

## FORTY-SECOND DAY

Friday, March 23, 1979

The Senate of the Tenth Legislature of the State of Hawaii, Regular Session of 1979, convened at 11:30 o'clock a.m., with the President in the Chair.

The Divine Blessing was invoked by Reverend James Habenicht, M.M., Associate Pastor, Sacred Heart Church, after which the Roll was called showing all Senators present.

The President announced that he had read and approved the Journal of the Forty-First Day.

The following introductions were then made to the members of the Senate:

Senator Saiki, on behalf of the Senators from the Seventh Senatorial District, introduced 74 fifth grade students from Kahala Elementary School, accompanied by their teachers Mrs. Sharon Inamine, Mrs. Carol Maehara, Mrs. Tsulan Young and Mrs. Janet Shitabata.

Senator Yamasaki, on behalf of the Senators from the Second Senatorial District, introduced 21 eighth grade students from Saint Joseph's School in Makawao, Maui, accompanied by Sister Aurelia, Sister Raymond, Mr. Tony Silva, Mrs. Helen Silva, Mr. Clement Bak, Mrs. Elizabeth Rago, Mrs. Paulette Ramon, Ms. Merlyn Canha and Ms. Carolyn Freitas.

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

The Senate reconvened at 11:51 o'clock a.m.

Senator Kuroda, on behalf of the Senators from the Fourth Senatorial District, then introduced 52 students from the fifth and eighth grades of Our Savior Lutheran School in Aiea, accompanied by their teachers Miss Wegener and Mr. Jessen and parents Mrs. Tabor and Mrs. Tamura.

## SENATE CONCURRENT RESOLUTIONS

The following concurrent resolutions (S.C.R. Nos. 62 and 63) were read by the Clerk and were disposed of as follows:

A concurrent resolution (S.C.R. No. 62), entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD TO ESTABLISH GENERAL STANDARDS OR CRITERIA FOR EMPLOYEES NOT COVERED UNDER THE PROVISIONS OF CHAPTER 89, HAWAII REVISED STATUTES", was jointly offered by Senators Toyofuku, Abercrombie, Hara, Takitani, Saiki, Soares, Mizuguchi, Cobb, Carpenter, O'Connor, Young, Campbell, Carroll, Ushijima,

George, Cayetano, Chong, Yamasaki, Kuroda and Yee.

By unanimous consent, S.C.R. No. 62 was referred to the Committee on Human Resources.

A concurrent resolution (S.C.R. No. 63), entitled: "SENATE CONCURRENT RESOLUTION RELATING TO THE DISAPPROVAL OF THE LEGISLATIVE SALARY PLAN SUBMITTED BY THE 1978 COMMISSION ON LEGISLATIVE SALARY", was jointly offered by Senators O'Connor, Cayetano, Kawasaki, Abercrombie, Cobb, Ushijima, Mizuguchi, Chong, Toyofuku, Takitani, Hara, Yamasaki, Carpenter, Young, Yim, Saiki, Anderson, Yee, George and Carroll.

By unanimous consent, action on S.C.R. No. 63 was deferred until Tuesday, March 27, 1979.

## SENATE RESOLUTIONS

The following resolutions (S.R. Nos. 295 and 296) were read by the Clerk and were disposed of as follows:

A resolution (S.R. No. 295), entitled: "SENATE RESOLUTION CONGRATULATING THE WINNER AND RUNNERS-UP OF THE 1979 DAUGHTERS OF THE AMERICAN REVOLUTION HAWAII STATE GOOD CITIZEN AWARD", was jointly offered by Senators Wong, Yim, Kawasaki, Campbell, Toyofuku, Mizuguchi, Kuroda, Takitani, O'Connor, Young, Yamasaki, Ushijima, Anderson, Cayetano, Chong, George, Carroll, Hara, Saiki, Ajifu, Carpenter, Abercrombie, Cobb, Yee and Soares.

On motion by Senator Kawasaki, seconded by Senator Yim and carried, S.R. No. 295 was adopted.

At this time, Senator Kawasaki introduced to the members of the Senate the honorees of S.R. No. 295: Judy Wai Ming Hui, the winner; and runners-up, Susan Hayashi of Moanalua High School; Jane Padwick of Kohala High School, who could not be present; and Russell N. Harada of Roosevelt High School. Senators Campbell and Cayetano presented certified copies of the resolution to the honorees. Senator Kawasaki also introduced a group of principals and teachers from the respective schools.

At 11:54 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:57 o'clock a.m.

A resolution (S.R. No. 296), entitled:

"SENATE RESOLUTION EXPRESSING PRIDE IN AND SUPPORT FOR THE SIGNING HANDS OF ALOHA OF THE HAWAII SCHOOL FOR THE DEAF AND BLIND", was jointly offered by Senators O'Connor, Takitani, Campbell, Kuroda, Saiki, George, Mizuguchi, Ushijima, Young, Soares, Yamasaki, Ajifu, Yim, Anderson, Hara, Chong, Cobb, Carroll, Yee, Abercrombie, Kawasaki, Carpenter, Cayetano, Toyofuku and Wong.

By unanimous consent, action on S.R. No. 296 was deferred to the end of the calendar.

#### STANDING COMMITTEE REPORTS

Senator Yamasaki, for the Committee on Legislative Management, presented a report (Stand. Com. Rep. No. 774) informing the Senate that Senate Concurrent Resolution No. 61, Senate Resolution Nos. 289 to 294 and Standing Committee Report Nos. 671 to 773 have been printed and are ready for distribution.

On motion by Senator Yamasaki, seconded by Senator George and carried, the report of the Committee was adopted.

Senator Carpenter, for the Committee on Health, presented a report (Stand. Com. Rep. No. 775) recommending that Senate Resolution No. 74, as amended in S.D. 1, be adopted.

On motion by Senator Carpenter, seconded by Senator Campbell and carried, the report of the Committee was adopted and S.R. No. 74, S.D. 1, entitled: "SENATE RESOLUTION REQUESTING A STUDY ON PAYMENT FOR ACUPUNCTURE SERVICES", was adopted.

#### ORDER OF THE DAY

##### THIRD READING

House Bill No. 340, H.D. 1:

On motion by Senator Toyofuku, seconded by Senator Yamasaki and carried, H.B. No. 340, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO FACILITIES FOR THE ELDERLY", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 544, S.D. 1:

On motion by Senator Toyofuku, seconded by Senator Yamasaki and carried, H.B. No. 544, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INDUSTRIAL CARCINOGENS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 402:

On motion by Senator O'Connor, seconded by Senator Cobb and carried, H.B. No. 402, entitled: "A BILL FOR AN ACT RELATING TO FIREARMS AND AMMUNITION", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 404:

By unanimous consent, action on H.B. No. 404, entitled: "A BILL FOR AN ACT RELATING TO PROMPT COMPLAINT", was deferred until Tuesday, March 27, 1979.

House Bill No. 585, H.D. 1:

On motion by Senator O'Connor, seconded by Senator Cobb and carried, H.B. No. 585, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII PENAL CODE", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

At 12:01 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:15 o'clock p.m.

#### MATTER DEFERRED FROM EARLIER ON THE CALENDAR

Senate Resolution No. 296:

On motion by Senator O'Connor, seconded by Senator Cobb and carried, S.R. No. 296 was adopted.

At this time, Senator O'Connor introduced to the members of the Senate the musical group of the Hawaii School for the Deaf and Blind, Signing Hands of Aloha, who will be participating in the National Very Special Arts Festival in Washington, D.C. on April 5 through 8, 1979. The group then gave a very beautiful and touching performance of the song "We're All Alone."

At 12:17 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:25 o'clock p.m.

Senator O'Connor then introduced Mr. Santiago Agcaoili, principal of the Hawaii School for the Deaf and Blind; Ms. Dianne Girard, State Coordinator for the Very Special Arts Festival; Ms.

Diane Ichimasa, Ms. Joan Kurashige and Ms. Judy Higa, teachers and assistants. Senator O'Connor presented certified copies of the resolution to them and Senators Saiki, Cobb and Soares presented the leis.

Senator Kuroda then rose to state as follows:

"Mr. President, having the blind and deaf people here today, I think, is very appropriate to the resolution that Senator Carpenter has prepared and circulated. It is a resolution proclaiming Wellness Week and I think it's a wonderful thing that we are able to have a resolution proclaiming wellness. Thank you."

Senator Carpenter then added as follows:

"Mr. President, the resolution speaks to wellness and honoring a number of people who have dedicated themselves to making people well. Perhaps we can contribute in some small way as Senators of this Body by adding our own thoughts, in that, perhaps in the future, it's no longer going to be fashionable to be ill, no longer going to be fashionable to think ill, and it's no longer going to be fashionable to do ill. So, with our own contributions as members of the law-making body in the State of Hawaii, hopefully, we can make a contribution to this total effort."

Senator Abercrombie then rose on a point of personal privilege and stated as follows:

"Mr. President, within the past two days, members of this Body have by implication been accused of blackmail in respect of the appointments generated by the Governor, in terms of his cabinet, and by further implication by those appointments having to do with boards and commissions.

"In particular, Mr. President, the Honolulu Advertiser lead editorial of Thursday, March 22, 1979, has stated, 'Certainly such cabinet appointments should not be held hostage by legislators who differ with a governor or mayor over programs or priorities.' Further, it goes on to say, 'It does not mean the Legislature should not have priorities or express them via legislation that is respected by the administration as much as possible within the limits of money and other priority programs.' And concludes, 'But there is also a line between honest bargaining and blackmail and it should be clear to the Capitol at this time.'

"Mr. President, I rise on a point of personal privilege because I do not think it should be allowed to pass, that the Honolulu Advertiser has misinformed the citizenry in terms of historical sequence of events

surrounding the phrase 'advise and consent'.

"There are two branches of government involved here, co-equal branches of government, and the founding fathers of this nation indicated very clearly as to why advise and consent was necessary when a nomination of a public official was concerned, and as to what the process should be and what the rationale for it was.

"It seems to me that this editorial opinion, to the extent that is reflected in news columns and to the extent it becomes reflected in the thinking of our citizenry, does damage to the historical press and for advice and consent in the Senate and the reasoning behind it.

"I wish very momentarily, Mr. President, to bring to your attention and to the public's attention exactly what advise and consent means, and, in particular, I wish to refer to Nos. 76 and 77 of 'The Federalist Papers' as written by Alexander Hamilton.

"I think, historically, it would be aggrieved, Mr. President, that Mr. Hamilton was the antithesis of the so-called democratic faction of the two major factions of our governmental philosophers at the time of the drafting of the Constitution--one being Alexander Hamilton, one represented by Thomas Jefferson.

"The Federalist Papers' debates, if you will, were as a result of that differentiation, Hamilton considered by all in 'The Federalist Papers', to be the conservative position. Therefore, Mr. President, I quote from Hamilton and 'The Federalist Papers' because I think that no one can deny, on a historical basis, it represents the most conservative position.

"In No. 76 he indicated, '...It is not easy to conceive a plan better calculated than this (that is to say advise and consent by the Senate with the nomination of the president or any other subsequent government officials in descending order) ... to promote a judicious choice of men for filling the offices of the Union; and it will not need proof that on this point must essentially depend (upon) the character of its administration. ... It ought either to be vested in a single man, or in a select assembly of a moderate number, or in a single man with the concurrence of such an assembly.'

"After examining the three propositions and moving to the third proposition, which is the Senate, he indicates, '... To what purpose then require the co-operation

of the Senate? I answer that the necessity of their concurrence would have a powerful, though, in general, a silent operation. It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity. And, in addition to this, it would be an efficacious source of stability in the administration.

"It will readily be comprehended that a man who had himself the sole disposition of offices would be governed much more by his private inclinations and interests than when he was bound to submit the propriety of his choice to the discussion and determination of a different and independent body, and that body an entire branch of the legislature. . . . The institution of delegated power implies that there is a portion of virtue and honor among mankind. . . . And I think this is particularly pertinent to the accusation of blackmail and hostage holding; I think it's an insult to the Governor; I think it's an insult to the members of the Senate who are called upon to exercise their constitutional obligations and duties. I repeat, ' . . . The institution of delegated power implies that there is a portion of virtue and honor among mankind, which may be a reasonable foundation of confidence. And experience justifies the theory. It has been found to exist in the most corrupt periods of the most corrupt governments. . . . it is as little to be doubted that there is always a large proportion of the body which consists of independent and public-spirited men who have an influential weight in the councils of the nation. . . . Though it might therefore be allowable to suppose that the executive might occasionally influence some individuals in the Senate, yet the supposition that he could in general purchase the integrity of the whole body would be forced and improbable. A man disposed to view human nature as it is, without either flattering its virtues or exaggerating its vices, will see sufficient ground of confidence in the probity of the Senate to rest satisfied, not only that it will be impracticable to the executive to corrupt or seduce a majority of its members, but that the necessity of its co-operation in the business of appointments will be a considerable and salutary restraint upon the conduct of that magistrate.'

"In other words, Mr. President, the founding fathers of this nation were more concerned that the Senate act as a restraint than that the Senate act as if it was holding anything hostage. It was more concerned with executive authority being exercised arbitrarily

and calling upon the Senate to exercise such attention as was necessary to see that executive authority was not abused. It is the exact opposite of the arguments that have been brought forward in the editorial opinion.

"I want to conclude with these remarks, 'Let us take a view of the converse of the proposition: "the Senate would influence the executive.'" As I have had occasion to remark in several other instances, the indistinctness of the objection forbids a precise answer. In what manner is this influence to be exerted? In relation to what objects? The power of influencing a person, in the sense in which it is here used, must imply a power of conferring a benefit upon him. How could the Senate confer a benefit upon the President by the manner of employing their right of negative upon his nominations? If it be said they might sometimes gratify him by an acquiescence in a favorite choice, when public motives might dictate a different conduct, I answer that the instances in which the President could be personally interested in the result would be too few to admit of his being materially affected by the compliances of the Senate. Beside this, it is evident that the POWER which can originate the disposition of honors and emoluments is more likely to attract than to be attracted by the POWER which can merely obstruct their course. If by influencing the President be meant restraining him, this is precisely what must have been intended.'

"I think that it behooves people who wish to discuss publicly the nominations of the Governor or the inclinations of any senator in respect of those nominations, that they keep well in mind that the nomination and confirming process in any appointment of any kind, whether a cabinet official or a board or commission, is a joint process by the executive and by the Senate of this state.

"And its historical precedence are such that time has well-served this notion that has been put into words in the Constitution with great deliberation, so as to prevent abuse by either Body. The utilization of the word 'hostage', the utilization of the word 'blackmail' is a disservice to the Constitution of the United States and the Constitution of the State of Hawaii. It is a disservice to the deliberate of nature and the cooperative nature of the consult of nature between the executive and the legislature in respect of the appointment of public officials."

## ADJOURNMENT

At 12:35 o'clock p.m., on motion by Senator Mizuguchi, seconded by Senator Anderson and carried, the Senate adjourned until 11:30 o'clock a.m., Tuesday, March 27, 1979.