

FORTY-SECOND DAY

Friday, March 23, 1984

The Senate of the Twelfth Legislature of the State of Hawaii, Regular Session of 1984, convened at 11:40 o'clock a.m., with the President in the Chair.

The Divine Blessing was invoked by Sister Katherine Theiler, M.M., Director of the Spiritual Life Center, after which the Roll was called showing all Senators present with the exception of Senator Abercrombie who was excused.

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

At this time, Senator Aki introduced 30 fourth, fifth and sixth graders from Waianae Elementary School, who are JPO's and members of the student council, accompanied by their counselor, Ms. Ann Toyota.

SENATE CONCURRENT RESOLUTIONS

The following concurrent resolutions (S.C.R. Nos. 59 to 61) were read by the Clerk and were disposed of as follows:

A concurrent resolution (S.C.R. No. 59), entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS TO REVIEW ITS ADMINISTRATIVE SUPPORT FOR BOARDS AND COMMISSIONS WHICH ARE SUBJECT TO THE SUNSET LAW," was offered by Senators Cobb, Aki, Fernandes Salling, Ajifu, George, Mizuguchi, Yamasaki, Hagino, Holt and Carpenter.

By unanimous consent, S.C.R. No. 59 was referred to the Committee on Consumer Protection and Commerce.

A concurrent resolution (S.C.R. No. 60), entitled: "SENATE CONCURRENT RESOLUTION REQUESTING A REVIEW OF CHANGES TO IMPROVE THE REGULATION OF HAIRDRESSERS, COSMETICIANS, BEAUTY SHOPS, AND BEAUTY SCHOOLS," was offered by Senators Cobb, Aki, Fernandes Salling, George, Ajifu, Mizuguchi, Yamasaki, Hagino, Holt and Toguchi.

By unanimous consent, S.C.R. No. 60 was referred to the Committee on Consumer Protection and Commerce.

A concurrent resolution (S.C.R. No. 61), entitled: "SENATE CONCURRENT RESOLUTION REQUESTING

A STUDY ON THE FEASIBILITY OF ESTABLISHING A PORT AUTHORITY FOR HAWAII," was offered by Senators Carpenter, Young, George, Fernandes Salling, Toguchi, Ajifu, Kuroda, Aki, Cayetano, Hagino, Henderson, Mizuguchi, Kawasaki, Chang, Yamasaki, Uwayne, Solomon and Abercrombie.

By unanimous consent, S.C.R. No. 61 was referred to the Committee on Transportation.

SENATE RESOLUTIONS

The following resolutions (S.R. Nos. 70 to 72) were read by the Clerk and were disposed of as follows:

A resolution (S.R. No. 70), entitled: "SENATE RESOLUTION REQUESTING THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS TO REVIEW ITS ADMINISTRATIVE SUPPORT FOR BOARDS AND COMMISSIONS WHICH ARE SUBJECT TO THE SUNSET LAW," was offered by Senators Cobb, Aki, Fernandes Salling, Ajifu, George, Hagino, Carpenter, Mizuguchi, Yamasaki and Holt.

By unanimous consent, S.R. No. 70 was referred to the Committee on Consumer Protection and Commerce.

A resolution (S.R. No. 71), entitled: "SENATE RESOLUTION REQUESTING A REVIEW OF CHANGES TO IMPROVE THE REGULATION OF HAIRDRESSERS, COSMETICIANS, BEAUTY SHOPS, AND BEAUTY SCHOOLS," was offered by Senators Cobb, Aki, Fernandes Salling, George, Ajifu, Mizuguchi, Yamasaki, Hagino, Holt and Toguchi.

By unanimous consent, S.R. No. 71 was referred to the Committee on Consumer Protection and Commerce.

A resolution (S.R. No. 72), entitled: "SENATE RESOLUTION REQUESTING A STUDY ON THE FEASIBILITY OF ESTABLISHING A PORT AUTHORITY FOR HAWAII," was offered by Senators Carpenter, Young, George, Fernandes Salling, Toguchi, Chang, Cayetano, Hagino, Kuroda, Aki, Henderson, Mizuguchi, Ajifu, Kawasaki, Yamasaki, Abercrombie, Uwayne and Solomon.

By unanimous consent, S.R. No. 72 was referred to the Committee on Transportation, then to the Committee

on Legislative Management.

STANDING COMMITTEE REPORTS

Senator Kuroda for the Committee on Tourism, presented a report (Stand. Com. Rep. No. 467-84) recommending that Senate Concurrent Resolution No. 39, as amended in S.D. 1, be adopted.

On motion by Senator Kuroda, seconded by Senator Aki and carried, the report of the Committee was adopted and S.C.R. No. 39, S.D. 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING A STATUS REPORT ON THE BIG ISLAND OCEAN RECREATION AND TOURISM PROJECT," was adopted.

Senator Kuroda for the Committee on Tourism, presented a report (Stand. Com. Rep. No. 468-84) recommending that Senate Resolution No. 45, as amended in S.D. 1, be adopted.

On motion by Senator Kuroda, seconded by Senator Aki and carried, the report of the Committee was adopted and S.R. No. 45, S.D. 1, entitled: "SENATE RESOLUTION REQUESTING A STATUS REPORT ON THE BIG ISLAND OCEAN RECREATION AND TOURISM PROJECT," was adopted.

ORDER OF THE DAY

ADVISE AND CONSENT

Standing Committee Report No. 393-84 (Gov. Msg. No. 230):

Senator Cobb moved that Stand. Com. Rep. No. 393-84 be received and placed on file, seconded by Senator Carpenter and carried.

Senator Cobb then moved that the Senate advise and consent to the nomination of Russel S. Nagata as Director of Commerce and Consumer Affairs, term to expire December 1, 1986, seconded by Senator Carpenter.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused 2 (Abercrombie and Kawasaki).

RE-REFERRAL OF SENATE RESOLUTION

The President re-referred Senate Resolution No. 63 which was introduced on March 19, 1984 to the Committee on Health, then to the

Committee on Legislative Management.

At 11:46 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:54 o'clock a.m.

Senator Cayetano rose on a point of privilege and stated as follows:

"Mr. President, I've been a member of this body now for ten years and if there is anything that I think I've learned in those ten years it is that when one gives his word in this body, one should hold to it.

"The past few days, the chairman of the Housing Committee has been under tremendous pressure. I don't think I have to go through the details. We've all seen the chairman subjected to the scrutiny of the press, the television media, when she declared a moratorium on House Bill 2246.

"Whether you agree with the chairman or not on the moratorium, I don't think anyone here will deny that her move was one based on principle and courage. What bothers me, Mr. President, however, is that some of the members here, in terms of their conduct with respect to this particular issue, have not lived up to the code that I spoke about.

"After the chairman put herself out on the limb and declared that she would be for the moratorium, yesterday, the Minority members of this Senate issued a press release, dated March 22, 1984, on this particular issue and I would like to read it for the record and for the benefit of the members here.

'Excessive increases in lease rents at renegotiation have threatened the home and family incomes of leaseholders throughout our state. The Senate and the House Republicans firmly believe that action must be taken during this legislative session to institute an equitable system of lease rent renegotiation.

'While Republicans generally believe in the traditional GOP philosophy of private property rights, the situation in which we find ourselves has to be resolved outside of that conservative tradition. We cannot sit on the sidelines while people whom we represent are in the dreadful dilemma of not being able to afford their new lease rentals or not being

able to sell their homes which in many cases represent their lifetime investment.

'We believe that the current process works a severe hardship on many citizens of our state. And we believe that it is the responsibility of this Legislature to address this unfair situation.

"The release then ends with this paragraph:

'The Senate and House Republicans, therefore, urgently request the chairman of the Senate Committee on Housing move House Bill 2246, relating to residential leases of real property, out of committee in order that the inequities suffered by the leaseholders may be swiftly redressed.'

"Mr. President, the information that I have available to me indicates that the chairman, one of the reasons the chairman took the stand that she did, was she was concerned about members who are opposed to the bill having to show their 'colors' in public -- a very generous concern, I might add, that not many chairmen would hold for the members of their committees -- but that she also checked with each individual member of her committee and asked them whether or not they would agree to the proposed moratorium. And the answer in each case was 'yes.'

"Having polled her committee, the chairman then went public and after having gone public and being bombarded with telephone calls and letters castigating her for holding back this important bill, the Minority members of this Senate came out with this press release.

"Now, there are five Minority members who I assume are part of this press release. I don't begrudge those members who have had a history in this Senate of favoring leasehold legislation which would help resolve the dilemma of lessees. But I do take exception when I read a committee report, Senate Bill 1813, and I see the signature of one Minority member who signed 'I do not concur.' That Minority member represents a district which has many, many leaseholders. I do take exception when that person gives the chairman his word, he agrees to a moratorium and then, in total contradiction to that agreement, joins this kind of a press release, subjecting the chairman to the vilification that she has been

subjected to.

"All of us in this Senate, I think, have taken sides on this issue and I don't begrudge anyone who has a philosophical difference or who has philosophical differences on this particular issue. One can respect that. But one cannot respect where a member of this body has had a history, a history, of opposing reform for lessees...I do object when that person for political reasons, because he's up for re-election, takes part in this kind of a press release.

"The chairman has called for a moratorium. I wonder, after the re-election, if this particular Senator is re-elected, how will he vote. Will he vote according to this press release, or will he vote according to the pattern that he has established in the Legislature over the years?

"Last week I introduced an amendment to the milk bill. That amendment was proposed to me by another Senator of this body who rather surprised me by voting against the very amendment that he proposed. I could excuse that one particular action, but it seems that this kind of conduct is becoming contagious. It's happening more frequently. While you can excuse this kind of conduct happening once on an issue like this where a chairman is subjected to so much heat and vilification, I think that these things have to be made public.

"We have an election coming up in 1984 and I can say this, that as far as I'm concerned, whoever the Democratic candidate is in that particular district, if I'm asked for my opinion about the conduct of his opponent on this particular issue, I will gladly volunteer it so that the constituency of that particular district will know fully and exactly what they are voting for."

Senator Ajifu rose to comment on the previous speaker's remarks as follows:

"The previous speaker has not talked to me about that press release. The press release was discussed in our caucus. So far as the press release coming out, it was discussed in our caucus, however, I had said in our caucus that this is a very important issue and it should not be a political issue. It's too important to play politics. This is what I have said in the caucus.

"I'd like to also inform this body

and the speaker that when the press release had gone out I had not seen the press release.

"So, Mr. President, I'd like to set the record straight that what was implied here was that I was part of the press release. We did agree to a press release but I didn't know what the content of the press release was at that time but I had indicated at the caucus and, I repeat, that it should not be a political issue. Thank you."

Senator Cayetano responded and stated: "Mr. President, we are not talking about a political issue, we are talking about a code of conduct for our Senators here.

"The point that I'm trying to make is that if a person gives his word and a chairman or another Senator goes out on a limb, because of that word, then one should live up to that word and not try to pull the rug or carpet from under the Senator or chairman."

Senator Soares also rose on a point of personal privilege and stated:

"Mr. President, I think it's important as the leader of the Republicans who've worked very hard over the years to maintain credibility on the floor of this Senate. I concur with Senator Cayetano in terms of the conduct of all of us here -- how we vote, how we represent our constituency and how we stand up for what is right and what is wrong.

"It has been my stance for the last 18 years, both here and in the House, to call a spade, a spade. Senate and House Republicans together issued a press release and while it may appear to be purely political, we have been consistent in our stance for years trying our best to get the residential leasehold problems solved for the good of our constituents, mine in particular. Eighty percent of the residents in my district reside on Bishop Estate leases. We have been meeting for years on the need to control the spiraling and outrageous cost, accelerated by the lease negotiations. We have also been discussing leasehold conversion to fee and the possibility of condemnation by HHA.

"Leasehold and Land Reform is a very, very critical issue. It is not political as far as I am concerned. On the other hand, when we issued our press release yesterday, both the House and Senate Republicans discussed the need to have this bill

brought to the floor of the Senate for a vote. It passed the House unanimously, 47 to 4; one signature with 'I do not concur'. And it has been the history here in the Senate to have open dialogue, great debate, pro and con on all the issues. Respect for one another is what's critical on the floor of the Senate as is the respect for one another, vote the issues up or down. Express your opinion on what you want and call it like it is.

"As far as I am concerned, there are seven on the committee. If my two colleagues want to vote it down, there are five more votes to bring it to the floor. And I think the real bottom line of our discussion today is this, the floor is the basis for debate, the floor is where you can vote, bring the bill to the floor of the Senate, we can debate it and vote up or down. That's the bottom line, Mr. President. This bill deserves a floor vote, roll call vote to see exactly where everyone stands. I regret, I really regret, to see us not respect one's own credibility.

"That is why I agree with Senator Cayetano. The fact is that we should not, never, hide behind the fact that a person should take all the heat, bury the bill in the drawer and say 'let's go on to something else.' The bill should be voted on, Mr. President.

"It is our great desire to see exactly where we all stand. The House did it, why can't we? We're supposed to be the upper house, the smarter guys, the tougher guys and if we are, let's be counted. That's the basic idea what we're here for.

"Thank you."

At this time, Senator Young rose and stated:

"Mr. President, talking about drawers, I thought maybe this issue might come up so I have this letter written to all lessees that have voiced their concerns. I feel that the Senate is entitled to an explanation by the chairperson on her decision for imposing the moratorium. I will read from a letter written to all lessees who have written to my office. I will not go through all of it; I will read portions of it and it goes as follows:

'I assure you the Legislature realizes some relief must be provided to the lessees. It is with this interest at heart I have decided a moratorium is the responsible action

to take.

'The United States Supreme Court hears the Land Reform Act case on March 26, 1984. It may render its decision after the close of the 1984 Hawaii State Legislative Session. Its decision regarding the constitutionality of Hawaii's Land Reform Act will directly affect this related issue of renegotiated lease rents and this will have an impact on you.

'If the Land Reform Act is found unconstitutional, the Legislature must ensure that the rent renegotiation statute is free of any of the defects which caused the Land Reform Act to be held unconstitutional. This will assure that the protection under this rent renegotiation statute is not jeopardized.

'If the Land Reform Act is upheld as constitutional, a rent limitation measure will affect the value of the fee interest purchased by lessees under the Land Reform Act. The legislature must safeguard this aspect of the Land Reform Act, by ensuring that this rent control measure does not unfairly decrease the "just compensation" which must be provided to a landowner as required by the United States Constitution.

'Two formulas have been proposed this session (H.B. 2246, H.D. 2 used a 5.5 percent factor by which rents would increase; S.B. 1813, S.D. 1 used a CPI ratio in order to attain renegotiated rents). Both solutions presume the rent determined at the onset of the lease is an intrinsically fair and true representation of land value.

'I also considered that both the existing statute and the proposed amendments do not open the umbrella of protection above those lessees who need to renegotiate at an earlier date than specified in their leases for financing purposes, nor do they include those lessees of State land used for residential purposes. The extension of protection to these and other excluded lessees should be considered during the interim study.

'While I am extremely sympathetic to the plight of the lessees, I am concerned about enacting a bill as far reaching and as complex as this measure without 1) being knowledgeable of the Supreme Court's decision and directives, and 2) having all considerations thoroughly investigated. I am cognizant of the economic burden placed on the taxpayers of our State whenever a piece of

legislation is challenged in court. The legislature should feel confident that in its best judgment the laws enacted will withstand a court challenge.'

"Thank you."

Senator Soares replied:

"Mr. President, I would like to make a comment in reply to the chairman. While I admire her having the letter read on the floor of the Senate, I think the basic idea I am trying to raise is that in this case the chairman herself has decided the course of action. I am saying the committee should have the right to discuss the course of action, like the House did, and if you have some 'no' votes or 'I do not concur,' then decide it for bringing it to the floor for a vote.

"I think H.B. 2246 better addresses the problem, as far as I am concerned, and I would like to have it heard."

Senator Uwayne then commented as follows:

"Mr. President, in response to the Minority Floor Leader's comments. I think all members of this body at one time or another, including the Republicans have served as chairmen of committees, in particular, the Minority Floor Leader. It is well known by all committee members, as well as chairmen here, that not all bills that are referred to committee come before the body for a vote. Although it may be preferable that we all decide as a body, as a committee-as-a-whole, to vote on all issues, it is not practical. The previous speaker, as a former chairman of the Public Utilities Committee, is well versed on the fact that all committee bills that are referred to his committee at times, he had to, as chairman take the initiative to decide what would be discussed by the committee, as well as what would come before the body as a whole.

"So for all practical purposes although I would agree with the previous speaker that we would as a body like to vote on all bills, it is not practical."

Senator Soares further stated:

"I do think, also, in fairness to the chairman, that if she's going to have a problem with members of her committee not supporting her, by the same token thinking he is not fair to

her either. I think each member of the committee should be ready at any time on any bill to take all the heat, not one person."

Senator Cayetano then commented as follows:

"Mr. President, just to get back to my original point. This chairman did what not many chairmen do. She consulted with the members of her committee, Majority as well as Minority. The point that I am trying to make is that the Minority committee members agreed with her course of action. Having agreed with the course of her action, it seems somewhat hypocritical to join this kind of a press release. That's the point I'm trying to make."

Senator Cobb rose and stated:

"Very briefly, Mr. President, while I sat through the rather long Judiciary Committee hearing on the so-called companion bill, S.B. 1813, as related to the residential leaseholds, the point of concern of most members of the committee was of basic fairness or equity to both sides. I think that in the consideration of any moratorium, we have to be more cognizant of the problem that is faced by lessees in which I hope is the solution that is arrived at, and that is where an individual lessee is either going to be in a position of buying or selling property that unless they have a minimum 20 year term for their lease rent, if they are not able to buy that they be able to receive such a term in order to acquire or be eligible for bank

financing.

"I am not addressing this in the context to the lessee who would want to buy or sell for a quick profit. Those wanting to do so as a fundamental matter of finding, acquiring or disposing of their housing; individuals who are transferring, individuals who have growing families, individuals who find themselves in circumstances where a new house is needed. I earnestly hope that if the moratorium is to be the arrived at a solution that this particular problem is addressed because otherwise we would be facing a crisis situation with people not being able to buy or sell their homes as being one of my principal concerns throughout this matter and I think we have to keep this in context in terms of the situation lessees find themselves in.

"Thank you."

The Chair made the following observation: "I know that we are heading into the second crossover and I want to again remind all the chairmen who have the various functional plans to work on them over the weekend or perhaps the early part of next week. Please try to get them moved on to the Committee on Economic Development as quickly as possible."

ADJOURNMENT

At 12:20 o'clock p.m., on motion by Senator Cobb, seconded by Senator Soares and carried, the Senate adjourned until 11:30 o'clock a.m., Tuesday, March 27, 1984.