

## FIFTY-SIXTH DAY

## Wednesday, April 24, 2013

The Senate of the Twenty-Seventh Legislature of the State of Hawai'i, Regular Session of 2013, convened at 11:40 a.m. with the President in the Chair.

The Roll was called showing all Senators present.

The President announced that she had read and approved the Journal of the Fifty-Fifth Day.

At this time, Senator Slom welcomed Jeanette and Rex Blennerhasett who were visiting from Victoria, Australia, and their good friends Bill and Joan Ladd from North Carolina.

Senator Thielen introduced Carmille Lim from Common Cause Hawaii, Janet Mason of the League of Women Voters, and Donna Wong of Hawaii's Thousand Friends, who were present in the gallery to witness the filing of a petition a number of organizations, including theirs, had submitted.

## MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 1127 to 1138) were read by the Clerk and were placed on file:

Gov. Msg. No. 1127, informing the Senate that on April 22, 2013, the Governor signed into law House Bill No. 411, H.D. 2 as Act 27, entitled: "RELATING TO HOSPITAL EMERGENCY COMPASSIONATE CARE FOR SEXUAL ASSAULT VICTIMS."

Gov. Msg. No. 1128, informing the Senate that on April 22, 2013, the Governor signed into law Senate Bill No. 409, S.D. 1 as Act 28, entitled: "RELATING TO MAHINA 'OLELO HAWAI'I."

Gov. Msg. No. 1129, informing the Senate that on April 22, 2013, the Governor signed into law Senate Bill No. 891 as Act 29, entitled: "RELATING TO NOTARIES PUBLIC."

Gov. Msg. No. 1130, informing the Senate that on April 22, 2013, the Governor signed into law House Bill No. 919 as Act 30, entitled: "RELATING TO STATE EMPLOYMENT."

Gov. Msg. No. 1131, informing the Senate that on April 22, 2013, the Governor signed into law Senate Bill No. 870, S.D. 1, H.D. 1 as Act 31, entitled: "RELATING TO USE OF FORCE BY PERSONS WITH SPECIAL RESPONSIBILITY FOR CARE, DISCIPLINE, OR SAFETY OF OTHERS."

Gov. Msg. No. 1132, informing the Senate that on April 22, 2013, the Governor signed into law Senate Bill No. 306, S.D. 1 as Act 32, entitled: "RELATING TO MEDICAID."

Gov. Msg. No. 1133, informing the Senate that on April 22, 2013, the Governor signed into law Senate Bill No. 1187, S.D. 1 as Act 33, entitled: "RELATING TO DELINQUENT TAXES."

Gov. Msg. No. 1134, informing the Senate that on April 22, 2013, the Governor signed into law Senate Bill No. 1040 as Act 34, entitled: "RELATING TO ELECTRIC SYSTEMS."

Gov. Msg. No. 1135, informing the Senate that on April 22, 2013, the Governor signed into law Senate Bill No. 1075 as Act 35, entitled: "RELATING TO PHYSICAL THERAPY."

Gov. Msg. No. 1136, informing the Senate that on April 22, 2013, the Governor signed into law Senate Bill No. 1076 as Act 36, entitled: "RELATING TO THE USE OF THE DOCTOR OF ACUPUNCTURE TITLE."

Gov. Msg. No. 1137, informing the Senate that on April 22, 2013, the Governor signed into law Senate Bill No. 120, S.D. 1 as Act 37, entitled: "RELATING TO PUBLIC UTILITIES."

Gov. Msg. No. 1138, informing the Senate that on April 22, 2013, the Governor signed into law House Bill No. 1133, S.D. 2 as Act 38, entitled: "RELATING TO PUBLIC LAND."

## HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 727 to 731) were read by the Clerk and were placed on file:

Hse. Com. No. 727, returning S.C.R. No. 62, S.D. 1, which was adopted by the House of Representatives on April 23, 2013.

Hse. Com. No. 728, returning S.C.R. No. 84, S.D. 1, which was adopted by the House of Representatives on April 23, 2013.

Hse. Com. No. 729, returning S.C.R. No. 129, S.D. 1, which was adopted by the House of Representatives on April 23, 2013.

Hse. Com. No. 730, returning S.C.R. No. 158, S.D. 2, which was adopted by the House of Representatives on April 23, 2013.

Hse. Com. No. 731, returning S.C.R. No. 159, S.D. 1, which was adopted by the House of Representatives on April 23, 2013.

## CONFERENCE COMMITTEE REPORTS

Senator Baker, for the Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House to S.B. No. 960, S.D. 1, presented a report (Conf. Com. Rep. No. 10) recommending that S.B. No. 960, S.D. 1, H.D. 1, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15 of the Constitution of the State of Hawai'i, action on Conf. Com. Rep. No. 10 and S.B. No. 960, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO FORECLOSURES," was deferred for a period of 48 hours.

Senator Ige, for the Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House to S.B. No. 1196, S.D. 1, presented a report (Conf. Com. Rep. No. 11) recommending that S.B. No. 1196, S.D. 1, H.D. 1, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15 of the Constitution of the State of Hawai'i, action on Conf. Com. Rep. No. 11 and S.B. No. 1196, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CASH ECONOMY ENFORCEMENT," was deferred for a period of 48 hours.

Senator English, for the Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House to S.B. No. 1207, presented a report (Conf. Com. Rep. No. 12) recommending that S.B. No. 1207, H.D. 2, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15 of the Constitution of the State of Hawai'i, action on Conf. Com. Rep. No. 12 and S.B. No. 1207, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TRANSPORTATION," was deferred for a period of 48 hours.

Senator Nishihara, for the Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by

the House to S.B. No. 995, presented a report (Conf. Com. Rep. No. 13) recommending that S.B. No. 995, H.D. 1, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15 of the Constitution of the State of Hawai'i, action on Conf. Com. Rep. No. 13 and S.B. No. 995, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO IRRIGATION WATER DEVELOPMENT," was deferred for a period of 48 hours.

Senator Chun Oakland, for the Committee on Conference on the disagreeing vote of the House to the amendments proposed by the Senate to H.B. No. 1207, H.D. 1, presented a report (Conf. Com. Rep. No. 14) recommending that H.B. No. 1207, H.D. 1, S.D. 1, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15 of the Constitution of the State of Hawai'i, action on Conf. Com. Rep. No. 14 and H.B. No. 1207, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HUMAN SERVICES," was deferred for a period of 48 hours.

### ORDER OF THE DAY

#### AGREE/DISAGREE

#### MATTER DEFERRED FROM TUESDAY, APRIL 23, 2013

S.C.R. No. 21 (H.D. 1):

Senator Solomon moved that the Senate agree to the amendments proposed by the House to S.C.R. No. 21, seconded by Senator Espero.

Senator Solomon noted:

"S.C.R. No. 21 authorizes the exchange and the sale of property between the State of Hawai'i and the Napoleon 'ohana. It has been approved by the Board of Land and Natural Resources at its meeting on June 8, 2012, under agenda item D-11. The amendments that were made were technical and nonsubstantive. Thank you."

The motion was put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.C.R. No. 21, and S.C.R. No. 21, H.D. 1, entitled: "SENATE CONCURRENT RESOLUTION AUTHORIZING THE EXCHANGE AND SALE OF PROPERTY BETWEEN THE STATE OF HAWAII AND NAPOLEON, ET AL., APPROVED BY THE BOARD OF LAND AND NATURAL RESOURCES AT ITS MEETING ON JUNE 8, 2012, UNDER AGENDA ITEM D-11," was placed on the calendar for Final Adoption on Thursday, April 25, 2013.

S.C.R. No. 41, S.D. 1 (H.D. 1):

Senator Dela Cruz moved that the Senate agree to the amendments proposed by the House to S.C.R. No. 41, S.D. 1, seconded by Senator Espero.

Senator Dela Cruz noted:

"The task force has been meeting since the summer of 2011 and has made considerable progress. Due to the complexity of the issues it was created to address, however, the task force needs more time to resolve the issues to the satisfaction of all parties involved. The Senate agrees to the House amendments which were made which extends the term of the Government Contracting Task Force until December 31, 2013."

The motion was put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.C.R. No. 41, S.D. 1, and S.C.R. No. 41, S.D. 1, H.D. 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE EXTENSION OF THE GOVERNMENT CONTRACTING TASK FORCE TO DEVELOP

RECOMMENDATIONS TO ADDRESS ISSUES THAT AFFECT PROCUREMENT FOR GOODS AND SERVICES PURCHASED THROUGH NONPROFIT ORGANIZATIONS, INCLUDING HUMAN SERVICE NONPROFIT ORGANIZATIONS THAT DELIVER PIVOTAL GOODS AND SERVICES TO INDIVIDUALS, FAMILIES, COMMUNITIES, AND OTHER SMALL BUSINESSES," was placed on the calendar for Final Adoption on Thursday, April 25, 2013.

### ADVISE AND CONSENT

Stand. Com. Rep. No. 1636 (Gov. Msg. Nos. 754 and 756):

Senator Dela Cruz moved that Stand. Com. Rep. No. 1636 be received and placed on file, seconded by Senator Slom and carried.

Senator Dela Cruz then moved that the Senate advise and consent to the nominations to the Hawai'i Community Development Authority (Kaka'ako District) of the following:

BRIAN LEE, term to expire June 30, 2015 (Gov. Msg. No. 754); and

LOIS MITSUNAGA, term to expire June 30, 2016 (Gov. Msg. No. 756),

seconded by Senator Slom.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

### ADOPTION OF RESOLUTIONS

#### MATTERS DEFERRED FROM TUESDAY, APRIL 23, 2013

Stand. Com. Rep. No. 1633 (H.C.R. No. 30, H.D. 1):

On motion by Senator Espero, seconded by Senator Slom and carried, the joint report of the Committees was adopted and H.C.R. No. 30, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF EDUCATION TO MEET WITH INTERESTED PARTIES TO EXAMINE THE FEASIBILITY OF ESTABLISHING A BOXING PILOT PROGRAM IN AT LEAST ONE OF HAWAII'S PUBLIC HIGH SCHOOLS," was adopted.

Stand. Com. Rep. No. 1634 (H.C.R. No. 183):

On motion by Senator Espero, seconded by Senator Slom and carried, the joint report of the Committees was adopted and H.C.R. No. 183, entitled: "HOUSE CONCURRENT RESOLUTION URGING THE PRESIDENT OF THE UNITED STATES AND CONGRESS TO SUPPORT AND PASS THE FILIPINO VETERANS FAMILY REUNIFICATION ACT OF 2013," was adopted.

Stand. Com. Rep. No. 1635 (H.C.R. No. 224, H.D. 1):

On motion by Senator Espero, seconded by Senator Slom and carried, the joint report of the Committees was adopted and H.C.R. No. 224, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION URGING THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY TO EXAMINE AND RE-EVALUATE ITS POLICIES REGARDING REFUGEE AND ASYLEE PROTECTIONS, INCLUDING THE PRINCIPLE OF NON-REFOULEMENT," was adopted.

Stand. Com. Rep. No. 1637 (H.C.R. No. 199, H.D. 1):

On motion by Senator Espero, seconded by Senator Slom and carried, the joint report of the Committees was adopted and H.C.R. No. 199, H.D. 1, entitled: "HOUSE CONCURRENT

RESOLUTION URGING THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS AND THE AMERICAN ASSOCIATION FOR MARRIAGE AND FAMILY THERAPY: HAWAII DIVISION, TO DEVELOP DRAFT LEGISLATION ESTABLISHING, IMPLEMENTING, AND MONITORING CONTINUING EDUCATION REQUIREMENTS FOR ALL LICENSED MARRIAGE AND FAMILY THERAPISTS IN HAWAII," was adopted.

Stand. Com. Rep. No. 1638 (H.C.R. No. 184):

On motion by Senator Espero, seconded by Senator Slom and carried, the joint report of the Committees was adopted and H.C.R. No. 184, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE AUDITOR TO CONDUCT A COMPREHENSIVE FINANCIAL AUDIT OF THE DEPARTMENT OF HUMAN SERVICES MED-QUEST DIVISION, WITH EMPHASIS ON THE MEDICAID PROGRAM," was adopted.

Stand. Com. Rep. No. 1639 (H.C.R. No. 118, H.D. 1):

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and H.C.R. No. 118, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF HUMAN SERVICES TO PREPARE A PROGRESS REPORT ON DETAILING EFFORTS TO IMPROVE AND RE-ENGINEER PROCESSING FOR ADULT PROTECTIVE SERVICES," was adopted.

Stand. Com. Rep. No. 1640 (H.C.R. No. 76):

On motion by Senator Espero, seconded by Senator Slom and carried, the joint report of the Committees was adopted and H.C.R. No. 76, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE EXECUTIVE OFFICE ON AGING TO CONTINUE ITS RESEARCH OF THE TIMEBANKING CONCEPT FOR HAWAII'S RESPITE SYSTEM," was adopted.

#### FINAL READING

Conf. Com. Rep. No. 2 (S.B. No. 1083, H.D. 2, C.D. 1):

On motion by Senator Tokuda, seconded by Senator Dela Cruz and carried, Conf. Com. Rep. No. 2 was adopted and S.B. No. 1083, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TRANSPORTATION OF SCHOOL CHILDREN," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

#### MISCELLANEOUS COMMUNICATION

The following communication (Misc. Com. No. 4) was read by the Clerk and was placed on file:

Misc. Com. No. 4, from the Americans for Democratic Action/Hawaii; Common Cause Hawaii; League of Women Voters of Hawaii; Citizen Voice; Choon James, Country Talk Story; Conservation Council for Hawaii; Hawaii Coalition for Legislative Reform; Hawaii Open Data; Hawaii's Thousand Friends; Kokua Council; Media Council Hawaii; Open Law Alliance; and members of the public, transmitting an undated petition to the Hawaii State Senate under Rule 67 and the Hawaii State House under Rule 44.

At this time, the Chair made the following announcement:

"Members, I will be referring Miscellaneous Communication No. 4 to a subcommittee of Senate leadership to review the petition and consider amendments to Senate Rules and practices."

Senator Thielen rose to speak on the measure as follows:

"May I enter some remarks in the record with this item in the Journal?"

The Chair so ordered.

Senator Thielen continued:

"Thank you, and in my written remarks I'm also going to be attaching a statement from Jean Aoki, who is the longtime member of the League of Women Voters and the Chair of their Legislative Committee. I just did want to say that Jean began her note by saying that for democracy to work, citizens must be able to participate in the legislative process in a fair and orderly manner; and she ended by encouraging the Senate and House to adopt rules that reflect our State Constitution and its intent to promote meaningful citizen participation in our democratic process.

"So I want to thank you, Madam President, for referring this matter to a committee, and I look forward to some discussion on this at a later date. Mahalo."

The Chair having so ordered, Senator Thielen's additional remarks read as follows:

"I have received a written communication from Jean Aoki, a longtime League of Women Voters member and the Chair of their Legislative Committee.

"Ms. Aoki could not attend today's session due to her health, but she wanted to stress the importance of this Petition to members of the Senate.

"Jean begins her note by saying "For our democracy to work, citizens must be able to participate in the legislative process in a fair and orderly manner." She ends by encouraging the Senate and House to adopt rules that reflect our State Constitution and its intent to promote meaningful citizen participation in our democratic process.

"Madam President, I want to thank you for referring this Petition to a Committee of Senators for recommended action, and I look forward to our discussion on this matter in the future.

"Hawaii is fortunate, indeed, to have many lifelong community representatives like Jean Aoki, and organizations like the League of Women Voters and Common Cause, who dedicate countless hours on civic matters in our state.

"I would like to place a copy of Ms. Aoki's remarks in the Journal alongside my own."

The Chair having so ordered, the letter from Ms. Aoki is identified as "ATTACHMENT A" to the Journal of this day.

#### RECONSIDERATION OF ACTIONS TAKEN

S.B. No. 68, S.D. 1 (H.D. 1):

Senator Hee moved that the Senate reconsider its action taken on April 11, 2013, in disagreeing to the amendments proposed by the House to S.B. No. 68, S.D. 1, seconded by Senator Espero and carried.

In accordance with the Conference Committee Procedures agreed upon by the Senate and the House of Representatives, the managers on the part of the Senate recommended that the Senate agree to the amendments proposed by the House to S.B. No. 68, S.D. 1, on the following showing of Ayes and Noes:

Ayes, 3 (Hee, Shimabukuro, Slom). Noes, none. Excused, none.

Senator Hee moved that the Senate agree to the amendments proposed by the House to S.B. No. 68, S.D. 1, seconded by Senator Espero.

Senator Hee noted:

“What the House did, when this measure crossed over, was bifurcated the sentencing of imprisonment for specified class B felonies. In certain class B felonies it shall not be less than five years, and a sentence of imprisonment imposed for specified class C felonies shall not be less than one year. After discussing this with the advocates for this bill, we reconsidered the House draft in its amended form and find it to be acceptable at this time. Thank you, Madam President.”

The motion was put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 68, S.D. 1, and S.B. No. 68, S.D. 1, H.D. 1, entitled: “A BILL FOR AN ACT RELATING TO SENTENCING,” was placed on the calendar for Final Reading on Thursday, April 25, 2013.

S.B. No. 319 (H.D. 1):

Senator Solomon moved that the Senate reconsider its action taken on April 11, 2013, in disagreeing to the amendments proposed by the House to S.B. No. 319, seconded by Senator Espero and carried.

In accordance with the Conference Committee Procedures agreed upon by the Senate and the House of Representatives, the managers on the part of the Senate recommended that the Senate agree to the amendments proposed by the House to S.B. No. 319, on the following showing of Ayes and Noes:

Ayes, 3 (Solomon, Gabbard, Shimabukuro). Noes, none. Excused, 2 (Dela Cruz, Slom).

Senator Solomon moved that the Senate agree to the amendments proposed by the House to S.B. No. 319, seconded by Senator Espero.

Senator Solomon noted:

“The differences between the House and Senate versions were technical, and the effective dates were agreed upon.”

The motion was put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 319, and S.B. No. 319, H.D. 1, entitled: “A BILL FOR AN ACT RELATING TO THRILL CRAFT,” was placed on the calendar for Final Reading on Thursday, April 25, 2013.

S.B. No. 454, S.D. 1 (H.D. 1):

Senator Solomon moved that the Senate reconsider its action taken on April 11, 2013, in disagreeing to the amendments proposed by the House to S.B. No. 454, S.D. 1, seconded by Senator Espero and carried.

In accordance with the Conference Committee Procedures agreed upon by the Senate and the House of Representatives, the managers on the part of the Senate recommended that the Senate agree to the amendments proposed by the House to S.B. No. 454, S.D. 1, on the following showing of Ayes and Noes:

Ayes, 5 (Solomon, Gabbard, Dela Cruz, Shimabukuro, Slom). Noes, none. Excused, none.

Senator Solomon moved that the Senate agree to the amendments proposed by the House to S.B. No. 454, S.D. 1, seconded by Senator Espero.

Senator Solomon noted:

“The differences between the House and Senate versions were technical, and the effective dates were agreed upon.”

The motion was put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 454, S.D. 1, and S.B. No. 454, S.D. 1, H.D. 1, entitled: “A

BILL FOR AN ACT RELATING TO WATER CONSERVATION,” was placed on the calendar for Final Reading on Thursday, April 25, 2013.

At this time, Senator Kahele introduced Mr. Steve Ono, a friend from Hilo who was retired from the HSTA and was seated in the gallery.

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

“I noticed that we didn’t have a moment of contemplation today or yesterday or for several days, and as we approach our final votes I know that we’re going to need to contemplate. So, I will volunteer if you need any additional contemplation. I’d be very happy to come forward and deliver that for my colleagues who eagerly await that.”

#### APPOINTMENT OF CONFEREES

H.B. No. 487, H.D. 2 (S.D. 2):

In accordance with the disagreement of the House to the amendments proposed by the Senate to H.B. No. 487, H.D. 2, and the request for a conference on the subject matter thereof, the President appointed Senators Nishihara, chair; Kouchi, co-chair; Ige as manager on the part of the Senate at such conference.

H.B. No. 1264, H.D. 2 (S.D. 2):

In accordance with the disagreement of the House to the amendments proposed by the Senate to H.B. No. 1264, H.D. 2, and the request for a conference on the subject matter thereof, the President appointed Senators Nishihara, chair; Kouchi, co-chair; Ige as manager on the part of the Senate at such conference.

#### ADJOURNMENT

At 11:53 a.m., on motion by Senator Espero, seconded by Senator Slom and carried, the Senate adjourned until 6:30 p.m., Thursday, April 25, 2013.

**ATTACHMENT A**

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April 23, 2013

Remarks on Legislative Petition to the State House and Senate

For our democracy to work, citizens must be able to participate in the legislative process in a fair and orderly manner. Legislators who use practices such as “gut and replace” or adding unrelated provisions to a bill to create a “Frankenstein” bill do a disservice to members of the public and each other.

Our State Constitution specifically provides for a public hearing for each bill in each house of the legislature so that members of the public can participate in the legislative process in a clear, unambiguous fashion. How can our democracy work if members of the legislature amend bills to replace the original bill with unrelated material or add unrelated material to an existing bill? This makes it impossible for the public to review, understand and comment on the measures, especially when hearings are skipped altogether.

The League of Women Voters, Common Cause and other civic organizations have complained about these techniques for many years. But it is now easier for voters to recognize when our elected representatives engage in these tactics, so we will all be ramping up our advocacy. It would be far better if our Senate and House adopted rules that reflect our State Constitution (or better yet a Constitutional amendment) to avoid such distortion of our democratic process.