

## THIRTIETH DAY

## Wednesday, March 12, 2014

The Senate of the Twenty-Seventh Legislature of the State of Hawai'i, Regular Session of 2014, convened at 11:32 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.

At this time, Senator Gabbard honored and commended the Kalaeloa Heritage and Legacy Foundation, and presented the following remarks:

"Madam President and colleagues, please welcome the board of directors and officers of the Kalaeloa Heritage and Legacy Foundation. Kalaeloa has been my home for the past 10 years, and it means 'the distant or long point.' And to give you a little history, it was a resting place for ali'i that provided refreshing, cool water in the sinkholes along the ancient trails between Waikiki and Wai'anae. In 1877, James Campbell purchased 41,000 acres west of Pearl Harbor. Later, the Kalaeloa area became the Marine Corps Air Station Ewa and then Naval Air Station Barbers Point. In 1999, Naval Air Station Barbers Point closed and in 2002, the State Legislature transferred redevelopment responsibilities for the area to the Hawai'i Community Development Authority.

"Kalaeloa was envisioned as a wahi ho'okela (center of excellence) where Hawai'i's people would come together to share knowledge, develop expertise, and advance themselves while remaining respectful of past and place. The Ahahui Siwila Hawai'i O Kapolei (Kapolei Hawaiian Civic Club) worked in partnership with HCDA to identify, preserve, and protect Native Hawaiian historical sites, native plants, and fauna in Kalaeloa. This process led to the discovery of a parcel of roughly 77 acres abundant with rare historical sites. This area was named the Kalaeloa Heritage Park.

"The Kalaeloa Heritage and Legacy Foundation is a nonprofit 501(c)(3) organization that was created to lead the stewardship of the Kalaeloa Heritage Park. Starting off is President and Board Member Melissa Lyman, next is Vice President and Board Member Eric Matanane, Secretary/Treasurer and Board Member Valerie Kane, Board Member Shad Kane, Board Member Dan Lyman, and also Board Member Lance Holden. Please give them your applause. Mahalo.

"Colleagues, the Kalaeloa Heritage and Legacy Foundation has forged partnerships with over 50 community organizations, including schools and businesses, since its inception four years ago. KHLF members and volunteers have logged almost 13,000 volunteer hours and, along with its partners, cleared about 2.5 acres of overgrown kiawe bush to reveal a cluster of significant archaeological sites, which include sinkholes, habitation structures, a religious altar, and a trail that is being used as an educational site. The goal of Kalaeloa Heritage and Legacy Foundation is to build a multi-purpose educational community and visitor center, where the mo'olelo of Kalaeloa can be shared, where cultural practitioners can display their art, and where the community can embrace their heritage. And so we honor and commend the Kalaeloa Heritage and Legacy Foundation today, and we say a big mahalo to all the organizations and individuals who have dedicated themselves to preserving this cultural treasure and making the vision of Kalaeloa as a wahi ho'okela become reality.

"And on a personal note, as an 'ignorant' Samoan who is learning daily about the beauty and depth of the culture from

my northern cousins, I would say it's groups like KHLF and others that are helping us all to appreciate the beauty of our island paradise.

"Also with us today, we have in the gallery some volunteers: Charles Rodrigues, John Kaaha Jury, Clayton Cabebe, Darwynne Moki Matthews, and Ron Shaedel. And also from HCDA, we have Executive Director Anthony Ching, Outreach Compliance Manager Lindsey Doi, Program Specialist Shelby Hoota, Program Specialist Pearlyn Fukuba, and Kalaeloa Director of Planning and Permitting Tesha Malama. Mahalo."

Senator Galuteria rose to note that he had sailed with Clayton Cabebe's brother, Clement "Tiger" Espere, on the *Höküle'a* from the Society Islands to the Cook Islands in 1992.

At 11:39 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:44 a.m.

## MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 584 to 617 and 1102) were read by the Clerk and were disposed of as follows:

Gov. Msg. No. 584, submitting for consideration and confirmation as the Administrator of the State Procurement Office, the nomination of SARAH-JANE ALLEN, term to expire October 15, 2017, was referred to the Committee on Economic Development, Government Operations and Housing.

Gov. Msg. No. 585, submitting for consideration and confirmation as the Director of the Office of Environmental Quality Control, the nomination of JESSICA WOOLEY, term to expire June 30, 2015, was referred to the Committee on Energy and Environment.

Gov. Msg. No. 586, submitting for consideration and confirmation to the Board of Regents of the University of Hawaii, the nomination of STANFORD YUEN, term to expire June 30, 2019, was referred to the Committee on Higher Education.

Gov. Msg. No. 587, submitting for consideration and confirmation to the Board of Regents of the University of Hawaii, the nomination of LEE PUTNAM, term to expire June 30, 2019, was referred to the Committee on Higher Education.

Gov. Msg. No. 588, submitting for consideration and confirmation to the Board of Regents of the University of Hawaii, the nomination of JEFFREY PORTNOY, term to expire June 30, 2014, was referred to the Committee on Higher Education.

Gov. Msg. No. 589, submitting for consideration and confirmation to the Board of Regents of the University of Hawaii, the nomination of JEFFREY PORTNOY, term to expire June 30, 2019, was referred to the Committee on Higher Education.

Gov. Msg. No. 590, submitting for consideration and confirmation to the Board of Regents of the University of Hawaii, the nomination of MICHELLE TAGORDA, term to expire June 30, 2016, was referred to the Committee on Higher Education.

Gov. Msg. No. 591, submitting for consideration and confirmation to the Board of Private Detectives and Guards, the nomination of GARY YABUTA, term to expire June 30, 2018,

was referred to the Committee on Commerce and Consumer Protection.

Gov. Msg. No. 592, submitting for consideration and confirmation to the Board of Private Detectives and Guards, the nomination of DARRYL PERRY, term to expire June 30, 2018, was referred to the Committee on Commerce and Consumer Protection.

Gov. Msg. No. 593, submitting for consideration and confirmation to the Island Burial Council, Island of Hawaii, the nomination of T. KEIKIALOHA KEKIPI, term to expire June 30, 2017, was referred to the Committee on Hawaiian Affairs.

Gov. Msg. No. 594, submitting for consideration and confirmation to the Enhanced 911 Board, the nomination of ROY IREI, term to expire June 30, 2016, was referred to the Committee on Economic Development, Government Operations and Housing.

Gov. Msg. No. 595, submitting for consideration and confirmation to the Enhanced 911 Board, the nomination of STEVEN SCHUTTE, term to expire June 30, 2016, was referred to the Committee on Economic Development, Government Operations and Housing.

Gov. Msg. No. 596, submitting for consideration and confirmation to the Enhanced 911 Board, the nomination of JEFF RIEWER, term to expire June 30, 2016, was referred to the Committee on Economic Development, Government Operations and Housing.

Gov. Msg. No. 597, submitting for consideration and confirmation to the Stadium Authority, the nomination of ROSS YAMASAKI, term to expire June 30, 2018, was referred to the Committee on Economic Development, Government Operations and Housing.

Gov. Msg. No. 598, submitting for consideration and confirmation to the Board of Agriculture, the nomination of RICHARD HA, term to expire June 30, 2018, was referred to the Committee on Agriculture.

Gov. Msg. No. 599, submitting for consideration and confirmation to the Board of Trustees of the Deferred Compensation Plan, the nomination of KANOE MARGOL, term to expire June 30, 2018, was referred to the Committee on Judiciary and Labor.

Gov. Msg. No. 600, submitting for consideration and confirmation to the Board of Professional Engineers, Architects, Surveyors, and Landscape Architects, the nomination of DEMETRIO CONSTANTINO, term to expire June 30, 2018, was referred to the Committee on Commerce and Consumer Protection.

Gov. Msg. No. 601, submitting for consideration and confirmation to the Board of Directors of the Hawaii Tourism Authority, the nomination of L. RICHARD FRIED, JR., term to expire June 30, 2018, was referred to the Committee on Tourism.

Gov. Msg. No. 602, submitting for consideration and confirmation to the Board of Directors of the Hawaii Public Housing Authority, the nomination of MYOUNG OH, term to expire June 30, 2018, was referred to the Committee on Human Services.

Gov. Msg. No. 603, submitting for consideration and confirmation to the Board of Directors of the Hawaii Public Housing Authority, the nomination of SHERI TANAKA, term to expire June 30, 2014, was referred to the Committee on Human Services.

Gov. Msg. No. 604, submitting for consideration and confirmation to the Board of Directors of the Hawaii Public Housing Authority, the nomination of SHERI TANAKA, term to expire June 30, 2018, was referred to the Committee on Human Services.

Gov. Msg. No. 605, submitting for consideration and confirmation to the Crime Victim Compensation Commission, the nomination of HAAHEO MANSFIELD, term to expire June 30, 2018, was referred to the Committee on Public Safety, Intergovernmental and Military Affairs.

Gov. Msg. No. 606, submitting for consideration and confirmation to the Disability and Communication Access Board, the nomination of PETER FRITZ, term to expire June 30, 2017, was referred to the Committee on Health.

Gov. Msg. No. 607, submitting for consideration and confirmation to the Disability and Communication Access Board, the nomination of LUCY MILLER, term to expire June 30, 2018, was referred to the Committee on Health.

Gov. Msg. No. 608, submitting for consideration and confirmation to the Disability and Communication Access Board, the nomination of BARBARA FISCHLOWITZ-LEONG, term to expire June 30, 2017, was referred to the Committee on Health.

Gov. Msg. No. 609, submitting for consideration and confirmation to the Disability and Communication Access Board, the nomination of LYNN MURAKAMI-AKATSUKA, term to expire June 30, 2018, was referred to the Committee on Health.

Gov. Msg. No. 610, submitting for consideration and confirmation to the Disability and Communication Access Board, the nomination of GLENN NAKAMURA, term to expire June 30, 2018, was referred to the Committee on Health.

Gov. Msg. No. 611, submitting for consideration and confirmation to the Disability and Communication Access Board, the nomination of MICHAEL OKAMOTO, term to expire June 30, 2018, was referred to the Committee on Health.

Gov. Msg. No. 612, submitting for consideration and confirmation to the Disability and Communication Access Board, the nomination of ANTHONY RIECKE-GONZALES, term to expire June 30, 2017, was referred to the Committee on Health.

Gov. Msg. No. 613, submitting for consideration and confirmation to the Board of Dental Examiners, the nomination of JOY SHIMABUKU, term to expire June 30, 2017, was referred to the Committee on Commerce and Consumer Protection.

Gov. Msg. No. 614, submitting for consideration and confirmation to the Hawaii Medical Board, the nomination of BARRY SHITAMOTO, term to expire June 30, 2018, was referred to the Committee on Commerce and Consumer Protection.

Gov. Msg. No. 615, submitting for consideration and confirmation to the Motor Vehicle Industry Licensing Board, the nomination of WENDEE WILSON, term to expire June 30, 2016, was referred to the Committee on Commerce and Consumer Protection.

Gov. Msg. No. 616, submitting for consideration and confirmation to the Board of Psychology, the nomination of MARTY OLIPHANT, term to expire June 30, 2018, was referred to the Committee on Commerce and Consumer Protection.

Gov. Msg. No. 617, submitting for consideration and confirmation to the Hawaiian Homes Commission, the

nomination of WILLIAM RICHARDSON, term to expire June 30, 2018, was referred to the Committee on Hawaiian Affairs.

Gov. Msg. No. 1102, informing the Senate that on March 10, 2014, the Governor signed into law House Bill No. 2650, H.D. 1 as Act 2, entitled: "MAKING APPROPRIATIONS TO PROVIDE FOR THE EXPENSES OF THE LEGISLATURE, THE AUDITOR, THE LEGISLATIVE REFERENCE BUREAU, THE OMBUDSMAN, AND THE ETHICS COMMISSION," was placed on file.

#### STANDING COMMITTEE REPORTS

Senator Tokuda, for the Committee on Education, presented a report (Stand. Com. Rep. No. 2845) recommending that H.B. No. 2598, 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. 2598, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HAWAII 3R'S," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Dela Cruz, for the Committee on Economic Development, Government Operations and Housing, presented a report (Stand. Com. Rep. No. 2846) recommending that H.B. No. 2626, H.D. 2, 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. 2626, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Dela Cruz, for the Committee on Economic Development, Government Operations and Housing, presented a report (Stand. Com. Rep. No. 2847) recommending that H.B. No. 1702, H.D. 2, 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. 1702, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE CAPITAL INFRASTRUCTURE TAX CREDIT," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Dela Cruz, for the Committee on Economic Development, Government Operations and Housing, presented a report (Stand. Com. Rep. No. 2848) recommending that H.B. No. 2611, 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. 2611, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE STATE CAPITOL," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Dela Cruz, for the Committee on Economic Development, Government Operations and Housing, presented a report (Stand. Com. Rep. No. 2849) recommending that H.B. No. 2253, 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. 2253, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO FUNDING FOR FILM AND DIGITAL MEDIA DEVELOPMENT," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Dela Cruz, for the Committee on Economic Development, Government Operations and Housing, presented a report (Stand. Com. Rep. No. 2850) recommending that H.B. No. 2147, 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. 2147, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CONCESSIONS," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Dela Cruz, for the Committee on Economic Development, Government Operations and Housing, presented a report (Stand. Com. Rep. No. 2851) recommending that H.B. No. 2188, H.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. 2188, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO STATE FUNDS," passed Second Reading and was referred to the Committee on Ways and Means.

At this time, Senator Hee rose to speak on a point of personal privilege as follows:

"Thank you. Colleagues, this morning's *Star-Advertiser* has an op-ed by a lawyer named Barry Sullivan, and he begins by saying – this is in relationship to the confirmation of Michael Wilson – he says, 'One of my law partners sits on the Judicial Selection Commission, which submitted Circuit Judge Michael Wilson as qualified for the nomination. Another sits on the board of directors of the Hawai'i State Bar, which thereafter voted Wilson "unqualified."'

"What this guy doesn't say – I mean, it's really a sad commentary on lawyers, but it's not unexpected and it's not surprising – what this guy doesn't say is his partner who sits on JSC, Jim Bickerton, a well-known lawyer, was voted to sit as a member of the JSC by the entire bar association. What he doesn't say is his other partner – Nadine Ando, wife of Bill Meheula – sits on the bar association. She led – she led – the character assassination on the nominee, and I've kept this quiet and only to myself because there seemed to be no redeeming factor in starting to name names. But when a lawyer like this comes out and presents himself as if he's some kind of beacon or arbiter of fairness, he needs to be transparent in his disclosure.

"Nadine Ando led the character assassination without principled due process. I have no problem if people want to take any nominee down, but to ask the nominee, as was testified by the nominee, 'Have you ever been arrested?' without giving dates, names, places, or time, and then of the nominee ask the question, 'Then why would somebody say that, if it wasn't true?' 'Have you ever been publicly intoxicated?' and without giving names, dates, and places, being asked, 'Then why would someone say that, if it wasn't true?' 'Have you ever engaged in sexual harassment?' without giving dates, names, or time, and then being asked, 'Then why would they say it, if it wasn't true?'

"You know, this thing is very unfortunate. I think – well, I don't think, I know – those of you who have spent any time with me as a member of the Senate know full well that I take these confirmations very seriously, and I'm sure you do, too. We're going to send to the clerk on Friday the committee report. Today's Wednesday; by our count, Monday is the twenty-ninth day and Tuesday is the thirtieth day, and I don't think the Senate wants to engage in hours and minutes on the thirtieth day.

"If anybody wants to name names, time, and places, I wish they would do so instead of casting more questions on a nominee that, as far as we have been able to find, meets the qualifications to sit as a member of the Supreme Court. There may be those who feel he's not the most qualified; well, I'm not sure if that's an accurate or inaccurate statement because, indeed, he may not be. But no one has come forward, other than to cast innuendo and aspersions on an individual who interviewed and was found to be unqualified by the association of which he is a member. And to have some lawyer named Barry A. Sullivan write an op-ed as if he doesn't know speaks very poorly of not only Mr. Sullivan, but the bar association. Thank you very much."

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

"Thank you very much, Madam President. On a point of personal privilege, and would the previous speaker please yield to a question?"

Senator Hee responded that he would yield to the question.

Senator Solomon continued:

"Thank you very much, Madam President, I'd like to ask the speaker: Yesterday, he issued a challenge to the bar to reappear in front of the Judiciary Committee so that we, in fact, could verify, and the fact is that he brought some kind of documentation to say that in 2011, if I recall, that the bar had agreed to disclose. I'm asking, Madam President, if, in fact, that's going to happen before Friday. Thank you."

Senator Hee responded as follows:

"Thank you, Madam President. I'm glad the previous speaker asked the question. Shortly after the floor remarks – I can't remember what day it was, I think it was Monday – I received an email, and I have it here, from the executive director of the Hawaii State Bar Association. And the email is totally in line with my comments on Mr. Sullivan. The email said, from Pat Mau-Shimizu, that they were going to change the policy, but in fact, despite the article written by Ken Kobayashi, they never did. And that's why they still hide behind the cloak of anonymity."

"But I'll tell you what I will do. From now on, I will ask the nominee, 'Who said what to you?' so the nominee will then name these people. I thought about doing it at the public hearing, but I thought we should take the high road. It wasn't until this op-ed came from Mr. Sullivan that I thought, 'Well, maybe we should take all roads.' Thank you, Madam President."

Senator Slom rose to commend the chair of the Committee on Judiciary and Labor for his "all roads" policy, and suggested he read a related article by Bob Jones in *MidWeek*.

Senator Slom then invited the members to a live broadcast that would be occurring the following day at 1:00 p.m. in Conference Room 414 on the Jones Act and seeking a congressional exemption to the U.S. shipbuilding requirement. Senator Slom noted that there was bipartisan support in the Senate and House of Representatives, and that elected officials in Guam, Puerto Rico, and Alaska would be participating in the discussion as well.

Senator Ige rose to request that the members sign a congratulatory certificate for former Governor Ariyoshi's eighty-eighth birthday.

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

"Thank you. Yesterday, the Council on Revenues met, and some of you may have heard the results; many may not have.

And for the record, the Council on Revenues reduced its revenue estimates for Fiscal Year 2014 from 3.3 percent revenue gain to 0 percent, and the impact of that is a net loss of revenues estimated at \$180 million. You know that the Senate Minority has maintained two things all along: Number one, our economy, in fact, has not improved and is getting worse; and number two, that the so-called \$184 million budget surplus was illusionary.

"If there was \$184 million and the governor still had bills left over from last year with appropriations that he had not released, he started doing so this week and that reduced that amount. But the \$180 million means that currently, both the governor's budget and the House draft of the budget are not in balance as required by law. Thank you."

#### ADJOURNMENT

At 11:56 a.m., on motion by Senator Espero, seconded by Senator Slom and carried, the Senate adjourned until 11:30 a.m., Thursday, March 13, 2014.