

EIGHTEENTH DAY

Friday, February 12, 1988

The Senate of the Fourteenth Legislature of the State of Hawaii, Regular Session of 1988, convened at 11:36 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by Father Alain Blanchard of Holy Trinity Catholic Church, after which the Roll was called showing all Senators present with the exception of Senators Aki, Holt, Ikeda, Nakasato and Reed who were excused.

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

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

Senator Young introduced 84 fourth grade students from Salt Lake Elementary School who were accompanied by their teachers, Ms. Jody Chang, Ms. Mary Senaha and Ms. Doris Kogachi.

Senator Young, on behalf of the Senate President, also introduced Mr. Osamu Aoyama, chairman of Daiwa Properties, Osaka, Japan, and Mr. Katsuaki Hongoh, vice president of Hiro International, Japan, who were accompanied by Mr. Sam Okinaga and Mr. Harold Kuwahara.

Senator Matsuura introduced Mr. Sid Abrams, president of the Wine Institute in California.

Senator McMurdo introduced members of the League of Women Voters of Honolulu, present on the Senate floor, who are celebrating their 40th anniversary on February 14: Ms. Arlene Ellis, president; Ms. Dorothy Lum, vice president; Ms. Nadine Taylor, treasurer; Mr. James Koshi, director; and Ms. Jean Aoki, director. There were also other members seated in the gallery.

The honorees rose to be recognized and were presented the Senate certificate of recognition by Senator McMurdo and leis by Senators Hee, Chang, Cobb, Menor and Tungpalan.

Senator Hagino, on behalf of Senator Nakasato, introduced 48 fourth grade students from Kalihi-Uka School who were accompanied by their teachers, Ms. Alice Takata and Ms. Wendy Nakanishi.

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

The Senate reconvened at 11:49 o'clock a.m.

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 124 to 128) were read by the Clerk and were placed on file:

Gov. Msg. No. 124, transmitting a report on Alternative Employment with State Agencies by Legislators, prepared by the Department of the Attorney General in response to S.R. No. 61 (1987).

Gov. Msg. No. 125, transmitting a report prepared by the Department of Health in response to S.C.R. No. 149 and S.R. No. 160 (1987), requesting that the Department of Health investigate and report on procedures and facilities for future response to possible contamination of

marine food products in the event that Hawaii's coastal shores and waters are affected by oil spills and other pollution.

Gov. Msg. No. 126, transmitting a report, "A Fidelity Bond Study on Condominium Managing Agents and Self-Managed Condominium Associations," submitted by the Real Estate Commission, Department of Commerce and Consumer Affairs, pursuant to Chapter 514A, HRS.

Gov. Msg. No. 127, transmitting a report Relating to Condominium Hotel Operations, submitted by the Real Estate Commission, Department of Commerce and Consumer Affairs, pursuant to Act 276, SLH 1987 amending Act 141, SLH 1985.

Gov. Msg. No. 128, transmitting a report on Issues Relating to Condominiums and Cooperatives, submitted by the Real Estate Commission, Department of Commerce and Consumer Affairs, pursuant to Chapters 514A and 485, HRS.

DEPARTMENTAL COMMUNICATION

Dept. Com. No. 30 from the Office of the Legislative Auditor, transmitting Report No. 88-15, "Study of Budgeting and Control of Personal Services Expenditures at the University of Hawaii," pursuant to Sec. 200, General Appropriations Act of 1987 (Act 216), was read by the Clerk and was placed on file.

SENATE CONCURRENT RESOLUTIONS

The following concurrent resolutions (S.C.R. Nos. 17 to 19) were read by the Clerk and were referred to committee:

Senate
Concurrent
Resolution

No. 17 "SENATE CONCURRENT RESOLUTION URGING UNITED AIRLINES TO PROVIDE THREE NON-SMOKING FLIGHTS PER DAY BETWEEN HAWAII AND THE MAINLAND."

Offered by: Senators Matsuura, Kobayashi, A.

Referred to: Committee on Health.

No. 18 "SENATE CONCURRENT RESOLUTION REQUESTING THE PACIFIC INTERNATIONAL CENTER FOR HIGH TECHNOLOGY RESEARCH TO CONVENE A PANEL OF DISTINGUISHED ISLAND REPRESENTATIVES TO EXAMINE THE EXCLUSIVE ECONOMIC ZONE NEEDS OF AMERICAN AFFILIATED ISLANDS IN THE PACIFIC."

Offered by: Senators Matsuura, Kobayashi, A.

Referred to: Committee on Business Development and Pacific Relations.

No. 19 "SENATE CONCURRENT RESOLUTION AUTHORIZING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO DISPOSE BY WAY OF AN EASEMENT, CERTAIN GOVERNMENT SUBMERGED LANDS AND LANDS BENEATH TIDAL WATERS FOR PURPOSES OF CONSTRUCTING CERTAIN OFFSHORE IMPROVEMENTS."

Offered by: Senator Wong, R., by request.

Referred to: Committee on Housing, Hawaiian Programs and Natural Resources.

SENATE RESOLUTIONS

The following resolutions (S.R. Nos. 21 and 22) were read by the Clerk and were referred to committee:

Senate Resolution

No. 21 "SENATE RESOLUTION URGING UNITED AIRLINES TO PROVIDE THREE NON-SMOKING FLIGHTS PER DAY BETWEEN HAWAII AND THE MAINLAND."

Offered by: Senators Matsuura, Kobayashi, A.

Referred to: Committee on Health.

No. 22 "SENATE RESOLUTION REQUESTING THE PACIFIC INTERNATIONAL CENTER FOR HIGH TECHNOLOGY RESEARCH TO CONVENE A PANEL OF DISTINGUISHED ISLAND REPRESENTATIVES TO EXAMINE THE EXCLUSIVE ECONOMIC ZONE NEEDS OF AMERICAN AFFILIATED ISLANDS IN THE PACIFIC."

Offered by: Senators Matsuura, Kobayashi, A.

Referred to: Committee on Business Development and Pacific Relations.

ORDER OF THE DAY

MATTER DEFERRED FROM THURSDAY, FEBRUARY 11, 1988

Senate Bill No. 151, H.D. 1 (Hse. Com. No. 4):

By unanimous consent, action on S.B. No. 151, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO DRUG PARAPHERNALIA," was deferred until Tuesday, February 16, 1988.

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

The Senate reconvened at 12:20 o'clock p.m.

ADVISE AND CONSENT

Stand. Com. Rep. No. 1519 (Gov. Msg. No. 3):

Senator Hee moved that Stand. Com. Rep. No. 1519 be received and placed on file, seconded by Senator Menor and carried.

Senator Hee then moved that the Senate consent to the nomination of Thomas K. Kaulukukui Jr., as 5th Judge of the Circuit Court of the First Circuit, for a term of ten years, seconded by Senator Menor.

Senator Hee rose to speak on the nomination as follows:

"Mr. President and members of the Senate, this past week has been one of the most difficult times in my entire political career. The events of the past week have re-emphasized to me what an awesome responsibility the Constitution charges the members of this Senate with in reviewing the Governor's appointments to the Judiciary. This is because the Constitution requires that we as Senators must pass judgment on the qualifications and

fitness of each person selected to serve in one of the most honored of public offices -- that of a judge.

"Our society has few institutions which must be more respected and above reproach than the Judiciary. This is because we entrust to the judges the greatest responsibility we can empower to any man or woman.

"To the judges we grant this authority and power to pass judgment on their fellow men and render decisions which may have lifelong consequences for that person. To judges we grant the responsibility to render decisions fairly and justly and without regard to popular opinion or the status of the individuals who stand in judgment before them.

"Because the Judiciary is an institution entrusted with a role, its members must be beyond reproach. They must be selected carefully for it is in their wisdom and good judgment that they will serve as the foundation to inspire public confidence in their authority.

"The Judiciary itself recognizes its heavy burden and has therefore adopted its own code of judicial conduct which dictates that judges must avoid even the appearance of impropriety in all of their activities.

"This is why the burden upon the members of this Senate is so awesome. Because we hold the public's trust that we will carefully review the qualifications and fitness of the individuals who are appointed to wield authority as judges.

"During the past week three significant events in the nominee's professional career came to light. The first, is his having been severely reprimanded by a federal district court judge for a violation of Rule 11. A reprimand which resulted in sanctions of more than \$11,000 being issued by the court. The second, was his law firm having been the subject of a contempt of court order issued by a federal bankruptcy judge for which sanctions were imposed. And the third event related to a case tried in Hilo in which sanctions were rendered by the presiding judge and in which the nominee's law firm was threatened with an ex parte order for contempt of court.

"Not one of the events had been affirmatively disclosed by the nominee in connection with the Senate's review of his qualifications and fitness as a judge. More importantly, it would appear that neither event was considered by the Judicial Selection Commission in its review process. The nominee says that he was never asked to disclose such information specifically in the judicial selection process and therefore did not think to do so to the Senate Judiciary Committee.

"The fact that none of the events was investigated or reviewed in connection with the judicial selection process is a matter of grave concern. Not because in this case these events would have afforded a basis in and of itself to disqualify the candidate for judicial appointment. Rather, because such significant events in a candidate's legal career are matters which should regularly be the subject of the Judicial Selection Commission's review procedures.

"The fact that the Judicial Selection Commission failed to investigate and consider such events in screening the candidates for judicial appointment is an unexpected and major deficiency in the selection process.

"Clearly, a Rule 11 sanction should be relevant consideration in evaluating the qualifications of any attorney who would seek to be a judge. Hawaii should seek to adopt the California principle which mandates that

all Rule 11 sanctions are automatically reported to the Disciplinary Council for review.

"Rule 11 is a rule designed to deter frivolous and meritless lawsuits and motions by attorneys. In other words, it is a rule designed to deter abuses of the legal process by allowing a court to sanction any attorney who has used the judicial process for an improper purpose.

"If an attorney has violated Rule 11 it raises questions regarding the discretion of the attorney in utilizing the legal system for proper ends. A serious violation such as Rule 11 is certainly a question worthy of consideration in evaluating any judicial candidate.

"However, if the Judicial Selection Commission fails to take Rule 11 sanctions, contempt of court citations, and disciplinary measures into account in its review process, its assessment of the candidates may be incomplete.

"The Constitution charges the Judicial Selection Commission with the responsibility of screening candidates. Because its responsibility is so great, its review must be thorough for public confidence in the selection process to remain intact. The Senate's previous role in consenting to judicial appointments has been severely restricted. This is why it is so important that the selection commission's work be complete.

"Under the 1978 Constitutional Amendment we have only 30 days after the Governor's appointment in which to reject, not confirm, a judicial nominee or the appointment is automatically confirmed. This severely handicaps the Senate's ability to do a thorough review of the candidate's qualifications. We must, therefore, rely heavily on the work of the Judicial Selection Commission.

"Had the Judicial Selection Commission done a more thorough investigation and review in the case of this nominee, the misunderstanding and doubts which arose over the qualifications of the nominee might have been avoided. However, that was not the case and we were compelled to conduct a public review of the nominee's professional background. It was not a comfortable role to be in questioning a man about his professional background and ethics in public. However, the commission's omission dictated this result.

"After having extensively reviewed the Rule 11 sanctions, the contempt of court citation, and the disciplinary measures issued against the nominee or his law firm, I am satisfied that none of the events indicates that the nominee is unfit to serve as a Judge on the Circuit Court.

"A significant question was raised regarding whether or not the nominee deliberately attempted to conceal the existence of the Rule 11 sanction, the contempt of court citation and the disciplinary sanctions rendered in Hilo. However, after having had the opportunity, as late as yesterday afternoon, to hear the nominee's explanation behind his failure to affirmatively disclose the sanctions against him, I am satisfied that there was no intent on his part to mislead this committee. Any omission on his part was an innocent one.

"I regret that the nominee was required to face such critical scrutiny. His difficulties before this committee, however, should prompt and compel the Judicial Selection Commission to immediately review its candidate screening procedures to ensure that similar gaps in their investigation do not occur in the future.

"Mr. President and members of the Senate, we are charged with a responsibility that mandates and demands

of us to be the custodians of this government's process. We as members are expected by the people to ask the tough questions. We have. Members of the Judiciary Committee, you are to be congratulated for a job well done. A new standard of judicial review by the Hawaii Senate has been established. Our work on this nominee is now complete.

"It is therefore with pleasure and great relief, Mr. President, that I am able to recommend to this body at this time that the Senate consent to the appointment of Thomas K. Kaulukukui Jr. to the Circuit Court Bench.

"Thank you, Mr. President."

Senator Cobb then rose to speak in favor of the nomination as follows:

"Mr. President, I note that in the multitude of testimony we had from other attorneys and judges that the testimony of every such individual who addressed the issue of disclosure indicated that under the current or then existing interpretation of the question that a disclosure of a Rule 11 violation or other court sanctions was not required, unless the matter was referred to the Disciplinary Council.

"So, in that sense, I think the chairman of the Judiciary Committee has pointed out very adequately the difference between the thinking of lawyers and the thinking of non-lawyers. And speaking as a non-lawyer, I appreciate that difference even more after this confirmation process. But every bit of that testimony indicated that a 'no' answer was the correct answer.

"I feel that we've all gone through a learning experience and that to solicit the information on things other than violations of professional ethics or professional rules, the question needs to be specifically asked about Rule 11 violations, contempt of court, or other sanctions.

"To require the Judicial Selection Commission to do that may require a change in the law, but the Judiciary Committee or any committee or any Senator has a perfect right to establish their own standards of questions, their own level of concern, upon any issue that becomes relevant before the body.

"I would have to point out, Mr. President, the Judicial Selection Commission was not referred any such complaint on this nominee, and it is very much a matter of judicial discretion on the part of the presiding judge as to whether or not such a complaint is forwarded. And I believe Federal Judge Martin Pence made that very clear when he pointed out that in the case of one attorney from California such a referral to a disciplinary council or commission had been made and, in his discretion, he chose not to make such a referral in this particular case.

"I think, Mr. President, it's very important to remember that a good attorney is an advocate who must take the risk of court sanctions at times to adequately and aggressively represent his or her client, and that a failure to do so can be construed as legal malpractice.

"I think, Mr. President, of our own situation when we served together in the House of Representatives that frequently there were times when we were called out of order by the Speaker, had sanctions imposed or other forms of penalties for aggressively doing our job.

"I recall of the case when former Speaker Jimmy Wakatsuki came before the committee for his confirmation hearing. Here was a man who had ruled me out of order on the average of one a week for trying to present an

issue or a case. So if I were to be asked that kind of question by a selection commission or by a committee interviewing me for a confirmation of an appointment, I would have to answer 'yes,' not once, not twice, but literally dozens of times because it was part of the role of advocacy. And to be an effective advocate sometimes it means taking that kind of risk.

"But I think the Judiciary Committee, as I've indicated, has a right to set its standards and to convey the standards to the Judicial Selection Commission either by letter or by law.

"I would also like to point out, Mr. President, that I'm proud to support Mr. Kaulukukui not only as a Son of Hawaii, not only as a Vietnam veteran, not only as a former director of the Vietnam Veterans Leadership Program, but an individual who literally worked his way through law school and survived on food stamps to do it. He is not a judge who has arrived at that position in a traditional manner of having gone to work for a government agency or a large law firm, or clerked in either house of the legislature and then been elevated by the Governor. He is very much a graduate of the 'School of Hard Knocks.'

"I said over a week ago that I would be willing to place my life in this man's hands. That feeling remains unchanged today. And I think any citizen would have to have the same level of confidence before any sitting judge for our level of public confidence in the Judiciary to be maintained.

"I strongly and gratefully urge this body to confirm Thomas Kaulukukui. Thank you."

Senator Blair also rose to speak in favor of the nomination as follows:

"Mr. President, I hadn't anticipated that I would be speaking in favor of the nomination, but I'm moved by the previous speaker to add a few words of my own.

"Though I am not a member of the Judiciary Committee, I did sit in on the hearings and I would like to commend the chairman for the thoroughness with which he deliberated on this matter. I think he reached the right conclusion.

"I would also like to speak as a member of the bar. The members of the bar I've talked to would be delighted to see Mr. Kaulukukui approved, because he is perceived to be a very fair individual and one who would listen fully to both sides of an argument. I think he will serve us very well as a judge.

"The only small reservation I have is that the Tom Kaulukukui that I knew walking back and forth to court always had a ready smile and I haven't seen that smile for about a week now. I'm happy to see it's back. Now I know it's the same guy. I told my colleague, Senator Fernandes Salling, that somehow I had to be sure that was the same guy. If need be, I have to get up and tell a joke. I'm happy that I don't have to tell a joke because the smile has arrived without it. But I did think of a joke so maybe I'll tell it anyway. (laughter)

"I think we should have a Rule 11 for the Senate as well. I think we should have a rule that says any legislator who signs a bill for introduction has to have a good faith basis for believing that it's in the best interest of the people of the State of Hawaii. My colleagues in the front row of the Democratic side have formed a commission, so if anyone has any complaints about anybody introducing bills that don't meet the new Rule 11

standard, please come see us and we'll censure the individuals. Thank you."

Senator Tungpalan also rose to speak in favor of the nomination as follows:

"Mr. President, as a member of the Judiciary Committee, I was pleased to have the opportunity to thoroughly review the Rule 11 sanction and the contempt of court citation of the nominee. Through this close scrutiny the sterling character of Mr. Kaulukukui became very evident. In the first, the nominee placed his client's interest before his own. In the second, he chose, as one witness stated, to throw his body on the grenade that was about to go off.

"Mr. President, Mr. Kaulukukui is the kind of man we need as a judge in Hawaii. He has clearly demonstrated throughout his career and most recently through this agonizing nomination process that he will serve Hawaii well in its best interest. Thank you."

Senator Solomon's remarks in support of the nomination are inserted as follows:

"Mr. President, I am speaking in support of the confirmation of Mr. Thomas Kaulukukui.

"The recent proceedings involving Mr. Kaulukukui was a very difficult and agonizing experience. The proceedings were difficult because of miscommunication between the nominee's interpretation of the questions asked by the committee and the committee's interpretation of the same questions. However, I felt at all times that Mr. Kaulukukui was being honest in his analysis of the questions posed by the committee. The questions posed by the committee emphasized Mr. Kaulukukui's responsibility and accountability to the people of the State of Hawaii.

"The proceedings were agonizing because of Mr. Kaulukukui's responsiveness to the chairman's inquiries. The proceedings were agonizing in terms of the Judicial Selection Committee process.

"However, Mr. President, I feel good about casting my vote in favor of the nominee. I feel that a lesson has been learned, and a message has been sent to others who are considering a judgeship in this great state. The message is that the Senate confirmation process cannot be taken lightly. Accountability is the key word in this process. I, as a committee member, will see to it that the process will be protected."

Senator Menor's remarks in support of the nomination are inserted as follows:

"Mr. President, I will vote to confirm Mr. Kaulukukui to the Circuit Court bench.

"As was obvious from the questions that I posed to Mr. Kaulukukui and my public statements about the nominee, I was a firm supporter of Mr. Kaulukukui's appointment at the start of the confirmation process. I also strongly advocated that Mr. Kaulukukui be afforded a full and fair hearing before we, as legislators, pass judgment on his confirmation. I believe that, in general, Mr. Kaulukukui was provided a fair hearing.

"However, I must admit that during the course of the confirmation hearings, I began harboring reservations about Mr. Kaulukukui's nomination. One of the main things that bothered me was the revelation during Tuesday's hearings that, in addition to the court sanctions imposed in the federal court case before Judge Pence and

the bankruptcy case before Judge Chinen, there was yet another state court case before Judge Kimura relating to the handling of the litigation by Mr. Kaulukukui's law firm. I had also spoken to several individuals within the legal community who had concerns about the nominee.

"After being informed about these string of cases and in light of the concerns expressed to me, I wanted to be absolutely certain in my own mind that the imposition of these sanctions did not indicate a pattern of unprofessional conduct reflecting negatively upon Mr. Kaulukukui's competence in terms of his integrity and legal ability and skills. These qualities are, of course, relevant factors to consider in reviewing the qualifications of a judicial applicant. In fact, these factors are incorporated into the guidelines of the Judicial Selection Commission in reviewing a judicial nominee.

"However, after reviewing pertinent legal documents in the case before Judge Kimura and speaking with members of the legal community, I am satisfied that nothing occurred in the Hilo case that does not oftentimes occur in a complicated, hotly contested litigation. Moreover, given the weight of the testimonies that were offered on Mr. Kaulukukui's behalf during the confirmation hearings, I believe that, on balance, Mr. Kaulukukui will make a competent judge and a welcome addition to the bench.

"Finally, I would like to state that I do not question Mr. Kaulukukui's integrity and sincerity in not disclosing the matters relating to the court sanctions in the questionnaires that had been sent to him. While I frankly would have disclosed these matters had I been in Mr. Kaulukukui's shoes because I believe that they are relevant in evaluating an individual's competence to serve as a judge, I think that there was a legitimate basis for Mr. Kaulukukui's interpretation that the questions were referring to serious, unethical and unprofessional conduct, or to matters referred to our state's Disciplinary Board. Therefore, I am not convinced that Mr. Kaulukukui's failure to disclose the court sanctions reveals any fundamental flaw in his character or judgment.

"In conclusion, I urge my colleagues to vote to confirm Mr. Kaulukukui's appointment to the Circuit Court bench. I believe that Mr. Kaulukukui will be a competent and fair-minded judge who will be a credit to the Judiciary. If Mr. Kaulukukui lacks anything it may be experience, particularly criminal law experience. However, I am optimistic that he will grow and mature in his position and will someday become a Circuit Court judge. Thank you."

Senator McMurdo's remarks on the nomination, with reservations, are inserted as follows:

"Mr. President, I put 'with reservations' when I signed the Judiciary Committee report on Mr. Kaulukukui in order to emphasize the seriousness of the concerns about which the Judiciary Committee deliberated at length.

"I believe that Mr. Kaulukukui received the questions and remarks of the Judiciary Committee in the constructive spirit in which they were offered. I am confident that the Judiciary Committee's concerns and support will assist him to be the outstanding judge we all anticipate that he will be."

The Chair then rose to comment on the nomination as follows:

"The Chair normally does not make comments on the process, but I do want to take this opportunity to thank the chairman of the Judiciary Committee and the

members for bringing the nomination to the floor for a vote.

"Secondly, I would like to take this opportunity to thank the Senators who were not privy to the discussions on the nominee for the manner in which they conducted themselves. By allowing the Committee on Judiciary to proceed without any interruptions from them or without them seeking attention by the media on this most delicate question, it really helped bring this matter to a successful conclusion.

"The Chair appreciates this and I want to tell all of you that I am proud to be one of the 25 members of the Senate."

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

Ayes, 20. Noes, none. Excused, 5 (Aki, Holt, Ikeda, Nakasato and Reed).

Senator Hee then introduced Mr. Thomas Kaulukukui Jr. and his family, who were sitting in the gallery, accompanied by Mr. Allen Ho.

Senator Matsuura introduced Mr. and Mrs. Tommy Kaulukukui Sr., who were also seated in the gallery.

Senator Solomon rose on a point of personal privilege and remarked:

"Mr. President, I am submitting for the Journal some remarks that I prepared regarding (University of Hawaii) President Simone's responses to the Higher Education Committee hearing that was conducted today on the report that was submitted for this body's consideration regarding the evaluation of the administrative flexibility legislation affecting the University of Hawaii and the study of electricity cost and consumption. Thank you."

(Senator Solomon's remarks for insertion follows.)

"February 12, 1988

"Yesterday, I held an informational hearing on the auditor's report on evaluation of the administrative flexibility legislation affecting the University of Hawaii and the study of electricity costs and consumption at the University of Hawaii. Both the Legislative Auditor's staff who wrote the report and President Simone and the pertinent University staff were present at the conference table to discuss the issues.

"I cannot help but express my extreme disappointment as to the President's responses.

"The Legislative Auditor reported a surplus of \$9.1 million from the general fund electricity appropriations for FY 1981-82 through FY 1986-87. This is an average of \$1.5 million for six years. The surplus as a percent of appropriations ranges from a low of 5.2 percent to a high of 23.5 percent or an average of 14.0 percent. I realize the purpose of good management is to produce a budget that does not end in a deficit. But such a surplus is unacceptable especially when funds are desperately needed for other statewide legislative priorities which were set on the back burner due to the lack of funds. This is \$9.1 million in cash -- not obligation bonds. For \$9.1 million we can build an elementary school in Kona where there is an extreme shortage of classrooms. For \$9.1 million we could have made improvements to roads and sewers in the Kona area because of massive resort developments. We can take care of many of the homeless.

"Where did the surplus go? With the financial flexibility given to the University it appears that these funds were expended wherever the UH administration wished. Why was it not returned to the state general fund?"

"As a legislator and chairman of the Senate Higher Education Committee, I must put this on record that the actions of the University are not condoned and that henceforth, all University requests will be very carefully scrutinized."

Senator Cobb then rose on a point of parliamentary privilege as follows:

"Mr. President, I know when we had the bill on drug paraphernalia it was an issue of serious concern to the Senators that the bill that crosses over first from whatever body is the one to be worked on even in the second year of the biennium.

"I've encountered a situation in more than one case where I've discovered bills, one in my committee and several in other committees, where the House bill had crossed over first. So I just want to request my colleagues to be on the lookout for that. If you do encounter a House bill that has crossed over first, that is the operative vehicle to work on.

"Thank you, Mr. President."

RE-REFERRAL OF SENATE BILLS

The President made the following re-referral of bills:

Senate Bills Referred to:

No. 2293 Jointly to the Committee on Planning and Environment and the Committee on Tourism and Recreation, then to the Committee on Ways and Means

No. 2455 Jointly to the Committee on Labor and Employment and the Committee on Government Operations

No. 2692 Jointly to the Committee on Military and Civil Defense and the Committee on Education, then to the Committee on Ways and Means

No. 2697 Jointly to the Committee on Government Operations and the Committee on Business Development and Pacific Relations, then to the Committee on Ways and Means

No. 2709 Jointly to the Committee on Consumer Protection and Commerce and the Committee on Business Development and Pacific Relations, then to the Committee on Ways and Means

No. 2746 Committee on Agriculture, Energy and Ocean Resources, then to the Committee on Ways and Means

No. 3053 Jointly to the Committee on Military and Civil Defense and the Committee on Education, then to the Committee on Ways and Means

No. 3088 Committee on Human Services, then to the Committee on Ways and Means

No. 3089 Committee on Human Services, then to the Committee on Ways and Means

No. 3219 Jointly to the Committee on Health and the Committee on Government Operations

ADJOURNMENT

At 12:26 o'clock p.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 16, 1988.