

THIRTEENTH DAY

Friday, February 1, 1985

The Senate of the Thirteenth Legislature of the State of Hawaii, Regular Session of 1985, convened at 11:30 o'clock a.m., with the President in the Chair.

The Divine Blessing was invoked by the Reverend Anthony Bolger of St. Theresa's Church, after which the Roll was called showing all Senators present with the exception of Senators Chang, Cobb and Kawasaki who were excused.

The Chair announced that he had read and approved the Journal of the Twelfth Day.

MESSAGE FROM THE GOVERNOR

Gov. Msg. No. 156, transmitting the following reports prepared by the Executive Office on Aging: Annual Report, FY 1984; and Report on Hawaii's Programs on Aging, FY 1984, was read by the Clerk and was referred to the Committee on Human Services.

DEPARTMENTAL COMMUNICATION

Dept. Com. No. 27 from the Department of Taxation, transmitting a report in response to Act 103, SLH 1981, directing the Department of Taxation to study and analyze the effect of Act 103 which provides that the gross proceeds from the sale of electricity to a public utility company for resale will be assessed at the one-half of one percent general excise tax rate, was read by the Clerk and was referred to the Committee on Ways and Means.

SENATE CONCURRENT RESOLUTION

S.C.R. No. 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE UNITED STATES CONGRESS TO PREPARE AND SUBMIT A CONSTITUTIONAL AMENDMENT REQUIRING A BALANCING OF THE FEDERAL BUDGET, OR TO CALL A CONSTITUTIONAL CONVENTION TO PROPOSE SUCH CONSTITUTIONAL AMENDMENT," was offered by Senators George, Cobb, Kawasaki, Henderson, A. Kobayashi, Soares, Aki, Cayetano, Matsuura, Hee, Toguchi, McMurdo, B. Kobayashi and Fernandes Salling, and was read by the Clerk.

By unanimous consent, S.C.R. No. 1 was referred to the Committee on Government Operations.

INTRODUCTION OF SENATE BILLS

On motion by Senator Kuroda, seconded by Senator Soares and carried, the following bills passed First Reading by title, were

printed and distributed, and were referred to committee:

Senate Bills

No. 344 "A BILL FOR AN ACT RELATING TO FRESH FRUITS AND VEGETABLES."

Introduced by: Senators Solomon, Hagino, B. Kobayashi, McMurdo, Abercrombie, Kuroda, Soares, Kawasaki, Chang, A. Kobayashi, Mizuguchi, Toguchi, Matsuura, Holt, George, Fernandes Salling, Young, Yamasaki and Aki.

Referred to: Committee on Agriculture.

No. 345 "A BILL FOR AN ACT RELATING TO MOTOR VEHICLES."

Introduced by: Senators Cayetano, Abercrombie, Hee, Aki, McMurdo, Yamasaki and Fernandes Salling.

Referred to: Committee on Transportation.

No. 346 "A BILL FOR AN ACT RELATING TO THE BOARD OF EDUCATION."

Introduced by: Senator B. Kobayashi.

Referred to: Committee on Judiciary.

No. 347 "A BILL FOR AN ACT RELATING TO THE BOARD OF EDUCATION."

Introduced by: Senator B. Kobayashi.

Referred to: Committee on Judiciary.

No. 348 "A BILL FOR AN ACT RELATING TO STANDARDS OF CONDUCT."

Introduced by: Senators B. Kobayashi and Kawasaki.

Referred to: Committee on Judiciary.

On motion by Senator Kuroda, seconded by Senator Soares and carried, the following bills passed First Reading by title, were referred to print and were placed on the calendar for further consideration on Monday, February 4, 1985:

Senate Bills

No. 349 "A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE XII, SECTION 5, OF THE HAWAII CONSTITUTION, TO CHANGE THE COMPOSITION OF THE BOARD OF

TRUSTEES OF THE OFFICE OF HAWAIIAN AFFAIRS."

Introduced by: Senators Hee, Holt, Fernandes Salling, Abercrombie, McMurdo, Chang, Kuroda, Hagino and Toguchi.

No. 350 "A BILL FOR AN ACT RELATING TO SAFETY."

Introduced by: Senators Hee, Abercrombie, Cayetano, Toguchi, Hagino, Kuroda, McMurdo and Chang.

No. 351 "A BILL FOR AN ACT RELATING TO ADVERTISING AND MARKETING OF FRUITS, VEGETABLES, AND COFFEE."

Introduced by: Senators Solomon, Hagino, Holt, Matsuura, A. Kobayashi, George, Yamasaki, Soares, B. Kobayashi, Aki, Fernandes Salling and Chang.

No. 352 "A BILL FOR AN ACT RELATING TO MEDICAL TORTS."

Introduced by: Senators Matsuura and Young.

No. 353 "A BILL FOR AN ACT RELATING TO KULANI CORRECTIONAL FACILITY."

Introduced by: Senators Matsuura and Abercrombie.

No. 354 "A BILL FOR AN ACT RELATING TO FELONS."

Introduced by: Senators Matsuura and McMurdo.

No. 355 "A BILL FOR AN ACT RELATING TO CONTRACTORS."

Introduced by: Senators Matsuura and Cayetano.

No. 356 "A BILL FOR AN ACT RELATING TO THE PENAL CODE."

Introduced by: Senators Matsuura and Hee.

No. 357 "A BILL FOR AN ACT RELATING TO NAMES."

Introduced by: Senators Matsuura and Hee.

No. 358 "A BILL FOR AN ACT RELATING TO DESIGN PROFESSIONAL CONCILIATION PANELS."

Introduced by: Senators Matsuura and Young.

No. 359 "A BILL FOR AN ACT RELATING TO FAMILY COURT."

Introduced by: Senators Matsuura and Abercrombie.

No. 360 "A BILL FOR AN ACT RELATING TO TAXATION."

Introduced by: Senators Matsuura and A. Kobayashi.

No. 361 "A BILL FOR AN ACT RELATING TO TAXATION."

Introduced by: Senators Matsuura and A. Kobayashi.

No. 362 "A BILL FOR AN ACT RELATING TO USE TAX OVERPAYMENT."

Introduced by: Senators Matsuura and Mizuguchi.

STANDING COMMITTEE REPORT

Senator Young, for the Committee on Legislative Management, presented a report (Stand. Com. Rep. No. 3) informing the Senate that S.B. Nos. 237 to 348 have been printed and have been distributed to the members of the Senate.

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

ORDER OF THE DAY

REFERRAL OF SENATE BILLS

The President made following committee assignments of bills that were introduced on Wednesday, January 30, 1985:

Senate Bills	Referred to:
No. 237	Committee on Ways and Means
No. 238	Committee on Ways and Means
No. 239	Committee on Ways and Means
No. 240	Committee on Ways and Means
No. 241	Committee on Ways and Means
No. 242	Committee on Ways and Means
No. 243	Committee on Judiciary, then to the Committee on Ways and Means
No. 244	Committee on Ways and Means
No. 245	Committee on Judiciary, then to the Committee on Ways and Means

No. 246 Means	Committee on Ways and	No. 270 Operations, then to the Committee on Ways and Means	Committee on Government
No. 247 Means	Committee on Ways and	No. 271 to the Committee on Ways and Means	Committee on Health, then
No. 248	Committee on Judiciary	No. 272 Recreation	Committee on Tourism and
No. 249	Committee on Judiciary	No. 273 Transportation	Committee on
No. 250	Committee on Judiciary	No. 274 Ways and Means	Committee on Economic Development, then to the Committee on
No. 251 Transportation	Committee on	No. 275 Ways and Means	Committee on Economic Development, then to the Committee on
No. 252 then to the Committee on Ways and Means	Committee on Judiciary,	No. 276 Development	Committee on Economic
No. 253	Committee on Judiciary	No. 277 Committee on Judiciary	Committee on
No. 254 Transportation, then to the Committee on Ways and Means	Committee on	No. 278 Committee on Housing and Community Development, then to the Committee on Ways and Means	Committee on Housing and Community Development, then to the Committee on Ways and Means
No. 255 Transportation	Committee on	No. 279 Development	Committee on Economic
No. 256 then to the Committee on Ways and Means	Committee on Judiciary,	No. 280 Development	Committee on Economic
No. 257 Ways and Means	Committee on Labor and Employment, then to the Committee on	No. 281 and Means	Committee on Government Operations, then to the Committee on Ways and Means
No. 258 Ways and Means	Committee on Labor and Employment, then to the Committee on	No. 282 Ways and Means	Committee on Economic Development, then to the Committee on
No. 259 Consumer Protection and Commerce	Committee on Labor and Employment, then to the Committee on	No. 283 Committee on Judiciary	Committee on Judiciary
No. 260	Committee on Judiciary	No. 284 Ways and Means	Committee on Economic Development, then to the Committee on
No. 261 then to the Committee on Ways and Means	Committee on Judiciary,	No. 285 Committee on Judiciary	Committee on Judiciary
No. 262 Ways and Means	Committee on Economic Development, then to the Committee on	No. 286 Community Development	Committee on Housing and Community Development
No. 263 Ways and Means	Committee on Labor and Employment, then to the Committee on	No. 287 Community Development	Committee on Housing and Community Development
No. 264 Development	Committee on Economic	No. 288 Committee on Health	Committee on Health
No. 265	Committee on Education	No. 289 and Means	Committee on Higher Education, then to the Committee on Ways and Means
No. 266	Committee on Judiciary	No. 290 then to the Committee on Ways and Means	Committee on Education, then to the Committee on Ways and Means
No. 267 Legislative Management	Committee on Government Operations, then to the Committee on	No. 291 Committee on Judiciary	Committee on Judiciary
No. 268	Committee on Judiciary	No. 292 Employment	Committee on Labor and Employment
No. 269 Means	Committee on Government Operations, then to the Committee on Ways and		

No. 293	Committee on Transportation, then to the Committee on Judiciary	No. 316	Committee on Labor and Employment
No. 294	Committee on Judiciary, then to the Committee on ways and Means	No. 317	Committee on Judiciary
No. 295	Committee on Government Operations	No. 318	Committee on Judiciary
No. 296	Committee on Judiciary	No. 319	Committee on Energy, then to the Committee on Ways and Means
No. 297	Committee on Judiciary	The President made the following committee assignments of bills that were introduced on Thursday, January 31, 1985:	
No. 298	Committee on Government Operations	Senate Bills	Referred to:
No. 299	Committee on Judiciary	No. 320	Committee on Judiciary
No. 300	Committee on Consumer Protection and Commerce, then to the Committee on Ways and Means	No. 321	Committee on Judiciary
No. 301	Committee on Tourism and Recreation, then to the Committee on Ways and Means	No. 322	Committee on Health, then to the Committee on Judiciary
No. 302	Committee on Judiciary, then to the Committee on Ways and Means	No. 323	Committee on Labor and Employment, then to the Committee on Ways and Means
No. 303	Committee on Judiciary	No. 324	Committee on Labor and Employment, then to the Committee on Consumer Protection and Commerce
No. 304	Committee on Consumer Protection and Commerce	No. 325	Jointly to the Committee on Agriculture and the Committee on Health, then to the Committee on Ways and Means
No. 305	Committee on Consumer Protection and Commerce	No. 326	Committee on Ways and Means
No. 306	Committee on Government Operations, then to the Committee on Ways and Means	No. 327	Committee on Consumer Protection and Commerce
No. 307	Committee on Consumer Protection and Commerce	No. 328	Committee on Judiciary, then to the Committee on Ways and Means
No. 308	Committee on Consumer Protection and Commerce	No. 329	Committee on Health, then to the Committee on Judiciary
No. 309	Committee on Consumer Protection and Commerce	No. 330	Committee on Economic Development, then to the Committee on Ways and Means
No. 310	Committee on Transportation	No. 331	Committee on Judiciary
No. 311	Committee on Judiciary	No. 332	Committee on Judiciary
No. 312	Committee on Higher Education, then to the Committee on Ways and Means	No. 333	Committee on Judiciary
No. 313	Committee on Higher Education, then to the Committee on Ways and Means	No. 334	Committee on Education, then to the Committee on Ways and Means
No. 314	Committee on Tourism and Recreation, then to the Committee on Ways and Means	No. 335	Committee on Consumer Protection and Commerce, then to the Committee on Judiciary
No. 315	Committee on Judiciary, then to the Committee on Ways and Means	No. 336	Committee on Judiciary
		No. 337	Committee on Judiciary
		No. 338	Committee on Ways and Means

No. 339 Committee on Economic Development, then to the Committee on Ways and Means

No. 340 Committee on Health, then to the Committee on Ways and Means

No. 341 Committee on Transportation

No. 342 Committee on Health, then to the Committee on Ways and Means

No. 343 Committee on Tourism and Recreation, then to the Committee on Ways and Means

At this time, Senator Cayetano rose on a point of personal privilege and remarked as follows:

"Mr. President, in the January 30, 1985 issue of the Honolulu Star-Bulletin there appeared an article entitled 'Hale Mohalu Leasing Rapped.' Mr. President, I'd like to respond to this article since I am mentioned in the article and the manner in which I am mentioned, I think, reflects on every member of this Senate. Let me read the article for the record.

'A group of church and social agencies were "stonewalled" when they tried last year to lease the Hale Mohalu site in Pearl City to build housing for the elderly and handicapped, an attorney said last week.

'Attorney Boyce Brown suggested in a court hearing that the state Land Board was influenced by state Sen. Ben Cayetano and Hawaii Democratic Party Chairman James Kumagai in awarding the lease to the Pearl City Youth Complex Association.

'He said Cayetano and Kumagai were present at the Oct. 26 board meeting when the lease was granted. "The fix was on," Brown said.'

"Mr. President, as a member of this body and, as we all know, each member of this body who has been elected by the public has been subject to criticism. I think we can expect that. But, where we have criticism which is based on a lack of knowledge or outright falsehood, then I think those who throw stones ... their integrity should also be revealed for the public to peruse.

"This article, Mr. President, this statement by Mr. Brown before the court that I was present at the October 26 meeting is utterly false. I have never attended a meeting of the Board of Land and Natural Resources in my life. In fact, I suggest that Mr. Brown or anybody else who is not satisfied with my disclaimer call the board and have them check the minutes to

see whether I was there. I was not there. I checked my calendar and, in fact, at the time that this meeting was being held, I was doing something equally important. I was at Pearl City High School judging a float.

"This accusation, Mr. President, is a disparagement of the integrity of every member of the Board of Land and Natural Resources. It also disparages Mr. Kumagai, me, and, by association, the members of this Senate because it implies that this is the way business is done here. It is, as I said, utterly false. Anyone who believes that I have the power to fix anything with this administration is living in fantasy land. The only way it will be done is if I get on my knees. That's why I haven't been able to fix anything.

"Now, if credit has to be given to anyone for the granting of the lease, and I think credit should be given, then credit should be given to Representative Arnold Morgado who spearheaded the drive and did a lot of hard work on this project. And if credit should be given here in the Senate, it should be given to Senator Kuroda who also, I think, did a helluva lot more work than I did. Mr. Brown is familiar with the involvement of other legislators in this project.

"When I read this article, I had to wonder why I was singled out and I have come to the conclusion that I was singled out because Mr. Brown is upset about a case that was recently resolved in the Circuit Court of this state. Let me be brief in the details of this case and let me say that the case involved my law firm.

"We represented a former client of Mr. Brown and our client was suing Mr. Brown for malpractice. The complaint, and it's a matter of public record, stated that among other things Mr. Brown in representing our client had caused our client to lose hundreds of thousands of dollars; that Mr. Brown had engaged in self-dealing, was in conflict and had not acted in the best interests of our client. Mr. President, if anyone would check the court records, he will see that that case involving Mr. Brown has been resolved. That's a matter of public record. I'm not at liberty at this time, because of agreement between the parties, to give you further details about the case but let me tell you a story.

"Not too long ago, our client, Mr. Brown's former client, called our office and said that this was the best Christmas he ever had. So, to those out in the public who wish to criticize or hurl accusations at us, I say, fine, that's part of the game, but, before you throw stones, you had better check your facts and make sure that the facts are correct; and before you throw stones, you had better make sure your own house is in

order.

"We are at a tremendous disadvantage, as many of you may know, in dealing with accusations from non-public figures. Because of the Supreme Court's ruling in the Sullivan case, it's virtually impossible for us to sue a person who makes false accusations against us because we have to prove malice. Ariel Sharon in his lawsuit against Time magazine just found out what the court meant in the Sullivan case. This does not mean, however, that we must sit on our hands and not respond when these kinds of charges are being made. We should respond. And that is exactly what I am doing. And anyone else who wants to make charges which are unfounded, which are false, had better be ready for more of the same.

"Thank you."

Senator Abercrombie added his remarks as follows:

"Mr. President, may I have the opportunity to express remarks on the basis of personal privilege as a result of the previous speaker's comments.

"Mr. President, for the illumination of the members here I would like to indicate my distress, as well, at the appearance of this story. I would like to, as a long time supporter of the people who lived at Hale Mohalu, and as you know, Mr. President, the history of that having mostly taken place here in the Senate, you can imagine my distress at the appearance of this story. My comment is as follows.

"There are two or three points and I hope the members will indulge me, particularly those who are interested in the future of this situation. It is a story in the newspaper. It is a quotation and the context of the quotation about meetings may very well not be what was in the court record. I think I have an idea from my own perusal of the records of the minutes of the Board of Land and Natural Resources over the past years in connection with this issue that the story may in fact be referring to another meeting or meetings that may have taken place.

"It could be that the Star-Bulletin story simply does not have its own facts correct. Nonetheless, even if it is a case of incompetence on the part of the Star-Bulletin, either in its editing or in its reporting or both, nonetheless, to the degree the remark reflected in the story is an accurate one, even if it is taken out of context or in any context, again, is very distressing and absolutely does not represent the point of view of those of us who are attempting to find a resolution to this problem in the nature of one which will

satisfy all parties and be in the public interest.

"And I am appreciative of the tenor of Senator Cayetano's remarks because he in no way is disparaging the motivations of the people who support a solution which would involve some housing possibilities on the basis of sharing this site with the athletic activities complex people who now have the lease to the site.

"I want to indicate that to the degree that Mr. Brown's remarks are accurately portrayed, that they disparage not only Senator Cayetano but they disparage the Council of Churches, Bishops Fujitani, Browning, Ferrario, and Rabbi Magid who support the Council of Churches proposal, and disparage myself and other supporters of the proposal of the Council of Churches.

"If Mr. Brown has a legal argument to make with respect to the awarding of the lease, it is not only his right representing individuals who have an interest in this, but his obligation and duty to bring that to the attention of the court, strictly based on the legal merits or demerits of the awarding of the lease. To characterize those proceedings, however, in the manner which appears in the newspaper is not only unfortunate but does an actual disservice to the cause that I think I represent here today, at least in terms of being a supporter of the proposal to locate housing for the handicapped and for the aged on the site known as Hale Mohalu in the Pearl City area. It is my intention to continue.

"I've had the good fortune to speak briefly with Senator Kuroda at previous times and with Senator Cayetano about the possibility of discussing this plan. I am perhaps having a meeting, if not a meeting of the minds, an actual meeting, with the people who are in support of the sports activities complex there to see if it might not be possible to find a way to have joint use of this site, which would be mutually beneficial. And I am pleased to say that both Senator Kuroda and Senator Cayetano have indicated they'd be perfectly willing to discuss the issue.

"So, Mr. President, the bottom line burden of my remarks is that I appreciate the tenor and temperament of Senator Cayetano's remarks because they reflect a sane and sober approach that does not obviate the possibility of good-hearted people with proper motivation who are associated with the Council of Churches plan from being characterized in the same category with the intemperate and false remarks to the degree that they do in fact represent Mr. Brown's point of view as indicated in the story.

"I want to conclude by saying that those of us who do support this proposal by the Council of Churches will continue to seek a

positive dialogue with not only members of this Legislature but members of the community associated with the sports activities complex in the hopes that reasonable people, people who have the public interest at heart, can come to a conclusion.

"I hope that it is clear that this kind of characterization of the proceedings does not originate nor proceed from those of us who are in support of this alternative proposal or

additional proposal, as you might want to put it, and that we look forward to a happy conclusion all the way around on this very unfortunate and distressing episode."

ADJOURNMENT

At 11:57 o'clock a.m., on motion by Senator Kuroda, seconded by Senator Soares and carried, the Senate adjourned until 11:30 o'clock a.m., Monday, February 4, 1985.