

FOURTEENTH DAY

Monday, February 8, 1988

The Senate of the Fourteenth Legislature of the State of Hawaii, Regular Session of 1988, convened at 11:38 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by the Reverend Malcolm Stuart of the Kailua Baptist Church, after which the Roll was called showing all Senators present with the exception of Senator Mizuguchi who was excused.

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

HOUSE COMMUNICATION

Hse. Com. No. 3, transmitting House Bill No. 2080, H.D. 1, which passed Third Reading in the House of Representatives on February 5, 1988, was read by the Clerk and was placed on file.

On motion by Senator Blair, seconded by Senator A. Kobayashi and carried, H.B. No. 2080, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO FORFEITURE," passed First Reading by title and was referred to the Committee on Judiciary, then to the Committee on Ways and Means.

SENATE CONCURRENT RESOLUTION

The following concurrent resolution (S.C.R. No. 10) was read by the Clerk and was referred to committee:

Senate
Concurrent
Resolution

No. 10 "SENATE CONCURRENT RESOLUTION URGING ESTABLISHMENT OF UNIFORM AND MANDATORY GUIDELINES FOR THE HANDLING OF PERSONS WITH AIDS BY LAW ENFORCEMENT AND CORRECTIONS AGENCIES."

Offered by: Senator Hee.

Referred to: Committee on Corrections.

SENATE RESOLUTION

The following resolution (S.R. No. 12) was read by the Clerk and was referred to committee:

Senate
Resolution

No. 12 "SENATE RESOLUTION URGING ESTABLISHMENT OF UNIFORM AND MANDATORY GUIDELINES FOR THE HANDLING OF PERSONS WITH AIDS BY LAW ENFORCEMENT AND CORRECTIONS AGENCIES."

Offered by: Senator Hee.

Referred to: Committee on Corrections.

ORDER OF THE DAY

RE-REFERRAL OF SENATE BILL

The President re-referred S.B. No. 3425 jointly to the Committee on Housing, Hawaiian Programs and Natural

Resources and the Committee on Planning and Environment.

At this time, Senator Cobb, chairman of the Committee on Consumer Protection and Commerce, requested a waiver of the 48-hour Notice of a Public Hearing on S.B. No. 3065, and the President granted the waiver.

At 11:44 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

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

The Chair at this time requested Senator Hee to clarify his announcement regarding the Committee on Judiciary's hearing scheduled for Tuesday, February 9, on the nomination of Thomas Kaulukukui Jr. to the Circuit Court bench, First Circuit.

Senator Hee responded:

"Yes, Mr. President. By way of explanation to this body, the nominee and his legal counsel have ... since the developments on Thursday afternoon and Friday morning at 8:00 a.m. have been offered the opportunity and at one time accepted the opportunity to meet with me, originally on Friday evening at 7:30 p.m. Mr. Kaulukukui's legal counsel and the nominee elected not to appear.

"I expressed my concern to the legal counsel and asked if we could meet with him and the nominee on Saturday morning at 9:00 a.m. At 9:00 a.m. on Saturday, his legal counsel advised me that the nominee had elected not to appear. I advised his legal counsel to give me a call so that we might meet Saturday evening or Sunday. Saturday evening, his legal counsel advised me again that the nominee had decided not to meet.

"On Friday I called the Governor's office so that we could meet. It was not returned. I called the Governor's office on Saturday. The call was not returned. I met with you, Mr. President, on Friday morning. We discussed the matter of getting the Governor involved. Nothing has happened.

"I met with you at 8:00 a.m. on Saturday morning to express our concern to get the Governor involved. Nothing has happened. The Governor is aware of the seriousness of this nomination. He has been made aware through his attorney general, whom I met on Friday. He has also been made aware through you and he has been made aware through other members on the Senate floor.

"They have been given more than ample opportunity to respond. They expressed to me at 11:30 p.m. on Thursday that they would like to have the hearings on Monday, today. In the interest of the nominee, I thought it wiser to give them the opportunity to fully explain the seriousness of the late break in developments. They have elected not to do so.

"Therefore, in the interest of the Senate, in the interest of the integrity of this body and in the interest of the people of this state, I am hereby requesting that the nominee appear before the Judiciary Committee at 9:00 a.m., Tuesday, at which time we will proceed with the nomination regarding the matters which have come before this committee.

"In the interest of the Judiciary members, I am asking them to come to the Judiciary conference room at 1:00 p.m., sharp. It will be a closed caucus. There is to be

no media. Unlike other hearings, this matter will begin at 1:00 p.m.

"We are prepared, Mr. President, having worked from Thursday to this morning to fully brief the members with the facts as they appear. We are prepared, Mr. President, having given the late break in information on Friday morning, having seen it Friday evening and having thoroughly discussed it with more than six attorneys to finally come to some conclusions.

"In fairness to the nominee, this information has been guarded by me simply because we want to give the nominee every opportunity to be briefed and to respond.

"I would now like to ask the Judiciary Committee to be present in conference room No. 4. It is a closed caucus. Subject to your call, Mr. President, I am asking you to consider a caucus of the Majority at or around 3:00 p.m. in the Judiciary conference room. Thank you."

The Chair then remarked:

"The Chair would just like to remind the chairman of Judiciary that it is incumbent upon you to notify the nominee of a hearing for tomorrow at 9:00 a.m."

Senator Hee responded:

"Mr. President, a call has been put in. Whether he has received it is debatable at this point."

The Chair further remarked:

"I think it is very important that the nominee be positively notified that he is expected to attend and that's his option, once he has been contacted, whether or not he chooses to do so."

Senator Hee then said:

"Mr. President, I will hand-deliver a message to the nominee's office as well as the office of his legal counsel immediately following this session."

The Chair replied: "The Chair would appreciate that."

Senator Reed also rose on a point of personal privilege and said:

"Mr. President, I'm sure you are aware of the injuries and even deaths that have occurred as a result of irresponsible use of jet skis. I want to point out a couple of recent events of interest to this body.

"Yesterday, there was a rally in Kihei sponsored by the Pacific Whale Foundation to present evidence that the whales are no longer where they have customarily been year after year and those areas are now frequented by jet skis.

"You probably also read in the newspaper and saw TV accounts of an incident that happened a couple of weeks ago off Lahaina where jet skis were used to actually run right through a pod of whales, apparently attempting to run over the whales, and certainly achieved the effect of scaring them further out to sea.

"There's going to be a much larger rally in Lahaina next Sunday attended by fishermen, surfers and recreational users of the ocean in West Maui to protest jet skis. The basic message is that the people of Maui and Hawaii have had enough of jet skis which are basically loud, obnoxious and dangerous.

"One of the problems that has occurred in trying to stop this is that the attorney general has ruled that an outright ban on jet skis would be unconstitutional, or at least has offered that opinion. I submitted a letter to the attorney general about ten days ago asking for an opinion as to the constitutionality of limiting the speed of thrill craft, and wanted to bring to this body's attention the fact that on Friday I received a letter from the attorney general's office in support of the possibility of limiting the speed. I'll read a portion of that letter. The attorney general's office said:

'The speed of motor vehicles within state waters may be regulated as long as such restrictions are related to the health, safety and welfare of the public.'

"I think it's clear that when jet skis are used to repeatedly and permanently disrupt fishing areas, ride waves amidst surfers, endanger snorklers and swimmers, and harass whales, restricting their use is clearly related to the health, safety and welfare of the public.

"I want to make you aware of a bill that has been introduced, Senate Bill 2754, which would specifically limit to five miles per hour the speed that thrill craft can go within a mile of our shorelines. This would have the effect of banning jet skis because they can't operate effectively at such low speeds and would require those who are renting jet skis to go a mile offshore to rent to tourists or anybody else who want to use them.

"So there is a vehicle available to perhaps do something concrete about keeping jet skis out of Hawaiian waters. Thank you."

ADJOURNMENT

At 11:58 o'clock a.m., on motion by Senator Blair, seconded by Senator A. Kobayashi and carried, the Senate adjourned until 11:30 o'clock a.m., Tuesday, February 9, 1988.