

TWENTY-SECOND DAY

Thursday, February 14, 1980

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

The Divine Blessing was invoked by Reverend Stanley Kain of the Hawaii Council of Churches, after which the Roll was called showing all Senators present, with the exception of Senators Anderson, George and Saiki who were excused.

At this time, the President, on behalf of the members of the Senate, acknowledged appreciation to Reverend Kain and Ms. Pat Navarro of the Hawaii Council of Churches for the scheduling of ministers for the invocation during this Regular Session of 1980.

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

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

Senator Carroll introduced Mr. Richard Sakamoto, principal of McKinley High School, who was sitting in the gallery.

Senator Soares introduced a visitor from Vancouver, B.C., Mr. Robert Thurston, who who was sitting in the gallery with Mr. Sam Caldwell of Hawaiian Sugar Planters Association.

At 11:40 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:42 o'clock a.m.

Senator Chong then introduced Dr. Mark Tajima who was also sitting in the Senate gallery.

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 68 to 73) were read by the Clerk and were disposed of as follows:

A message from the Governor (Gov. Msg. No. 68), transmitting a report prepared by the Board of Massage in response to S.R. No. 115 (1979) which requested the Board of Massage to upgrade and diversify its tests for licensing was referred to the Committee on Consumer Protection and Commerce.

A message from the Governor (Gov. Msg. No. 69), transmitting a report prepared by the Department of Social Services and Housing in response to Act 22, SLH, 1979,

which relates to the cost estimates to update the profiles on which reimbursement to professional providers (physicians, dentists, etc.) are based, was referred jointly to the Committee on Human Resources and the Committee on Health.

A message from the Governor (Gov. Msg. No. 70), transmitting the Annual Report, 1977-1978, of the Hawaii Foundation for History and the Humanities was referred to the Committee on Education.

A message from the Governor (Gov. Msg. No. 71), transmitting the Annual Report, 1976-1977, of the Hawaii Foundation for History and the Humanities was referred to the Committee on Education.

A message from the Governor (Gov. Msg. No. 72), submitting for consideration and consent to the Intermediate Appellate Court, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, the nomination of Yoshimi Hayashi, Chief Judge, for a term of ten years, was referred to the Committee on Judiciary.

A message from the Governor (Gov. Msg. No. 73), submitting for consideration and consent to the Intermediate Appellate Court, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, the nomination of Frank D. Padgett, Associate Judge, for a term of ten years, was referred to the Committee on Judiciary.

DEPARTMENTAL COMMUNICATIONS

The following communications (Dept. Com. Nos. 5 and 6) were read by the Clerk and were disposed of as follows:

A communication from the Department of Planning and Economic Development (Dept. Com. No. 5), transmitting copies of comments of the members of the State Plan Policy Council on the State Agriculture Plan, pursuant to Section 226-54(c), Hawaii Revised Statutes, was referred jointly to the Committee on Agriculture and the Committee on Economic Development.

A communication from the Department of Planning and Economic Development (Dept. Com. No. 6), transmitting copies of comments of the members of the State Plan Policy Council on the State Water Resources Development Plan, pursuant to Section 226-54(c), Hawaii Revised Statutes, was referred to the Committee on Economic Development.

HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 15 to 22) were read by the Clerk and were disposed of as follows:

A communication from the House (Hse. Com. No. 15), transmitting House Bill No. 2074-80, which passed Third Reading in the House of Representatives on February 13, 1980, was placed on file.

On motion by Senator Mizuguchi, seconded by Senator Yee and carried, H.B. No. 2074-80, entitled: "A BILL FOR AN ACT RELATING TO SIGNING AND FILING OF RETURNS FOR TAXATION PURPOSES", passed First Reading by title and was referred to the Committee on Ways and Means.

A communication from the House (Hse. Com. No. 16), transmitting House Bill No. 2131-80, which passed Third Reading in the House of Representatives on February 13, 1980, was placed on file.

On motion by Senator Mizuguchi, seconded by Senator Yee and carried, H.B. No. 2131-80, entitled: "A BILL FOR AN ACT RELATING TO TAXATION", passed First Reading by title and was referred to the Committee on Ways and Means.

A communication from the House (Hse. Com. No. 17), transmitting House Bill No. 2132-80, which passed Third Reading in the House of Representatives on February 13, 1980, was placed on file.

On motion by Senator Mizuguchi, seconded by Senator Yee and carried, H.B. No. 2132-80, entitled: "A BILL FOR AN ACT RELATING TO TAXATION", passed First Reading by title and was referred to the Committee on Ways and Means.

A communication from the House (Hse. Com. No. 18), transmitting House Bill No. 2133-80, which passed Third Reading in the House of Representatives on February 13, 1980, was placed on file.

On motion by Senator Mizuguchi, seconded by Senator Yee and carried, H.B. No. 2133-80, entitled: "A BILL FOR AN ACT RELATING TO TAXATION", passed First Reading by title and was referred to the Committee on Ways and Means.

A communication from the House (Hse. Com. No. 19), transmitting House Bill No. 2134-80, which passed Third Reading in the House of Representatives on February 13, 1980, was placed on file.

On motion by Senator Mizuguchi, seconded by Senator Yee and carried,

H.B. No. 2134-80, entitled: "A BILL FOR AN ACT RELATING TO TAXATION", passed First Reading by title and was referred to the Committee on Ways and Means.

A communication from the House (Hse. Com. No. 20), transmitting House Bill No. 2135-80, which passed Third Reading in the House of Representatives on February 13, 1980, was placed on file.

On motion by Senator Mizuguchi, seconded by Senator Yee and carried, H.B. No. 2135-80, entitled: "A BILL FOR AN ACT RELATING TO COPIES OF TAX RETURNS", passed First Reading by title and was referred to the Committee on Ways and Means.

A communication from the House (Hse. Com. No. 21), transmitting House Bill No. 2137-80, which passed Third Reading in the House of Representatives on February 13, 1980, was placed on file.

On motion by Senator Mizuguchi, seconded by Senator Yee and carried, H.B. No. 2137-80, entitled: "A BILL FOR AN ACT RELATING TO TAXATION", passed First Reading by title and was referred to the Committee on Ways and Means.

A communication from the House (Hse. Com. No. 22), transmitting House Concurrent Resolution No. 58, which was adopted by the House of Representatives on February 13, 1980, was placed on file.

On motion by Senator Mizuguchi, seconded by Senator Yee and carried, H.C.R. No. 58, entitled: "HOUSE CONCURRENT RESOLUTION EXTENDING CONGRATULATIONS TO JOSHUA C. AGSALUD FOR OUTSTANDING PUBLIC SERVICE AND FOR BEING NAMED THE RECIPIENT OF THE OUTSTANDING FILIPINO OVERSEAS IN THE FIELD OF PUBLIC SERVICE FOR 1979", was adopted.

SENATE CONCURRENT RESOLUTION

A concurrent resolution (S.C.R. No. 20), entitled: "SENATE CONCURRENT RESOLUTION RELATING TO THE ESTABLISHMENT OF NEIGHBORHOOD JUSTICE CENTERS IN HAWAII", was jointly offered by Senators Chong, Carpenter, Yim and O'Connor, and was read by the Clerk.

By unanimous consent, S.C.R. No. 20 was referred to the Committee on Judiciary.

At 11:45 o'clock a.m., the Senate stood

in recess subject to the call of the Chair.

The Senate reconvened at 11:46 o'clock a.m.

SENATE RESOLUTIONS

The following resolutions (S.R. Nos. 104 to 106) were read by the Clerk and were disposed of as follows:

A resolution (S.R. No. 104), entitled: "SENATE RESOLUTION REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO MAKE AS ONE OF ITS PRIORITIES THE DEVELOPMENT OF AN ACCURATE LAND INVENTORY THAT INCLUDES A CATEGORIZATION OF CEDED AND NON-CEDED PUBLIC LANDS", was jointly offered by Senators Carpenter, Yim, Wong, Kuroda, Yamasaki, Chong and Young.

By unanimous consent, S.R. No. 104 was referred to the Committee on Economic Development.

A resolution (S.R. No. 105), entitled: "SENATE RESOLUTION CONGRATULATING THE 1980 MISS MCKINLEY-CARNIVAL QUEEN ALICE KAEHUAEEA AND HER COURT", was jointly offered by Senators Yee, Carroll, Chong, Young, Yamasaki, Machida, Ajifu, Yim, Mizuguchi, Ushijima, Anderson, Saiki, Campbell, Kawasaki, Soares, Abercrombie and Carpenter.

On motion by Senator Yee, seconded by Senator Carroll and carried, S.R. No. 105 was adopted.

At this time, Senator Yee, on behalf of the Senators from the 5th and 6th Senatorial Districts, introduced to the members of the Senate the 1980 Miss McKinley-Carnival Queen Alice Kaehuaee and her Court: Miss Valerie Siu, first runner-up; Miss Tame Marksbury, second runner-up; Miss Diedre Suenaka, third runner-up; and Miss Wendy Koo, fourth runner-up, who were accompanied by Toby the (McKinley) Tiger, Miss Gayle Sykes, faculty advisor, and principal Richard Sakamoto.

A resolution (S.R. No. 106), entitled: "SENATE RESOLUTION REQUESTING THE GOVERNOR AND THE NATIONAL GUARD TO REFRAIN FROM CONDUCTING ANOTHER OPERATION GREEN HARVEST", was jointly offered by Senators Chong and Abercrombie.

By unanimous consent, S.R. No. 106 was referred to the Committee on Judiciary.

At this time, Senator Chong rose to state as follows:

"Mr. President, I thought that we were going to adopt this wonderful resolution today but, unfortunately, Senator Soares saw fit to have it referred so I go along

with it."

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

"Mr. President, I speak on a point of personal privilege. My point is that S.R. No. 106 makes certain statements which raise some serious doubts as to whether or not the introducers of the resolution speak for themselves when they say that 'many look toward the legalization of marijuana; that individuals should be free to cultivate or smoke marijuana; and that the law is desperate in its treatment of marijuana and alcohol.'

"These are reasons which I question and that is why I raise the point now about having it referred to the wastebasket."

Senator Chong then rose to state that he does not wish to debate the issue but would like to point out that "the word is disparate, not desperate."

Senator Soares again rose on a point of personal privilege and stated as follows:

"Mr. President, I had planned to rise later on but looking at my competitor's brand package on our desks which says 'I like you' with sugar-coated hearts, I think it's very appropriate at this time to recognize the attire of our Senate Sergeant-at-Arms this morning. And, on behalf of the women senators, Senator Saiki who is not here but I think she is the one that brought my competitor's package, Senator George and Senator Young who also are not here ... on behalf of all of us to all of the staff, our girlfriends on the floor, 'Happy Valentine's Day!'"

STANDING COMMITTEE REPORTS

Senator Yamasaki, for the Committee on Legislative Management, presented a report (Stand. Com. Rep. No. 25-80) informing the Senate that Senate Resolution Nos. 96 to 103 have been printed and are ready for distribution.

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

Senator Cobb, for the Committee on Consumer Protection and Commerce, presented a report (Stand. Com. Rep. No. 26-80) recommending that House Bill No. 687, H.D. 1, as amended in S.D. 1, pass Second Reading and

be placed on the calendar for Third Reading.

On motion by Senator Cobb, seconded by Senator Chong and carried, the report of the Committee was adopted and H.B. No. 687, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INTOXICATING LIQUOR," passed Second Reading and was placed on the calendar for Third Reading on Friday, February 15, 1980.

In accordance with Article III, Section 15, of the Constitution of the State of Hawaii, the 48-hour notice was given on H.B. No. 687, H.D. 1, S.D. 1.

ORDER OF THE DAY

MATTER DEFERRED FROM FEBRUARY 13, 1980

Senate Bill No. 1827-80, S.D. 1:

Senator O'Connor moved that S.B. No. 1827-80, S.D. 1, having been read through-out, pass Third Reading, seconded by Senator Cobb.

At this time, Senator Abercrombie rose to speak in favor of the bill and stated as follows:

"Mr. President, I would like to speak in favor of this measure prior to the explanation by the chairman.

"Just for this comment. I am sure I'm not the only one that has questions, and I've spoken with the chairman about it, and he has assured us that he wants to take these questions into consideration and that there would be a conference circumstance evolve out of this. Rather than bring up these matters now I would like to indicate that I am in favor of this measure but I do have questions which I would like to pass along to the committee as it goes forward with its deliberations."

Senator O'Connor then rose to speak in favor of the measure and stated as follows:

"Mr. President, I rise to speak in favor of Senate Bill 1827-80, S.D. 1, which codifies a set of rules of evidence for Hawaii. This codification of rules of evidence is one which was initiated some 10 years ago by the Supreme Court of the United States.

"The Supreme Court put together a set of rules of evidence and forwarded them to Congress which acted upon them about five years ago and codified Federal Rules of Evidence. Because the Federal Rules of Evidence were enacted, this body asked

the Judicial Council of the State of Hawaii if the Judicial Council would put together a subcommittee to look at a codification of rules of evidence for Hawaii. Such a subcommittee was put together and Judge Masato Doi, now retired Judge Masato Doi of the First Circuit Court, acted as its chairman. They retained Professor Addison Bowman of the University of Hawaii Law School, Professor of Evidence, as the reporter for the committee and worked for a period of a year on their first draft of a proposal of Rules of Evidence.

"After that subcommittee had submitted their proposal through the Judicial Council to the Legislature, this body last year enacted a resolution establishing a committee of both the House and the Senate, in the interim, to work on that proposal. Your interim committee report was submitted to this Chamber approximately two weeks ago and that interim committee which met some twelve or more times over the course of the summer and the fall suggested a certain measure to be introduced in both Houses this year.

"After introduction, your Judiciary Committee continued work on the measure and the product, which is today on the desk of the members, is the final product based upon the work of all of these individuals over a very long period of time.

"I would like to acknowledge, in particular, the effort and work which was done by Judge Masato Doi and his committee and the work done by Professor Addison Bowman who acted not only as the reporter of the initial committee but as reporter and chief scribe for the interim committee of the House and the Senate. His work in these areas has been monumental and he is still working on a set of comments and commentary which will go finally with this bill in its final form. Because of this effort and because of the work put into this particular code, we feel that it is, at this juncture, the most appropriate code of evidence that could be presented for this state.

"I will admit there are certain areas that still need some discussion, some analysis, and we anticipate that our brethren in the House will give this measure the analysis in those areas that are necessary. We are moving this bill very early in this session so that people in the community, attorneys, judges, laymen, and industries that the bill might affect, will have opportunity

to know that we are acting on this this year and provide additional input if they feel it necessary.

"The bill, as it stands today, is an excellent measure. It can be improved and certainly will be improved -- it's not just in this session but in the future as this code of evidence is used in the state.

"The obvious purpose for having codification in the rules of evidence is first to end long and useless argument in the courts concerning evidence, to shorten trial, to make decisions of attorneys and their clients easier as to whether or not litigation should be commenced or should continue, and, in general, to simplify our criminal and civil trial situation.

"I would urge all members of this body to vote in favor of this measure."

Senator Carroll also rose to speak in favor of the measure and stated as follows:

"Mr. President, I rise to speak briefly in favor of the measure.

"First of all, I'd like to compliment the chairman of the Judiciary Committee for really doing an excellent job and for having undertaken an arduous task not only since the session began, but actually since the middle of last summer. I would also like to publicly acknowledge Professor Bowman and Judge Doi, as well as the other attorneys who came and offered their time to us with respect to this measure.

"There are several items, Mr. President, which I would like to note that are not in the bill and which I believe will be addressed, I hope, when this returns to us in the form of a conference draft. One is the area of the privilege for a newsman which is absent in this measure. I feel that that shield, that privilege which will allow investigation into the area of crime which we do not have at this time, will be included and it would appear in the final conference draft and become law in this state.

"Another area which is mentioned in the area of privileges with respect to Rule 503, (d), (6), is that which has to do with the client-attorney privilege and particularly how that relates to the privilege which exists between the officer or employee of the state and the state Attorney General's office, and particularly with the attorney who is representing him. In this particular measure, we are virtually eliminating that privilege to those individuals and I think that that's an extremely sticky problem. It portends constitutional problems, and I think it's something we must pay very careful attention to.

"Again, I think an excellent job is being

done, even with the defects that I have mentioned. I feel that the bill, even in its present form, should be voted for and become law."

Senator Cayetano then added his remarks in favor of the measure and stated as follows:

"Mr. President, I would like to say a few words in favor of this bill. I join the previous speakers' remarks with respect to the overall job done on this bill.

"I think attorneys understand, especially, how important the rules of evidence are to parties who are engaged in litigation. If the rules are unfair or weigh to one side that will influence the outcome in court.

"Generally speaking, I think the commission and the committee on evidence did a very good job. However, there is one section on page 8 of the report, and I refer to Rule 407, where the Judiciary Committee did not accept the recommendation of the committee on evidence and instead reverted to the old common law rule of evidence regarding the admissibility of evidence of subsequent remedial measures which could be admitted as evidence of negligence in negligence cases.

"Generally speaking, Mr. President, Rule 407, as embodied in this document or in this bill, shows the footsteps of a defense lawyer. I hope that when we go into conference, if we ever do go into conference on this measure, that we would strongly reconsider the committee's original recommendation because I believe that the original recommendation was excellent."

The motion was put by the Chair and carried, and S.B. No. 1827-80, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII RULES OF EVIDENCE", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 20. Noes, none. Excused, 5 (Anderson, George, Saiki, Ushijima and Young).

At 12:07 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:09 o'clock a.m.

At this time, Senator Kuroda introduced to the members of the Senate a former University of Hawaii classmate and baseball star Bob Kagamida, and Mrs. Kagamida who were sitting in the

Senate gallery.

RE-REFERRAL OF
SENATE BILLS

The President made the following re-referral of bills that were introduced on Thursday, February 7, 1980:

Senate Bills Referred to:

No. 2391-80 Jointly to the Committee on Health and the Committee on Human Resources, then to the Committee on Ways and Means

No. 2406-80 Committee on Consumer Protection and Commerce

The President made the following re-referral of bills that were introduced on Monday, February 11, 1980:

Senate Bills Referred to:

No. 2683-80 Committee on Ways and Means

No. 2693-80 Committee on Education, then to the Committee on Ways and Means

No. 2738-80 Committee on Human Resources

RE-REFERRAL OF
A GOVERNOR'S MESSAGE

The President made the following re-referral of a Governor's Message that was received on Friday, February 8, 1980:

Governor's
Message Referred to:

No. 58 Jointly to the Committee on Health and the Committee on Education

ADJOURNMENT

At 12:12 o'clock a.m., on motion by Senator Mizuguchi, seconded by Senator Yee and carried, the Senate adjourned until 11:00 o'clock a.m., Friday, February 15, 1980.