

## THIRTY-FIFTH DAY

Thursday, March 17, 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 Vice President in the Chair.

The Divine Blessing was invoked by Lt. Katherine Zimmerman of The Salvation Army, after which the Roll was called showing all Senators present with the exception of Senators Ikeda and McMurdo who were excused.

The Chair announced that she had read and approved the Journal of the Thirty-Fourth Day.

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

Senator Hagino introduced Scott Plummer, seventh grade student from Wheeler Intermediate School, observing the legislative process.

Senator Hagino also introduced a group of 76 fourth grade students from Waialua Elementary School, accompanied by their parents, Mrs. Zuske, Mrs. Sacro and Mrs. Caneda, and teachers, Mrs. Yanaga, Mrs. Fukunaga and Mrs. Hagino.

Senator Tungpalan introduced her aunt, Mrs. Mercedes Hendrickson, former teacher at Stevenson Intermediate School.

## MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 203 to 211) were read by the Clerk and were referred to committee:

Gov. Msg. No. 203, submitting for consideration and confirmation to the Governor's Agriculture Coordinating Committee, the nomination of Ray T. Nishiyama, term to expire June 30, 1992, was referred to the Committee on Agriculture, Energy and Ocean Resources.

Gov. Msg. No. 204, submitting for consideration and confirmation to the Board of Acupuncture, the nomination of Paul W. Condry, term to expire June 30, 1990, was referred to the Committee on Consumer Protection and Commerce.

Gov. Msg. No. 205, submitting for consideration and confirmation to the CATV Advisory Committee, the nomination of R. Sean McLaughlin, term to expire June 30, 1992, was referred to the Committee on Consumer Protection and Commerce.

Gov. Msg. No. 206, submitting for consideration and confirmation to the Hawaii Housing Authority, the nominations of Edward Clayton Stevenson and George Yokoyama, terms to expire June 30, 1992, was referred to the Committee on Housing, Hawaiian Programs and Natural Resources.

Gov. Msg. No. 207, submitting for consideration and confirmation to the Advisory Council for Community Services, the nominations of: Roy T. Nishida, Captain Richard G. Hubbard, Merrilee Mia Yoshikawa and Grace C. Oness, terms to expire June 30, 1992, and Frank DeCosta, term to expire June 30, 1990, was referred to the Committee on Human Services.

Gov. Msg. No. 208, submitting for consideration and confirmation to the Criminal Justice Data Interagency

Board, the nominations of: Glenn W. Todd, Ryan E. Jimenez, Robert B. Graham and Melvin K. Soong, terms to expire June 30, 1992, and Daniel Heely, term to expire June 30, 1989, was referred to the Committee on Judiciary.

Gov. Msg. No. 209, submitting for consideration and confirmation to the Natural Area Reserves System Commission, the nominations of Charles P. Stone, Ph.D., and John Irven Ford, terms to expire June 30, 1992, was referred to the Committee on Planning and Environment.

Gov. Msg. No. 210, submitting for consideration and confirmation to the Medical Advisory Board, the nominations of Allan R. Kunitomo, M.D., and H. H. Chun, M.D., terms to expire June 30, 1992, was referred to the Committee on Transportation.

Gov. Msg. No. 211, submitting for consideration and confirmation to the Board of Taxation Review, Third Taxation District (Hawaii), the nominations of Timothy S. Young and Edwin T. Hara, terms to expire June 30, 1992, was referred to the Committee on Ways and Means.

## HOUSE COMMUNICATIONS

Hse. Com. No. 411, returning Senate Bill No. 70 which passed Third Reading in the House of Representatives on Wednesday, March 16, 1988, was read by the Clerk and was placed on file.

By unanimous consent, action on S.B. No. 70, entitled: "A BILL FOR AN ACT RELATING TO HORIZONTAL PROPERTY REGIMES," was deferred until Monday, March 21, 1988.

## SENATE CONCURRENT RESOLUTIONS

The following concurrent resolutions (S.C.R. Nos. 67 to 72) were read by the Clerk and were referred to committee:

Senate  
Concurrent  
Resolution

No. 67 "SENATE CONCURRENT RESOLUTION REQUESTING A STUDY ON THE ORGANIZATIONAL PLACEMENT OF THE OFFICE OF THE SHERIFF."

Offered by: Senators Menor, Aki, Blair, Fernandes Salling, Herkes, Holt, Ikeda, Kobayashi, A., Kobayashi, B., McMurdo, Mizuguchi, Reed, Wong, J., Young.

Referred to: Committee on Judiciary

No. 68 "SENATE CONCURRENT RESOLUTION REQUESTING THE UNITED STATES NAVY TO RETURN THE ISLAND OF KAHOLAWE TO THE STATE OF HAWAII AND THE COUNTY OF MAUI."

Offered by: Senators Yamasaki, Hee, Holt, Ikeda, Kobayashi, A., Reed, Solomon, Tungpalan, Young.

Referred to: Committee on Government Operations

No. 69 "SENATE CONCURRENT RESOLUTION RECOMMENDING THAT THE STATE INTEGRATE THE PRESERVATION PLANNING OF MOVING IMAGES THROUGH INTER-AGENCY PROCEDURES."

Offered by: Senators Yamasaki, Hee, Holt, Ikeda, Kobayashi, A., McMurdo, Solomon, Tungpalan, Young.

Referred to: Committee on Culture, Arts and Historic Preservation

No. 70 "SENATE CONCURRENT RESOLUTION RECOMMENDING THAT STATE AGENCIES INVESTIGATE THE POSSIBILITY OF CONSOLIDATING MOVING IMAGES STORAGE AREAS AND THAT FUTURE STATE-FUNDED MOVING IMAGES PROJECTS INCLUDE FUNDS FOR THE PRESERVATION OF SUCH MATERIALS."

Offered by: Senators Yamasaki, Hee, Holt, Ikeda, Kobayashi, A., McMurdo, Solomon, Tungpalan, Young.

Referred to: Committee on Culture, Arts and Historic Preservation

No. 71 "SENATE CONCURRENT RESOLUTION REQUESTING THE UNITED STATES CONGRESS TO URGE THE CENSUS BUREAU TO COUNT ETHNIC GROUPS SEPARATELY."

Offered by: Senators Yamasaki, Hee, Holt, Ikeda, Kobayashi, A., McMurdo, Solomon, Tungpalan, Young.

Referred to: Committee on Government Operations

No. 72 "SENATE CONCURRENT RESOLUTION REQUESTING THE UNITED STATES FARMERS HOME ADMINISTRATION TO INCREASE THE COUNTY SUPERVISORS' LOAN APPROVAL CEILING FOR ITS SECTION 502 HOUSING PROGRAM FROM \$65,000 TO \$70,000."

Offered by: Senators Yamasaki, Hee, Holt, Ikeda, Kobayashi, A., McMurdo, Reed, Solomon, Tungpalan, Young.

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

#### SENATE RESOLUTIONS

The following resolutions (S.R. Nos. 78 to 82) were read by the Clerk and were referred to committee:

Senate  
Resolution

No. 78 "SENATE RESOLUTION REQUESTING A HEARING ON THE STAFF MORALE PROBLEM IN THE DEPARTMENT OF CORRECTIONS."

Offered by: Senators Menor, Fernandes Salling, Holt, Ikeda, Mizuguchi, Solomon, Tungpalan, Yamasaki.

Referred to: Committee on Corrections, then to the Committee on Legislative Management

No. 79 "SENATE RESOLUTION REQUESTING A STUDY ON THE ORGANIZATIONAL PLACEMENT OF THE OFFICE OF THE SHERIFF."

Offered by: Senators Menor, Aki, Blair, Fernandes Salling, Herkes, Holt, Ikeda, Kobayashi, A., Kobayashi, B., McMurdo, Mizuguchi, Reed, Wong, J., Young.

Referred to: Committee on Judiciary, then to the Committee on Legislative Management

No. 80 "SENATE RESOLUTION REQUESTING THE UNITED STATES NAVY TO RETURN THE ISLAND OF KAHOLAWE TO THE STATE OF HAWAII AND THE COUNTY OF MAUI."

Offered by: Senators Yamasaki, Hee, Holt, Ikeda, Kobayashi, A., Reed, Solomon, Tungpalan, Young.

Referred to: Committee on Government Operations

No. 81 "SENATE RESOLUTION REQUESTING THE UNITED STATES FARMERS HOME ADMINISTRATION TO INCREASE THE COUNTY SUPERVISORS' LOAN APPROVAL CEILING FOR ITS SECTION 502 HOUSING PROGRAM FROM \$65,000 TO \$70,000."

Offered by: Senators Yamasaki, Hee, Holt, Ikeda, Kobayashi, A., McMurdo, Reed, Solomon, Tungpalan, Young.

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

No. 82 "SENATE RESOLUTION REQUESTING THE UNITED STATES CONGRESS TO URGE THE CENSUS BUREAU TO COUNT ETHNIC GROUPS SEPARATELY."

Offered by: Senators Yamasaki, Hee, Holt, Ikeda, Kobayashi, A., McMurdo, Solomon, Tungpalan, Young.

Referred to: Committee on Government Operations

#### STANDING COMMITTEE REPORTS

Senator Hee for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 2313) recommending that House Bill No. 3548, H.D. 2, as amended S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion of Senator Hee, seconded by Senator Hagino and carried, the report of the Committee was adopted and H.B. No. 3548, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE RELIEF OF CERTAIN PERSONS' CLAIMS AGAINST THE STATE AND PROVIDING APPROPRIATIONS THEREFOR," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Hee, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 2314) recommending that House Bill No. 3558, H.D. 1, as amended S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion of Senator Hee, seconded by Senator Hagino and carried, the report of the Committee was adopted and H.B. No. 3558, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CLAIMS INVOLVING THE STATE," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Hee, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 2315) recommending that House Bill No. 3574 pass Second Reading and be referred to the Committee on Ways and Means.

On motion of Senator Hee, seconded by Senator Hagino and carried, the report of the Committee was adopted and

H.B. No. 3574, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION TO THE DEPARTMENT OF THE ATTORNEY GENERAL," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Hee, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 2316) recommending that House Bill No. 2092, H.D. 2, as amended S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion of Senator Hee, seconded by Senator Hagino and carried, the report of the Committee was adopted and H.B. No. 2092, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO JURORS," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Menor, for the Committee on Corrections, presented a report (Stand. Com. Rep. No. 2317) recommending that the Senate advise and consent to the nomination of Jay A. Sasan to the Hawaii Criminal Justice Commission, in accordance with Gov. Msg. No. 158.

In accordance with Senate Rule 33, action on Stand. Com. Rep. No. 2317 and Gov. Msg. No. 158 was deferred until Friday, March 18, 1988.

#### ORDER OF THE DAY

##### RE-REFERRAL OF A HOUSE BILL

The Chair re-referred House Bill No. 2003 jointly to the Committee on Business Development and Pacific Relations and 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.

Senator Solomon then rose to speak on a point of personal privilege as follows:

"Madam Vice President and my fellow colleagues, as you know, in the Senate the Judiciary chairman and myself are concerned and have taken a strong position on the right-to-sue bill which is now with the House.

"Madam Vice President, I would like to explain the right-to-sue legislation to my colleagues and where we're at in terms of negotiation with the House.

"Madam Vice President, generally speaking, the right-to-sue bill provides standing to beneficiary organizations and individuals regarding their right-to-sue tenets; that they are direct beneficiaries of, e.g., as the Hawaiian Homes and ceded land trusts.

"The Senate has taken the position, which was passed out of the Judiciary Committee, to keep alive the clause of retroactivity to 1959. The provision will provide that no action may be brought against the state for back rentals owed to DHHL by state agencies until 1992. This, Madam Vice President, will give the state Legislature and agencies five years, Madam Vice President, five years to settle these issues on back rental before litigation will be allowed. If a resolution is achieved, there will be no need for litigation.

"Civil rights groups for Hawaiians across this state, Madam Vice President, have drafted and sponsored Senate Bills 3336 and 3366, House Bills 2409, 2410 which

provide for studies on the possibility of land exchanges to solve this problem of back rentals owed. This was agreed upon to mitigate any kind of fears that we in the State of Hawaii and this honorable body may have in reference to the standing of these organizations to sue the state for back rentals.

"Provision 3.i. provides that no one will ever be able to sue on behalf of OHA over OHA's share of ceded land revenues. This resolves the fears that we will join OHA, in other words, Madam Vice President, this should resolve our fears that the different Hawaiian organizations would join OHA against the state on ceded land issues.

"The different civil rights organizations across the state have agreed to delete the provisions of the Senate version to provide for a conciliation panel but have left in the requirement of exhausting all administrative remedies. The panel was put in there by the Senate, Madam Vice President, so that we could alleviate any of the fears that the big money cases would bankrupt the State of Hawaii. This is not the intent, Madam Vice President, of these civil rights organizations in the State of Hawaii. In other words, Madam Vice President, the Hawaiians have no intent of bankrupting the State of Hawaii. I just want to make that clear for the record.

"Lastly, civil rights organizations across this state have agreed to add a six-year statute of limitation. They feel and I feel, Madam Vice President, two years are not enough time to negotiate these issues or to have legislative resolutions worked out.

"I say this, Madam Vice President. I owe my political beginnings to the Office of Hawaiian Affairs. I believe that the people of this state want to see some resolve in terms of giving civil rights to the Hawaiian people.

"In my opinion and as a matter of interpretation, when Queen Liliuokalani abdicated her throne, and history has proven this out, she never ever, never ever, Madam Vice President, gave up the civil rights of the Hawaiian nation.

"At this time, I would like to make a request, Madam Vice President, to our Judiciary chairman if he would ask our Majority Leader to consider a brown bag luncheon with all of these civil rights organizations so we may ask the administration and the governor of this state if he would be willing to sit with these groups and try to resolve or at least discuss, Madam Vice President, the concerns that I feel are at the grass roots of this state.

"I now further add, Madam Vice President, 'Ua mau ke ea o ka aina i ka pono.' This is the motto of our state and I feel that this honorable body is obligated to see that we carry this off with the integrity that it rightfully deserves.

"If the chairman of the Judiciary Committee is willing to answer my request, Madam Vice President?"

The Chair posed the question to the chairman of the Judiciary Committee and Senator Hee responded as follows:

"Madam Vice President, in keeping with the Senate policy and certainly the policy of the Judiciary Committee, we are more than willing to meet at anytime and, perhaps, a brown bag lunch may be an appropriate way to do so. I am more than happy to accommodate the previous speaker's question.

"I would just like to add that from the committee's perspective this matter is a serious one which perhaps should not be exclusive of the governor's jurisdiction and

should perhaps be instead the jurisdiction of and a separation of the powers of government. This bill is not a new bill; it's a bill that has been long debated and has been passed by the Legislature only to be vetoed by then Governor Ariyoshi.

"Most of the legislators who passed the bill in 1986 are still here today. The chairman on the other side, Representative Levin, was then a member of the House.

"This bill is a fair bill. It does not seek to bankrupt the state. It seeks to provide justice to those native Hawaiians, those native Americans who were wronged, through negligent acts of the state government to allow them to seek justice in the courts. This is a very serious issue. So serious that I do not believe that it should be left to the governor and the governor alone to 'negotiate the state' out of this issue.

"This issue belongs in the Legislature; we are the elected representatives of the people; it is appropriate for this body and the other body across the hall to get together. And unless the Senate members feel differently, I think it's appropriate that the right to sue be retroactive to 1959 when Hawaii became a state. It does not seek compensatory damages when the foreign governments first touched these shores. It does seek to make the state accountable when Hawaii became a member of the United States.

"We are more than happy to accommodate the previous speaker's request. The conferees have been named, and at such time that the House of Representatives and the governor should like to take up the invitation, we are ready. Thank you."

At 11:59 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:06 o'clock p.m.

At this time, Senator Tungpalan, on behalf of Senators Mizuguchi and Menor, and the entire women's caucus, introduced the Pearl City High School Chargers Girls' Swim Team to the members of the Senate:

Team Captain Nadine Takai;  
Team Captain Vanessa Murakami;  
Members, Gay Monma, Betsy Imamura, Desiree DeSoto, Saline Tupua; Larissa Murakami and Tanya Lifa;  
Head Coach Ken Suenaga;  
Asst. Coach Gilbert Monma;  
Athletic Director Roy Ichinose; and  
Boys' Swim Coach Jane Suenaga.

Senator Tungpalan said, "The team achieved an outstanding record during the past year with the varsity team winning the OIA Western Division Championship and subsequently winning the OIA Championship. The Junior Varsity Team also excelled in their second consecutive OIA Division Championship."

The honorees rose to be recognized and were presented the Senate certificate of recognition and leis by various Senators.

At 12:08 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:11 o'clock p.m.

ADJOURNMENT

At 12:13 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., Friday, March 18, 1988.