

## THIRTIETH DAY

## Wednesday, March 18, 2015

The Senate of the Twenty-Eighth Legislature of the State of Hawai'i, Regular Session of 2015, convened at 11:29 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 Twenty-Ninth Day.

Senator Kidani commended and congratulated the Mililani High School boys and girls varsity soccer teams on becoming the 2014-2015 Division I State Champions, and presented the following remarks:

"Thank you, Madam President and colleagues. This week has been set aside to recognize excellence in our schools, and this morning, we switch from academics to athletics. I think everyone can agree that participation in organized athletics provides wonderful learning opportunities. Some might argue that the lessons learned through sports are just as important to growth and maturity as subjects taught in the classroom. Student athletes learn trust among teammates, the value of hard work and discipline, preparation for competitive events, good sportsmanship, and a couple of the basics of life: showing up on time and following the rules. For those who really excel, outstanding accomplishments in high school athletics can even help pay for college just as much as winning the science prize or scoring fives on Advanced Placement exams.

"This morning, I am extremely pleased to welcome the best in the state high school girls soccer team, the best in the state high school boys soccer team – the coaches and players from the girls and boys varsity squads who won their respective state championships this year. They are the men and women of our Trojan Nation, Mililani High School soccer team boys and girls. Chee hoo!

"Let me first call on my colleague, with whom I share representation of the Mililani community. He represents our neighbors in the Mililani Mauka area: Senator Dela Cruz."

Senator Dela Cruz rose to present the following remarks:

"Thank you. Madam President and colleagues, we all followed the week-after-week successes of both teams as they racked up the wins. We knew the tradition of winning at Mililani: The Trojan boys had already won five previous Division I state titles. They entered this year's state tournament finals as top seed, having lost only one game all season, finishing 15-1, winning their final 10 games.

"With us this morning are the boys varsity championship team and Head Coach Steve McGehee. Coach McGehee took over from longtime Head Coach Jeff Yamamoto this year after having served as assistant coach for 15 years. And what a way to build on Mililani's winning tradition!

"With Coach McGehee and the boys team this morning are Assistant Coach Kurt Kagawa and team captains Jeron Cunningham and Mark Matas. Congratulations to the Mililani High School boys team state champions. But wait, there's more – Senator Kidani."

Senator Kidani continued:

"Thank you, Madam President. Thank you, Senator Dela Cruz. Unlike the boys' team, the Lady Trojans went into the state tournament unseeded. But their one loss in the OIA tournament made them all that more determined going into the states. In the end, it was a spectacular 50-yard shot in the second overtime that won them the state championship to wrap

up the season with the record of 15 wins, 1 loss, and 1 tie. This was the girls' fourth state title overall, and the first under Head Coach Ray Akiona. Colleagues, I present to you today Coach Akiona.

"Also, some of the team players who are with us today: Kayla Braunthal, Jayna Morikawa, Gabrielle Fukumoto, Megan Usui, and Mariko Bebb.

"Colleagues, if you'd permit me, I'd also like to introduce some of the family members in the gallery with us today: Kayla's mom, Sheri Braunthal; Roschel's father, Robert, and her sisters, Raelani and Rozelyn; Megan's parents, Laurie and Garreth Usui; and Mariko's mother, Corey Ann Bebb. Thank you for the wild ride we had this season, for our men and women of Trojan Nation, Mililani High School. Thank you so much. Thank you, Madam President."

Senator Gabbard introduced the Military Christian Homeschoolers of O'ahu who were present in the gallery.

At 11:37 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:12 p.m.

## MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 543 and 544) were read by the Clerk and were placed on file:

Gov. Msg. No. 543, letter dated March 16, 2015, correcting the seat position on Gov. Msg. No. 540.

Gov. Msg. No. 544, letter dated March 16, 2015, correcting the term for the nomination to Gov. Msg. No. 541, Gubernatorial Nominee to the Board of Land and Natural Resources, CHRISTOPHER J. YUEN, term to expire amended to June 30, 2018.

## HOUSE COMMUNICATION

The following communication from the House (Hse. Com. No. 336) was read by the Clerk and was disposed of as follows:

Hse. Com. No. 336, transmitting H.C.R. No. 53, H.D. 1, which was adopted by the House of Representatives on March 17, 2015, was placed on file.

By unanimous consent, H.C.R. No. 53, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE UNITED STATES CONGRESS TO CONVENE A CONSTITUTIONAL CONVENTION TO PROPOSE A CONSTITUTIONAL AMENDMENT TO OVERTURN THE UNITED STATES SUPREME COURT'S DECISION IN *CITIZENS UNITED V. FEDERAL ELECTION COMMISSION*," was deferred.

## STANDING COMMITTEE REPORTS

Senator Keith-Agaran, for the Committee on Judiciary and Labor, presented a report (Stand. Com. Rep. No. 914) recommending that H.B. No. 155, H.D. 1 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Green, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 155, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE WAILUKU STATE OFFICE MASTER PLAN," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Wakai, for the Committee on Economic Development and Technology, presented a report (Stand. Com. Rep. No. 915) recommending that the Senate advise and consent to the nomination of LUIS SALAVERIA as Director of the Department of Business, Economic Development and Tourism, in accordance with Gov. Msg. No. 504.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 915 and Gov. Msg. No. 504 was deferred until Thursday, March 19, 2015.

Senator Wakai, for the Committee on Economic Development and Technology, presented a report (Stand. Com. Rep. No. 916) recommending that the Senate advise and consent to the nomination of MARY ALICE EVANS as Deputy Director of the Department of Business, Economic Development and Tourism, in accordance with Gov. Msg. No. 505.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 916 and Gov. Msg. No. 505 was deferred until Thursday, March 19, 2015.

At 12:13 p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:39 p.m.

At this time, the Chair stated:

“Members, if there are no objections, we will be taking up Supplemental Order of the Day No. 1 at this time.”

#### MESSAGE FROM THE GOVERNOR

The following message from the Governor (Gov. Msg. No. 545) was read by the Clerk and was placed on file:

Gov. Msg. No. 545, informing the Senate that on March 18, 2015, the Governor withdrew the nomination of CARLETON CHING as Chairperson of the Department of Land and Natural Resources, under Gov. Msg. No. 514 dated January 23, 2015, from consideration by the Senate.

In compliance with Gov. Msg. No. 545, the nomination listed under Gov. Msg. No. 514 was returned.

#### ORDER OF THE DAY

#### ADVISE AND CONSENT

Stand. Com. Rep. No. 913 (Gov. Msg. No. 514):

Senator Green moved that Stand. Com. Rep. No. 913 be received and placed on file, seconded by Senator Slom.

Senator Slom rose to present the following remarks:

“Thank you, Madam President, colleagues. I’m very disheartened by this action. I was hoping, since we had a full, standing room only gallery, that the public would get the benefit of listening to our arguments, pro and con, on this governor’s nomination. That has now been taken away.

“We have several bills before this session of the Legislature that have to do with bullying. I think what’s transpired during the past week has been a good example of bullying and political pragmatism. I can speak about this because, as you know, I’m not part of any of the clubs that take place in the Senate. Heck, I wasn’t even invited into the majority caucus.

“But I think that we’re basing our decisions on politics and our electability rather than on what’s right or what’s wrong and what we should do. And in the process, we have further blurred the lines between separation of powers between the executive branch and the legislative branch, and we have besmirched the character of a good individual in this community.

“I know, as I said last Thursday at the conclusion of the Water and Land confirmation hearing, everyone had an opportunity and was encouraged to give their thoughts and to continue to talk to their legislators. I received an awful lot of communications myself, and I tried to talk to everyone that I could, and I did talk to a lot of people, except for those people who called in with anonymous threats, rudeness, and foul language, who neglected to leave their names. Now, I don’t ascribe them to any group or any support or opposition, but I’m afraid that in this community, we are having less open discussion. And while we talk about transparency, we have less transparency.

“I think that the public should demand more of us, not just on these controversial nominations; and by the way, for some people who thought this was the most controversial nominee – he was not. We’ve had very serious controversies before, but we always managed to discuss them openly, and I’m sorry that we didn’t do that on this occasion.

“So the report will be filed, the governor has withdrawn, and we lose an opportunity, as the governor had said, to get a fresh pair of eyes. There are problems with this department, and those people who did not like the nominee should look and focus their attention on some of the things that this department has done and has not done. Believe me, it has nothing to do with taking away usual and customary practices or things that are important to the host culture or historic preservation. It has to do with simple things like what they’ve done with land that they are supposed to manage for *all* people in Hawai’i, and they have not done a good job.

“We have this idea of putting people in because of a popularity contest, not because of the job that they can do. Well, we’ll never know what can be done, and like the woman that I talked to from Kaua’i yesterday, who said she really disliked the nominee because she dislikes his house – his house overlooks the ocean – and she disliked the lei that he was wearing on the day of the confirmation. Too few people go that extra mile to find out about either the nominee or about the issues, and I think that’s really a shame.

“I think many more of us should uphold our responsibility to not only do due diligence, but to be independent of mind and thought and to let the political chips fall where they may in doing the right thing. And so in this case, Madam President, we have a report; we have a lot of people who are very happy; and we escaped the idea of going on record and making statements and having a vote, and for that, I’m truly sorry. Thank you.”

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

“I support my colleague from Hawai’i Kai, and though I did not have a chance to read my presentation today, I will, because for those naysayers that are here today, I will support the man that I thought would be the right person for the right job, and I continue.

“I stand before this body to offer a brief history of 40 years in which I have witnessed for, and had direct involvement, issues relevant to the Department of Land and Natural Resources. In Mr. Ching’s leadership, I see hope and the need for change, so desperately needed by the people of my district and my island.

“In 1967, I entered into a career in the hotel industry at the Orchid Island Hotel on Banyan Drive. It was the most beautiful boutique hotel, built by Californian George Hacker, who was ahead of his time. At that point, no one had heard of the word ‘boutique’ before in reference to a hotel. He expanded his presence in the east side of Hawai’i Island, building a subdivision in lower Puna called Hawaiian Beaches. With its own private water well, he was able to provide low-cost

residential housing for hotel employees and others who took advantage of an opportunity to own a home on fee simple land. He also invested in a small two-story condominium project on land across from the hotel, now bordered by industrial activity, and offered first option to the employees and then availability to the public.

“With visitor activity thriving in Hilo, the hotels were close to 100 percent occupancy most of the time. Having only 100 rooms wasn’t enough to sustain the increased visitor volume, and an opportunity became available on adjacent lands now known as Banyan Golf Course. I was part of the team selected to plan and design the extension of the hotel, which included acquiring the golf course. Mr. Hacker had a vision for this property: a Hawaiian cultural park, similar to the Polynesian Cultural Center, to enhance the activities of the Merrie Monarch Festival and to create a showplace like the Waikiki Shell and a large luau area for kama’āina, visitors, and our Hawaiian people.

“We were so proud of this Californian, who created jobs and invested in the economy of the island. Going to the DLNR hearings on O’ahu, where the bidding began, we were all supporting him. The politics at that time were such that the awards went to someone who knew someone. The land lease was awarded to a person with no history in the visitor industry; it’s one of the blights on Banyan Drive you see today.

“Several years later, another parcel became available with that lease going to an O’ahu investor who built an apartment building, another poor use of prime land. The travel lodge and other business relied upon for additional overflow rooms went on the market, reopening the lease on state land again. A former member of the Board of Land and Natural Resources won the bid and today is one of the troubling lessees, a responsibility falling on the shoulders of the present director and the governor.

“In February, the Hawai’i Board of Land and Natural Resources approved a pair of lease extensions for Uncle Billy’s Hilo Hotel and the country club condominiums. The leases were set to expire on March 14 of this year. The extensions allowed the Banyan Drive leases to remain in effect for one more year; after that, the leases will revert to month-to-month revocable permits. Longer extensions were not up for consideration because the DLNR is in the midst of assessing whether the lands should be redeveloped. The country club is one of the blights, riddled with financial problems, escalating discussions between the leaseholder and the condo association.

“In December of 2014, the board denied a 15-year extension for Reeds Bay Resort Hotel, instead giving the business a one-more-year extension, and this is the property I spoke of earlier that was adjacent to the Orchid Island Hotel.

“I was elected as senator in 1998 as one of the seven newest members of the Senate. Along with my House colleague, former Representative Jerry Chang, I was asked to assist hotel properties who were pending lease expirations with DLNR, and these included the Hilo Hawaiian and the Naniloa Hotel, both located on Banyan Drive. Our first years as intermediaries were a struggle, but eventually, we were able to get the department to move forward.

“So what does this have to do with the nominee Carleton Ching? I believe he is hope. He brings a new perspective to the department and will have the clear vision and openness needed for this position. He will take control, along with the governor, assessing how to change the management of state leases and the negative climate that looms over the Land Division.

“Recently, I was called by another group of constituents in the Kanoelēhewa Industrial Area, many on the long-term leases. They have no idea when the DLNR will handle this, though I understand they are on 10-year lease options. Being small

businesses surviving the economic decline in the past decade, they were not committed to making improvements to their infrastructure and buildings until such time as they guarantee a long-term lease renewal. Small businesses like my dear friends Don and Cathy O’Reilly, who own a small mom and pop print shop, want to stay in business. Their home is in the district of the good senator of Puna and Volcano, and they ask, ‘Please help us. We can’t afford the kinds of increases the agency’s requiring. It will kill us, and we will have to close.’

“Now remember the date of early 2000. Don also tells me, next door to him, the Mauna Kea Infrared company is also on the lease expiration. They put \$300,000 in their improvement. The company builds astronomy equipment for parts for the telescope of Mauna Kea. They were ordered, with the advice from our AGs as well, that they need to put more into the building, and they will get another 10-year extension. Don goes on to say that they were asked to put \$100,000 into their mom and pop little business. These are the kinds of stories I hear.

“The lease agreements are still pending for the many in the KIA Association that I speak of: the relocation of these buildings that were devastated by the 1960 tidal wave. A suit was filed in court years ago regarding the lease negotiations that were still pending in the leases. And while the DLNR lost, businesses were given only a 10-year window of extension. Who could afford to stay in business?

“The demand that those folks hire appraisers or go into arbitration, with the state doing the same, is the cruelest thing I have heard. And let me say, the agreement is that you hire a mediator, you hire an appraiser, but the DLNR did not tell them that the state will also hire an appraiser, and I spoke with a company just this morning. The demands by the state are that the lessee pays the appraiser fee that the state hired. They hired the most expensive appraiser in this state. The cost to everyone individually is \$5,000. So aside from the demand of DLNR, you have an increase in your lease, you have a 10-year extension, and you make improvements.”

Senator Green interjected:

“Madam President, may I just respectfully ask for a clarification: I just wanted to know whether we were in the motion or another ...”

The Chair responded:

“We are in discussion regarding the filing of this measure. So, Senator, if you could contain your remarks to the filing of this measure.”

Senator Inouye continued:

“All right. I just wanted to say, in addition to my colleague from Hawai’i Kai, why I support the nominee, Madam President. And the illness that goes beyond, I think, we need to stop this crazy cancer that’s in the division of DLNR. Thank you, Madam President.”

The Chair then stated:

“Members, at this time, the Chair will entertain any remarks that you would like to put into the Journal. So, if there is a show of hands of anyone who would like to put remarks ... Senator Nishihara?”

Senator Nishihara rose to request that remarks be entered into the Journal, and the Chair so ordered.

The Chair having so ordered, Senator Nishihara’s remarks read as follows:

“Madam President and members of the Senate, I wish to speak in support of Carleton Ching to head the DLNR.

"As with others, I have followed the confirmation hearings for Carleton Ching. I have listened to the many speakers who have spoken on his behalf as well as to those who oppose his appointment. The major objections come as a result of his employment as a spokesman for Castle and Cooke, a major land developer, and also because of his tenure as a member of the LURF board. His detractors feel that his experience as a land developer and a supporter of land development and housing is a detriment to agriculture, the watershed, shorelines and the natural environment in general. This is, I feel, guilt by association based on a negative view of development in any part of state-protected land. It is a view that, if carried to extreme, would place open land over affordable housing, restricting management of forests and oceans by limiting revenues that would pay to protect these areas. The department has struggled over the years to provide the protections that we all feel necessary to maintain the natural beauty of our precious islands.

"I believe Mr. Ching when he says he will be the 'bulldog' who will do his best to protect and defend against unwarranted development of our people's birthright. I feel that as a former agent for development, he has the understanding and commitment to parse out what is in the public's interest as opposed to those of a developer. Although Mr. Ching's stated commitment to carry out the mission of DLNR is not as clear or as cogent as his accusers would like to hear, they only listen to the words, and not the passion and honest responses he also spoke. He did not wordspeak, or use the approved phrases or watchwords that the environmental community believes to indicate commitment and experience. How often have we seen that those who seem to speak so clearly and articulate well fail to deliver when their words are called into action? I believe in the man, I believe in what he says he is going to do, that his commitment to our precious resources, the 'āina, is not 'waha', but real. I believe that he will prove his detractors wrong. I trust this keiki o ka 'āina. That is why I ask that my fellow colleagues join in confirming Mr. Carleton Ching."

The motion to file Stand. Com. Rep. No. 913 was then put by the Chair and carried.

#### RE-REFERRAL OF HOUSE BILLS

The Chair re-referred the following House bills that were received:

H.B. No.:	Re-referred to:
H.B. No. 586, H.D. 2	Committee on Health, then to the Committee on Ways and Means
H.B. No. 830, H.D. 1	Jointly to the Committee on Higher Education and the Arts and the Committee on Water and Land, then to the Committee on Ways and Means
H.B. No. 1384, H.D. 2	Jointly to the Committee on Energy and Environment and the Committee on Economic Development and Technology, then jointly to the Committee on Commerce and Consumer Protection and the Committee on Ways and Means

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

"I'd like to ask that the comments of the senator from Hawai'i Kai be entered as if they were my own. Thank you." (The Chair so ordered, by reference only.)

Senator Kidani announced that Education Week activities would continue the following day with demonstrations from student participants in the R.E.A.C.H. (Resources for Enrichment, Arts, Culture, and Health) Initiative pilot program,

as well as presentations honoring outstanding teachers and librarians.

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

"Members, today marks a historic day in the Senate, on this thirtieth day of our session. I'd like to bring your attention to the Order of the Day. Today the Senate goes bilingual, and we will now be including Hawaiian as well as English on all of our Orders of the Day, and in the future, we'll be rolling out Hawaiian in the hearing notices and other documents of the Senate.

"So this is the very first day that we're going to use this, and this honors the Native Hawaiian language. It honors our commitment in the constitution to perpetuate the two languages in Hawai'i: Hawaiian and English. It also helps us to incorporate the use of Hawaiian in everyday government. So I just wanted to mark the occasion, bring your attention to it, and also to thank the Clerk's office for such hard work to make this happen. Thank you, everyone."

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

"I was delighted to be able to acknowledge the boys and girls soccer teams from Mililani this morning, but I wanted to share with my colleagues that there was another set of boys and girls teams that deserve recognition, too. Unfortunately, they aren't from O'ahu. They live in my district in Lahaina on Maui, and it's very difficult to get neighbor island teams over here.

"But this year marked the first time that a neighbor island school won a state championship in wrestling. And not only did we win the state team championship in wrestling for boys, but also for girls. For our boys team, it was the first time; the girls team has won before. It's a great program at Lahainaluna High School, and I just wanted to share that with all of my colleagues. Thank you."

#### ADJOURNMENT

At 12:59 p.m., on motion by Senator Green, seconded by Senator Slom and carried, the Senate adjourned until 11:30 a.m., Thursday, March 19, 2015.