

FIFTEENTH DAY

Tuesday, February 5, 1980

The Senate of the Tenth Legislature of the State of Hawaii, Regular Session of 1980, convened at 11:30 o'clock a.m., with the President in the Chair.

The Divine Blessing was invoked by the Reverend David N. Halsinger of St. Luke's Episcopal Church, Nuuanu, after which the Roll was called showing all Senators present with the exception of Senators Ajifu, Chong, Saiki and Ushijima, who were excused.

The President announced that he had read and approved the Journal of the Fourteenth Day.

At this time, the following introductions were made to the members of the Senate:

Senator Campbell introduced Mr. Willard Maguire, President of the National Education Association and Senator Young presented him with a lei. Senator Campbell then introduced Mrs. Odetta Fujimori, former President of the Hawaii State Teachers Association and a member of the Board of Directors of the National Education Association and Mrs. Masako Ledward, Chairperson of the Hawaii Education Council, who accompanied Mr. Maguire.

At 11:38 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:41 o'clock a.m.

Senator Yee introduced Mr. Mits Watanabe, Treasurer of Molokai Electric Company.

Senator Cayetano then introduced Mr. and Mrs. Stanley Asanoma from Pearl City, Oahu.

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 48 and 49) were read by the Clerk and were disposed of as follows:

A message from the Governor (Gov. Msg. No. 48), transmitting a report prepared by the Department of Health in response to Senate Resolution No. 369 (1979), which requested the Department to conduct a study of the School Food Service Program, was referred to the Committee on Health.

A message from the Governor (Gov. Msg. No. 49), transmitting the 1978 Annual Report prepared by the Teacher

Education Coordinating Committee in accordance with Section 304-20, Hawaii Revised Statutes, was referred to the Committee on Education.

DEPARTMENTAL COMMUNICATION

A communication from the Department of Hawaiian Home Lands (Dept. Com. No. 4), transmitting a "Position Paper on the Native Hawaii Rehabilitation Fund", a draft form for public review and comment and noting that the Position Paper describes the background for the Native Hawaiian Rehabilitation Fund, proposed objectives and priorities for the period 1980-84, major research findings to date and the planning process being carried out, was read by the Clerk and was referred to the Committee on Housing and Hawaiian Homes.

SENATE CONCURRENT RESOLUTION

A concurrent resolution (S.C.R. No. 13), entitled: "SENATE CONCURRENT RESOLUTION RESPECTFULLY URGING THE UNITED STATES CONGRESS TO ENACT ENABLING LEGISLATION FOR THE EFFECTUATION OF THE RECENTLY NEGOTIATED INTERNATIONAL SUGAR AGREEMENT", was jointly offered by Senators Machida, Yamasaki, Hara, Mizuguchi, Chong, Toyofuku, O'Connor, Ushijima, Campbell, Young, Carpenter, Carroll, Kuroda, Cayetano, George, Soares and Abercrombie and was read by the Clerk.

By unanimous consent, S.C.R. No. 13 was referred to the Committee on Agriculture.

SENATE RESOLUTIONS

The following resolutions (S.R. Nos. 67 to 69) were read by the Clerk and were disposed of as follows:

A resolution (S.R. No. 67), entitled: "SENATE RESOLUTION RESPECTFULLY URGING THE UNITED STATES CONGRESS TO ENACT ENABLING LEGISLATION FOR THE EFFECTUATION OF THE RECENTLY NEGOTIATED INTERNATIONAL SUGAR AGREEMENT", was jointly offered by Senators Machida, Yamasaki, Hara, Chong, Mizuguchi, Toyofuku, O'Connor, Ushijima, Campbell, Young, Carpenter, Carroll, Kuroda, Cayetano, George, Soares and Abercrombie.

By unanimous consent, S.R. No. 67 was referred to the Committee on Agriculture.

A resolution (S.R. No. 68), entitled: "SENATE RESOLUTION CONGRATULATING ROY R. YONAHARA ON HIS SELECTION AS THE 1980 TEACHER OF THE YEAR

FOR THE MAUI DISTRICT", was jointly offered by Senators Machida, Yamasaki, Campbell, Anderson, Kawasaki, Soares, Cayetano, Toyofuku, Hara, Carpenter, Wong, Yee, Yim, Ajifu, Mizuguchi, Chong, Kuroda, Abercrombie, O'Connor and George.

On motion by Senator Machida, seconded by Senator Yamasaki and carried, S.R. No. 68 was adopted.

A resolution (S.R. No. 69), entitled: "SENATE RESOLUTION REQUESTING THE FEDERAL GOVERNMENT TO RETURN BELLOWS FIELD TO THE STATE OF HAWAII", was offered by Senator Ajifu.

By unanimous consent, S.R. No. 69 was referred to the Committee on Ecology, Environment and Recreation.

INTRODUCTION OF SENATE BILLS

On motion by Senator Mizuguchi, seconded by Senator Anderson and carried, the following bills passed First Reading by title, were referred to print and were placed on the calendar for further consideration on Wednesday, February 6, 1980:

Senate Bills

No. 2298-80 "A Bill for an Act Making an Appropriation for Makiki Park."

Introduced by: Senator Carroll.

No. 2299-80 "A Bill for an Act Making an Appropriation for Makiki Fire Station."

Introduced by: Senator Carroll.

No. 2300-80 "A Bill for an Act Making an Appropriation for Street Trees for the Makiki Area."

Introduced by: Senator Carroll.

No. 2301-80 "A Bill for an Act Relating to Bodies."

Introduced by: Senator Carroll, by request.

No. 2302-80 "A Bill for an Act Relating to Workers' Compensation Program Commission."

Introduced by: Senators Toyofuku, Hara, Ushijima, Kuroda, Young, Machida, Mizuguchi, Chong, Abercrombie, Campbell, Ajifu and Soares.

No. 2303-80 "A Bill for an Act Making an Appropriation for Hale Opio Kauai, Incorporated."

Introduced by: Senators Toyofuku,

Chong, Campbell, Ajifu, Soares, Machida, Carpenter and Kuroda.

No. 2304-80 "A Bill for an Act Relating to Workers' Compensation."

Introduced by: Senators Toyofuku, Machida, Carpenter, Ajifu, Anderson and Soares.

No. 2305-80 "A Bill for an Act Relating to the Limits of Liability of a Policy of Uninsured Motorist Insurance."

Introduced by: Senators Toyofuku, Ushijima, Kuroda, Hara, Young, Machida, Abercrombie, Campbell, Anderson and Soares.

No. 2306-80 "A Bill for an Act Making an Appropriation for Collective Bargaining, Unit 1."

Introduced by: Senator Wong.

No. 2307-80 "A Bill for an Act Making an Appropriation for Collective Bargaining, Unit 2."

Introduced by: Senator Wong.

No. 2308-80 "A Bill for an Act Making an Appropriation for Collective Bargaining, Unit 3."

Introduced by: Senator Wong.

No. 2309-80 "A Bill for an Act Making an Appropriation for Collective Bargaining, Unit 4."

Introduced by: Senator Wong.

No. 2310-80 "A Bill for an Act Making an Appropriation for Collective Bargaining, Unit 5."

Introduced by: Senator Wong.

No. 2311-80 "A Bill for an Act Making an Appropriation for Collective Bargaining, Unit 6."

Introduced by: Senator Wong.

No. 2312-80 "A Bill for an Act Making an Appropriation for Collective Bargaining, Unit 7."

Introduced by: Senator Wong.

No. 2313-80 "A Bill for an Act Making an Appropriation for Collective Bargaining, Unit 8."

Introduced by: Senator Wong.

No. 2314-80 "A Bill for an Act Making an Appropriation for Collective Bargaining, Unit 9."

Introduced by: Senator Wong.

No. 2315-80 "A Bill for an Act Making an Appropriation for Collective Bargaining, Unit 10."

Introduced by: Senator Wong.

No. 2316-80 "A Bill for an Act Making an Appropriation for Collective Bargaining, Unit 11."

Introduced by: Senator Wong.

No. 2317-80 "A Bill for an Act Making an Appropriation for Collective Bargaining, Unit 13."

Introduced by: Senator Wong.

No. 2318-80 "A Bill for an Act Making Appropriations for Adjustment Authorized by Chapter 89C, Hawaii Revised Statutes."

Introduced by: Senator Wong.

No. 2319-80 "A Bill for an Act Relating to Criminal History Record Information."

Introduced by: Senator Wong, by request.

No. 2320-80 "A Bill for an Act Relating to Traveling Expenses of State Officials."

Introduced by: Senator Wong, by request.

No. 2321-80 "A Bill for an Act Relating to Partnerships."

Introduced by: Senator Wong, by request.

No. 2322-80 "A Bill for an Act Relating to Residential Leasehold Condominiums."

Introduced by: Senator Wong, by request.

No. 2323-80 "A Bill for an Act Relating to Public Assistance."

Introduced by: Senator Wong, by request.

No. 2324-80 "A Bill for an Act Relating to Domiciliary Care."

Introduced by: Senator Wong, by request.

No. 2325-80 "A Bill for an Act Relating to Project Holomua."

Introduced by: Senators Hara, Ushijima, Carpenter, Young, Machida, Toyofuku, Saiki, Kuroda, Carroll, Cayetano, Yamasaki, Chong, Ajifu, Campbell, Mizuguchi, George, Yee, O'Connor,

Soares and Abercrombie.

SPECIAL COMMITTEE REPORT

Senator O'Connor, for the Joint Committee of the Senate and House of Representatives, directed by Senate Resolution No. 509 (1979) and House Resolution No. 844 (1979), respectively, to review during the 1979 legislative interim, the possible codification of the proposed Hawaii Rules of Evidence, presented a report (Spec. Com. Rep. No. 2-80), with certain recommendations.

On motion by Senator O'Connor, seconded by Senator Cobb and carried, the report of the Committee was accepted.

STANDING COMMITTEE REPORTS

Senator Yamasaki, for the Committee on Legislative Management, presented a report (Stand. Com. Rep. No. 14-80) informing the Senate that Senate Resolution Nos. 63 to 66 and Senate Bill Nos. 2243-80 to 2297-80 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.

Senators Carpenter and Cobb, for the Committees on Health and Consumer Protection and Commerce, presented a joint report (Stand. Com. Rep. No. 15-80) recommending that Senate Bill No. 2134-80 pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Carpenter, seconded by Senator Cobb and carried, the joint report of the Committees was adopted and S.B. No. 2134-80, entitled: "A BILL FOR AN ACT RELATING TO FOOD, DRUGS, AND COSMETICS", passed Second Reading and was placed on the calendar for Third Reading on Thursday, February 7, 1980:

In accordance with Section III, Section 15, of the Constitution of the State of Hawaii, the 48-hour notice was given on S.B. No. 2134-80.

ORDER OF THE DAY

REFERRAL OF SENATE BILLS

The President made the following committee assignments of bills that were introduced on Monday, February 4, 1980:

Senate Bills Referred to:

No. 2243-80 Committee on Education, then to the Committee on Ways and Means

No. 2244-80 Committee on Education, then to the Committee on Ways and Means

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| No. 2245-80 | Committee on Human Resources,
then to the Committee on Ways and
Means | to the Committee on Judiciary |
| No. 2246-80 | Committee on Ways and Means | No. 2272-80 Committee on Judiciary |
| No. 2247-80 | Committee on Judiciary | No. 2273-80 Committee on Judiciary |
| No. 2248-80 | Committee on Economic
Development, then to the Committee
on Judiciary | No. 2274-80 Committee on Judiciary,
then to the Committee on Ways and
Means |
| No. 2249-80 | Committee on Intergovernmental
Relations | No. 2275-80 Committee on Judiciary |
| No. 2250-80 | Committee on Judiciary | No. 2276-80 Committee on Human Resources,
then to the Committee on Ways and Means |
| No. 2251-80 | Committee on Judiciary | No. 2277-80 Committee on Judiciary |
| No. 2252-80 | Committee on Judiciary | No. 2278-80 Committee on Judiciary,
then to the Committee on Ways and Means |
| No. 2253-80 | Committee on Consumer
Protection and Commerce | No. 2279-80 Committee on Judiciary,
then to the Committee on Ways and
Means |
| No. 2254-80 | Committee on Consumer
Protection and Commerce | No. 2280-80 Committee on Judiciary |
| No. 2255-80 | Committee on Human Resources,
then to the Committee on Ways and
Means | No. 2281-80 Committee on Education,
then to the Committee on Ways and
Means |
| No. 2256-80 | Committee on Ways and Means | No. 2282-80 Committee on Human Resources,
then to the Committee on Ways and
Means |
| No. 2257-80 | Committee on Ways and Means | No. 2283-80 Committee on Human Resources,
then to the Committee on Ways and Means |
| No. 2258-80 | Committee on Ways and Means | No. 2284-80 Committee on Housing
and Hawaiian Homes, then to the Committee
on Ways and Means |
| No. 2259-80 | Committee on Ways and Means | No. 2285-80 Committee on Consumer
Protection and Commerce |
| No. 2260-80 | Committee on Ways and Means | No. 2286-80 Committee on Human Resources |
| No. 2261-80 | Committee on Ways and Means | No. 2287-80 Committee on Transportation,
then to the Committee on Ways and
Means |
| No. 2262-80 | Committee on Housing
and Hawaiian Homes, then to the
Committee on Ways and Means | No. 2288-80 Committee on Education,
then to the Committee on Ways and
Means |
| No. 2263-80 | Committee on Housing and
Hawaiian Homes, then to the Committee
on Ways and Means | No. 2289-80 Committee on Education,
then to the Committee on Ways and Means |
| No. 2264-80 | Committee on Housing and
Hawaiian Homes, then to the Committee
on Consumer Protection and Commerce | No. 2290-80 Committee on Economic
Development, then to the Committee
on Judiciary |
| No. 2265-80 | Committee on Housing and
Hawaiian Homes | No. 2291-80 Committee on Health |
| No. 2266-80 | Committee on Housing and
Hawaiian Homes | No. 2292-80 Committee on Ecology,
Environment and Recreation |
| No. 2267-80 | Committee on Housing and
Hawaiian Homes | No. 2293-80 Committee on Health, then
to the Committee on Judiciary |
| No. 2268-80 | Committee on Judiciary | No. 2294-80 Committee on Judiciary |
| No. 2269-80 | Committee on Judiciary | |
| No. 2270-80 | Committee on Judiciary | |
| No. 2271-80 | Committee on Health, then | |

No. 2295-80 Committee on Human Resources, up, in a more public way.
then to the Committee on Ways and Means

"Thank you, Mr. President."

No. 2296-80 Committee on Ways and Means

(The letter reads as follows:

No. 2297-80 Committee on Judiciary,
then to the Committee on Ways and Means

"The Senate
The Ninth Legislature
of the
State of Hawaii
Honolulu, Hawaii

MISCELLANEOUS COMMUNICATION

January 12, 1979

A communication from Mr. Gordon R. Ring, Assistant to the President for Program Coordination, the East-West Center, (Misc. Com. No. 3), transmitting their Annual Report for the fiscal year 1979, in compliance with Act 82 of the Hawaii State Legislature, Regular Session of 1975, was read by the Clerk and was referred to the Committee on Higher Education.

The Honorable Yoshimi Hayashi
Judge, First Circuit Court
Judiciary Building
417 South King Street
Honolulu, Hawaii 96813

Re: Medicaid Fraud
Central Unit convictions on Maui

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

Dear Judge Hayashi:

The Senate reconvened at 11:47 o'clock a.m.

In the coming weeks you must make a decision concerning an appropriate sentence in respect of 3 defendants who have pleaded guilty to first degree Theft in the Medicaid payment program.

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

In the past, as a Senior Deputy Probation Officer and as a private citizen, I have made many recommendations to the Court in both misdemeanor and felony cases ranging from traffic tickets to murder. I have always believed, philosophically, when an officer of the Court, as a private citizen and now as a Legislator, that sentencing is not a mechanical process; that discretionary power should and must remain with the judiciary. Because of the advocacy nature of our system of jurisprudence, this principle is essential. While entitled to a position neither the defense nor the prosecution may necessarily represent to the Court what is ultimately in the best interests of society and the defendant to be sentenced.

"Mr. President, I would like to submit for the Journal a copy of a letter that I wrote to the Honorable Yoshimi Hayashi, Judge of the First Circuit Court, in January of 1979, concerning Medicaid fraud and the Medicaid Fraud Unit convictions, at that time--they referred to the convictions on Maui.

Likewise, an outside view may not be cognizant of every relevant factor, but nonetheless the observations of third parties may serve to illuminate the parameters within which a judge must reach his conclusions.

"Since that time, there have been subsequent convictions and subsequent sentences. I kept the letter to myself previously because I was not sure of the ethical implications, in my own mind, of discussing publicly a recommendation to the Judiciary in terms of sentencing in a particular case. However, since the sentencing has commenced in various cases with the Medicaid Fraud Unit, I have become very much concerned that these cases do not seem to have the same kind of impetus in the minds of some of the judges, in terms of what the proper sentences are or how they should be addressed, both in the public mind and in the degree to which the Judiciary seems to regard them as serious.

It is in this spirit that I write you.

I hope I am not a vengeful person. I realize one person's sense of justice may be accounted revenge by another. But I hope I am not a fool either.

"Mr. President, I would like to submit this letter--it's quite lengthy and detailed--as my feelings on this subject in the record for those who wish to have it in mind. Also, I intend to inform Judge (Samuel) King as I think there is another sentencing coming

Perhaps because of the fact I receive a paycheck from the public treasury I am sensitive to Theft from it, but it is also a fact that the confidence of our taxpayers has been severely shaken by revelations of so-called white-collar crime on a massive scale throughout the nation especially where government spending is involved.

In the case of Medicaid we are dealing with the most explosive public issue in government today--health care and its runaway costs. This is particularly so because of the fear factor. In few areas of his or her life is the individual so dependent upon the judgment and integrity of another as in serving health needs. Most of us are virtually without recourse in determining if we are being cheated or badly served.

This combination of cost and trust must be addressed when criminality threatens to undermine the confidence I have previously cited. The situation is so serious where Medicaid is concerned that a special Fraud Unit has been created. The outcome of its labors will be closely monitored by those tempted to take advantage of the program at every level of service. To secure successful prosecution and have the guilty parties lightly treated will undermine the rationale of the special attention the taxpayers are sponsoring through their financial support of the Fraud Unit personnel.

I refer in particular to the assessment of fines in lieu of prison time. Whether fairly drawn or not, there is a distinct public impression that white-collar crime is handled as if it 'really' isn't all that wrong. Fines paid with relative ease with probation and/or short or suspended sentences in the relative comfort of low-security penal institutions seem in the public mind to smack of rewarding the criminal.

I am perfectly aware of the meaning of prison. I have been inside them enough to know their terror even in the most seemingly benign atmosphere. But I am also aware that its imposition has all too often in the past been for the poor, the inarticulate and life's losers. That is not a lament so much as a simple statement of fact.

Here it is the poor who have been victimized along with the taxpayer in general. The more costs rise the more the poor person's well-being

in health care terms is in jeopardy because of the irritation of the larger tax-paying public. Deserved benefits are seen to be a wasteful extravagance at the expense of the honest taxpayer. A distorted picture emerges and animosity breeds among those who rather than sharing the fiscal burden inherent in proper health care come to view one another with suspicion and spite. The poor rather than disease become the enemy.

The victims here are not articulate--in the sense that they were able to interpret, let alone question, the authority of the druggists. Druggists are professional people whose standards must be more than circumspect if they are to retain the good will and faith of the public. This case involves people who obviously were not confused, misled or incapable. They willfully stole from the public treasury using for their advantage the inability of their victims to protest.

Finally, these thieves are not life's losers. They are among its privileged. They have turned their skills, knowledge and public trust to the ends of greed--not a new story certainly but within the context as I view it particularly reprehensible.

I, therefore, ask you consider in dispensing the awful responsibility of your high office the maximum term. In the individual instance, the sentence is just. In the public context, the warning is unmistakable.

Sincerely,

/s/ Neil Abercrombie

Neil Abercrombie
Senator, Sixth District

NA:vb")

ADJOURNMENT

At 11:50 o'clock a.m., on motion by Senator Mizuguchi, seconded by Senator Anderson and carried, the Senate adjourned until 11:30 o'clock a.m., Wednesday, February 6, 1980.