of revenue per available room growth. And think of Local 5 while you’re at it.

Statewide occupancy averaged 73.1 percent in December, a gain of 3.2 percent. The average daily rate rose 7.4 percent in December to \$219.79, increased of 12.3 percent. The average daily room rates increased 8.5 percent to \$189.62 and revenue per available room jumped 12.6 percent to \$139.18. Room rates for Hawai’i hotels in 2011 were the second highest in the nation behind New York City and occupancy was the fourth best in the nation, trailing only New York City, San Francisco, and Miami, according to the Smith Travel Research.

“There are few members here who remember and voted to establish a hotel room tax. There’s at least one member here, I remember, who advocated vociferously against establishing a hotel room tax, and indicated that the sky would fall and that people wouldn’t come to Hawai’i and jobs would be lost if Hawai’i established a hotel room tax. Hotels today, unlike twenty years ago—well, let’s see, it’s more than twenty years ago. It would have been when Cayetano and Abercrombie were still in the Senate, so would have probably been 1985 or ’86. And I remember Scotty Henderson, Buddy Soares; they were also in the Senate. But the argument then was that any establishment of a room tax would chase visitors away, and it was quite compelling and people protested quite vociferously. But the difference then was that so many more hotels then were locally-owned. Virtually every hotel down Waikīkī is foreign-owned; and what that means is the profits go someplace else. So, what’s left behind are the people who make the beds, scrub the toilets, park your car, cook your food—those people. Those are the people you and I know. They’re your friends, they’re your neighbors, and they’re your family. And they’re the ones that are told every time, ‘What are you complaining about? At least you got a job.’

“It’s not the job and it’s not the complaining; it’s the data. It’s the data that shows where Hawai’i stands with hotel room rates, hotel occupancy. It’s the data where Hawai’i stands with the hotel room tax. Now, I realize that some of you will say hotel room tax will tax the residents who stay in hotels; fair enough. But hotel room rates, hotel room growth, and hotel occupancy has done one thing, and that’s go through the roof. We are now second in the nation to New York City. With so many conversions to condo hotels, that shuts out the jobs to Local 5, but who cares. The hotels are owned by investment houses like Oak Tree, foreign companies like Kyo-ya, and others that take the profits generated in Hawai’i. And oh, by the way, HTA needs more money for marketing. Thank you very much.”

Senator Solomon rose to make the following remarks:

“I’d like to support the remarks of the previous speaker, Mr. President, and I would like to add some of my own, if I may. Thank you.

“I think the Chairman on Judiciary and Labor has brought up a very good point. We had a great discussion in your Committee on Water and Land yesterday as to what we are going to do about funding our watersheds here in our Hawai’i nei. You know, we’re looking at anywhere between \$5 million to \$11 million. Mr. President, that money should be coming from the transient accommodations tax. If you were to look back at the old committee reports and what the chairman was relating to – because I was there, I voted for that hotel room tax – the thought was not to just use the money for marketing, but also the money was supposed to be invested in improving the product, which our islands definitely need help. Look at the conditions of our parks; you’re lucky if you can find a decent

restroom. So many of our concerns, Mr. President – what is it all related to? *No money.*

“So, I think we should really revisit what that transient accommodations tax is for and how it should be used. I think the remarks of the previous speaker are well taken. I think we have to, as a body, really reassess our hotel industry here in our Hawai‘i nei. There’s no doubt in my mind where they’re going to start to push towards international labor agreements. We fought that way back when, when the ILWU wanted to go international. We fought for our local control in our Hawai‘i. This is just the beginning, and we have to pay more attention as to how we’re going to resolve these critical problems in the future.

“You know what I see in the hotel industry? You have to read John Burns’ book of why we diversified from agriculture to tourism to afford our people more opportunities. The tourism industry of Hawai‘i is the biggest plantation! How do our workers advance? How do you go from being a busboy to the maître d’? *There is no job movement in the hotel visitor industry.* That’s why we created, at the University of Hawai‘i, the School of Tourism and Management. Do you know that we have not one local—unless some Senator can stand up and correct me, and I will gladly be corrected—we do not have even one local GM in Waikīkī.

“These are the problems that we really have to stay on top of, as to whom is this industry benefitting and how this industry is in fact going to propel us into the new future for our Hawai‘i nei.”

At this time, Senator Solomon also requested that additional remarks relating to gambling be entered into the Journal for Thursday, February 2, 2012, and the Chair so ordered.

Senator Ige, Chair of the Committee on Ways and Means, requested a waiver of the notice requirement pursuant to Senate Rule 21 for S.B. No. 2012.

Senator Ige noted:

“The original notice for the hearing was filed on January 30. However, the committee felt because it dealt with some changes to the procurement law that it would be wise for us to post some of those proposed amendments as well.”

The Chair granted the waiver.

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 this afternoon.”

#### ADJOURNMENT

At 12:07 p.m., on motion by Senator Espero, seconded by Senator Slom and carried, the Senate adjourned until 11:30 a.m., Thursday, February 9, 2012.