

**JOURNAL**  
**of the**  
**SENATE OF THE**  
**FOURTEENTH LEGISLATURE**  
**of the**  
**STATE OF HAWAII**

---

**Special Session of 1988**

**Convened Friday, May 20, 1988**  
**Adjourned Monday, May 23, 1988**

## **TABLE OF CONTENTS**

|   | <b>PAGE</b> |
|---|-------------|
| <b>First Day, Friday, May 20, 1988 .....</b>          | <b>1</b>    |
| <b>Second Day, Monday, May 23, 1988.....</b>          | <b>6</b>    |
| <br><b>Communications received after adjournment:</b> |             |
| <b>Governor's Messages.....</b>                       | <b>10</b>   |
| <b>House Communication .....</b>                      | <b>11</b>   |
| <br><b>Appendix:</b>                                  |             |
| <b>Conference Committee Reports .....</b>             | <b>12</b>   |
| <b>Standing Committee Report .....</b>                | <b>13</b>   |
| <br><b>History:</b>                                   |             |
| <b>Senate Bill .....</b>                              | <b>14</b>   |
| <b>House Bills.....</b>                               | <b>15</b>   |

THE  
FOURTEENTH LEGISLATURE  
STATE OF HAWAII  
SPECIAL SESSION OF 1988  
JOURNAL OF THE SENATE

FIRST DAY

Friday, May 20, 1988

The Senate of the Fourteenth Legislature of the State of Hawaii, Special Session of 1988, was called to order at 11:08 o'clock a.m., by the Senator Richard S.H. Wong, President of the Senate, in accordance with the following Proclamations:

"PROCLAMATION

I, RICHARD S.H. WONG, President of the Senate of the Fourteenth Legislature of the State of Hawaii, pursuant to the power vested in me by Section 10, Article III of the Constitution of the State of Hawaii, and at the written request of two-thirds of the members to which the Senate is entitled, do hereby convene the Senate in Special Session for the purpose of carrying out its responsibility established by Section 3 of the Article VI for a period of two (2) days, excluding Saturdays and Sundays, commencing on Friday, May 20, 1988.

/s/ Richard S.H. Wong  
RICHARD S.H. WONG  
President of the Senate"

and

"PROCLAMATION

WE, Richard S.H. Wong, President of the Senate, and Daniel J. Kihano, Speaker of the House of Representatives, of the Fourteenth Legislature of the State of Hawaii, pursuant to the power vested in us by Section 10, Article III of the Constitution of the State of Hawaii, and at the written request of two-thirds of the members to which each house is entitled, do hereby convene the Special Session of 1988 of the Fourteenth Legislature of the State of Hawaii for a period of two (2) days, excluding Saturdays and Sundays, commencing on Friday, May 20, 1988.

/s/ Richard S.H. Wong  
RICHARD S.H. WONG  
President of the Senate

/s/ Daniel J. Kihano  
DANIEL J. KIHANO  
Speaker of the House"

The Divine Blessing was invoked by Father Terrence Watanabe of the Co-Cathedral of Our Lady of Peace, after which the Roll was called showing all Senators present with the exception of Senator Solomon who was excused.

At this time, Senator Mizuguchi introduced to the members of the Senate visiting Senator Bill Owen of the Tennessee State Legislature.

At 11:08 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:18 o'clock a.m.

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 327 and 328) were read by the Clerk and were disposed of as follows:

Gov. Msg. No. 327 returning Senate Bill No. 3264, without his approval, together with his statement of objections relating to the measure which reads as follows:

"EXECUTIVE CHAMBERS  
HONOLULU, HAWAII

May 13, 1988

STATEMENT OF OBJECTIONS TO SENATE BILL NO.  
3264

Honorable Members  
Fourteenth Legislature  
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 3264, entitled 'A Bill for an Act Relating to Capital Improvement Projects.'

The purpose of Senate Bill No. 3264 is to authorize certain capital improvement projects and to appropriate funds for those capital improvement projects.

The bill appears to violate section 9 of Article VII of the State Constitution. Section 9 of Article VII and section 37-93, Hawaii Revised Statutes, which implements section 9 of Article VII, provide that the Legislature may make appropriations from the general fund in excess of the general fund expenditure ceiling only by: (1) a two-thirds vote of the members to which each house of the Legislature is entitled; and after (2) setting forth the dollar amount and rate by which the appropriations exceed the general fund expenditure ceiling; and (3) setting forth the reasons for exceeding the expenditure ceiling.

Senate Bill No. 3264 was apparently not enacted in accordance with these requirements even though it makes appropriations for fiscal year 1987-88 which exceed that fiscal year's expenditure ceiling. This may have resulted from unintended references to fiscal year 1987-88 in section 2 of the bill.

According to section 2 of this bill, the appropriations in it are made from the general fund for fiscal year 1987-88. Section 6 of the bill provides that appropriations made for fiscal year 1988-89 shall lapse on June 30, 1990. However, no appropriation is made by the bill for that fiscal year. This technical ambiguity suggests that there

may be an erroneous fiscal year reference in either section 2 or section 6. If the fiscal year references in section 2 should have been to 1988-89, the appropriations would not lapse until June 30, 1990, and the appropriations made in the bill would be well within the general fund expenditure ceiling for fiscal year 1988-89, inasmuch as the ceiling can accommodate the total amount appropriated by the bill. On the other hand, if the fiscal year reference in section 6 of the bill were incorrect and it could be corrected without further legislative action, the funds appropriated in section 2 for fiscal year 1987-88 would not lapse until June 30, 1990, but the general fund expenditure ceiling would still have been exceeded.

Because of the technical ambiguities, it is impossible to tell from the bill which of the two sections contain the error. Thus, I am unable to correct the measure pursuant to section 21 of the bill, and it appears that only the Legislature can address the bill's seeming constitutional defect.

I also note that section 11 of Article III of the Constitution of the State of Hawaii provides that any portion of any appropriation which is unencumbered at the close of the fiscal period for which the appropriation is made shall lapse at the close of such fiscal period. Thus, unencumbered appropriations made for the fiscal year 1987-88 by this bill will lapse on June 30, 1988. As a practical matter, the appropriations made in this bill cannot be encumbered in any substantial amount by June 30, 1988.

For the foregoing reasons, I am returning Senate Bill No. 3264 without my approval.

Respectfully,

/s/ John Waihee  
JOHN WAIHEE  
Governor of Hawaii"

#### "P R O C L A M A T I O N"

WHEREAS, under Section 16 of Article III of the Constitution of the State of Hawaii, the Governor is required to give notice, by a proclamation, of the Governor's plan to return with the Governor's objections any bill presented to the Governor less than ten days before adjournment sine die or presented to the Governor after adjournment sine die of the Legislature; and

WHEREAS, Senate Bill No. 3264, entitled 'A Bill for an Act Relating to Capital Improvement Projects,' passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, Senate Bill No. 3264 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, JOHN WAIHEE, Governor of the State of Hawaii, hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return Senate Bill No. 3264 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol,  
Honolulu, State of Hawaii,  
this 13th day of May, 1988.

/s/John Waihee  
JOHN WAIHEE  
Governor of Hawaii"

was placed on file.

Gov. Msg. No. 328 transmitting his statement of objections to House Bill No. 2032 which he has returned to the House without his approval and which reads as follows:

#### **"EXECUTIVE CHAMBERS HONOLULU, HAWAII**

May 16, 1988

#### **STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2032**

Honorable Members  
Fourteenth Legislature  
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 2032, entitled 'A Bill for an Act Relating to Telecommunications and Information.'

The purpose of this bill is to create a vehicle through which the State of Hawaii could become a leader in the field of telecommunications and information technology in the Pacific Basin and throughout the world, and to appropriate funds to accomplish these ends.

The appropriation found in section 14 of the bill does not specify the fiscal period for which the appropriation is being made as required by section 11 of Article VII of the Hawaii State Constitution, and therefore the appropriation from general revenues violates the constitutional requirement that a general fund appropriation be for a 'specified' period.

In addition, I have been advised that part of the appropriations made for fiscal year 1987-1988 by the bill exceeds the constitutionally imposed general fund expenditure ceiling. Section 9 of Article VII of the Hawaii State Constitution provides, in pertinent part, that '[n]o appropriations in excess of the general fund expenditure ceiling shall be authorized in any legislative session unless the legislature shall, by a two-thirds vote of the members to which each house of the legislature is entitled, set forth the dollar amount and the rate by which the ceiling will be exceeded and the reasons therefor.' Section 37-93 (b) of the Hawaii Revised Statutes, a statute implementing the constitutional provision above-described, requires that the information be included in each act containing an appropriation that exceeds the expenditure ceiling. Because the bill does not comply with any of these constitutional and statutory requirements, the entire appropriation appears to be constitutionally defective.

For the foregoing reasons, I am returning House Bill No. 2032 without my approval.

Respectfully,

/s/ John Waihee  
JOHN WAIHEE  
Governor of Hawaii"

#### "P R O C L A M A T I O N"

WHEREAS, under Section 16 of Article III of the Constitution of the State of Hawaii, the Governor is required to give notice, by a proclamation, of the Governor's plan to return with the Governor's objections any bill presented to the Governor less than ten days

before adjournment sine die or presented to the Governor after adjournment sine die of the Legislature; and

WHEREAS, House Bill No. 2032, entitled 'A Bill for an Act Relating to Telecommunications and Information,' passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, House Bill No. 2032 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, JOHN WAIHEE, Governor of the State of Hawaii, hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return House Bill No. 2032 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol,  
Honolulu, State of Hawaii,  
this 16th day of May, 1988.

/s/John Waihee  
JOHN WAIHEE  
Governor of Hawaii"

was placed on file.

#### ORDER OF THE DAY

Senate Bill No. 3264, S.D. 1, H.D. 1, C.D. 2:

By unanimous consent, S.B. No. 3264, S.D. 1, H.D. 1, C.D. 2, entitled: "A BILL FOR AN ACT RELATING TO CAPITAL IMPROVEMENT PROJECTS," was recommitted to the Committee on Conference to address the objections set forth in the governor's proclamation of May 13, 1988 (Gov. Msg. No. 327).

The President then appointed Senators Yamasaki, chairman, Mizuguchi, Aki, Blair, Fernandes Salling, Hagino, Kobayashi, B., Matsuura, Nakasato, Young, Herkes, Ikeda and Kobayashi, A. as managers on the part of the Senate to the Committee on Conference on S.B. No. 3264, S.D. 1, H.D. 1, C.D. 2.

House Bill No. 2032, H.D. 2, S.D. 2, C.D. 2:

By unanimous consent, H.B. No. 2032, H.D. 2, S.D. 2, C.D. 2, entitled: "A BILL FOR AN ACT RELATING TO TELECOMMUNICATIONS AND INFORMATION," was recommitted to the Committee on Conference to address the objections set forth in the governor's proclamation of May 16, 1988 (Gov. Msg. No. 328).

The President then appointed Senators Chang and Yamasaki, co-chairmen, Blair, Mizuguchi, and Kobayashi, A. as managers on the part of the Senate to the Committee on Conference on H.B. No. 2032, H.D. 2, S.D. 2, C.D. 2.

#### STANDING COMMITTEE REPORT

Senator Hee, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. S1) recommending that the Senate consent to the nomination of George M. Masuoka as Judge of the Circuit Court of the Fifth Circuit, for a term of ten years, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, and in accordance with Gov. Msg. No. 317.

In accordance with Senate Rule 33, action on Stand. Com. Rep. No. S1 and Gov. Msg. No. 317 was deferred until Monday, May 23, 1988.

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

"Mr. President, I rise on a point of personal privilege.

"Mr. President, I would like to respond to an article which appeared in this morning's paper on a right-to-sue bill being called a 'sellout' by the Civil Rights for Hawaiians.

"Briefly, spokesperson Mililani Trask has articulated four positions in the bill and I would like to address them accordingly.

"The first is, and I will quote it from the text of the article, 'It is a right-to-sue bill that does not give Hawaiians the right to sue.'

"Members, as you well know, this simply is not true. It, in fact, is as stated in the committee report, the purpose of this bill is to provide Hawaiians and native Hawaiian individuals and native Hawaiian organizations the right to sue in the courts of the state.

"The second item she delineated was that it gives the governor powers that should belong to native Hawaiians.

"The powers that this bill gives, if any, as far as the conference committee was concerned, belong to the native Hawaiians in seeking redress in a court of law.

"Third, she added that it removes the state's accountable to native beneficiaries. The bill just does quite the opposite. It, once and for all, will set forth by mandate the accountability by the state to native Hawaiians and its beneficiaries.

"Lastly, she, through the article, has indicated that monies can be awarded to the departments and not to the plaintiff and this, again, is not true. In fact, in the committee report we were very careful to point out on page 3 of the committee report under 'scope of relief' - direct monetary relief out-of-pocket losses suffered by the beneficiaries individually may be recovered. In addition, the prevailing plaintiff may call for reasonable court costs and attorney's fees.

"Finally, and I suspect the most important to the spokesperson for the group, is the issue of the retroactivity or the lack thereof in the bill.

"I want to make it very clear one more time that there is a retroactive 'kicker' in the bill. Retroactivity would occur in the failure of the Legislature in 1991 to not adopt a plan to address the amount of exposure which the state has been negligent for. If we fail as the legislature to adopt a plan in 1991, retroactivity will occur and it is in the bill and needs not be discussed for future legislation.

"With those short remarks, I wanted to address this article because it may be of some question to the members on the floor and, secondly, I would like to add that I would be more than pleased to meet with the Big Island group or any other group which has questions on the bill, if they would give me a call.

"Thank you, Mr. President."

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

"Mr. President, I rise on a point of personal privilege.

"I suspect that most people who picked up the Advertiser this morning noticed the front page headline 'Prostitute-AIDS suspect freed' with the sub-heading 'ACLU gets state to halt her testing.'

"I would like to respond briefly to that, if I may."

The Chair permitted Senator Reed to proceed.

Senator Reed continued:

"Mr. President, the key parts of the article read as follows:

'A woman who police have arrested several times for prostitution and is suspected of infecting her clients with AIDS was freed without charges yesterday, hours after the state attorney general blocked police from obtaining results of state Health Department tests on the woman's blood.

'Acting on reports that she had admitted having AIDS and passing it on to her unwitting clients, police arrested her Wednesday for investigation of charges of attempted reckless endangering, a felony, and prostitution.

'Police obtained a sample of the woman's blood shortly after her arrest. The sample was sent to the Department of Health to test for the AIDS virus.

'Yesterday, however, at the urging of the American Civil Liberties Union, Attorney General Warren Price ordered the tests halted.

'ACLU attorney Kirk Cashmere said the woman's civil rights had been violated. He blamed her arrest on a "knee-jerk reaction" by police and prosecutors to a public health concern.'

"Dr. Al Katz, director of the Health Department's AIDS/Sexually Transmitted Project, said, 'We know she is a prostitute, allegedly she has AIDS and the police have seen her use drugs intravenously when she was arrested before.'

"Dr. Katz says, in conclusion, 'But we are looking at compassionate detainment. Putting her in ... prison for several years is not the way to deal with this woman.'

"Compassionate detainment. Why? Why isn't imprisonment an appropriate response when a person who has AIDS is continuing to engage in activity known to transmit the deadly virus?

"If this prostitute does have the AIDS virus in her body, she is doing far more deadly damage in our community then if she were killing her customers out right. The reason is that if she infects a customer, he takes that deadly virus home to his wife, or his girlfriends, or whomever he has sexual contact with in the future. A person can be infected with the AIDS virus for ten years or longer and show no symptoms whatsoever. During that decade a person could unknowingly infect dozens other people and those people could in turn infect dozens or even hundreds of others.

"So this prostitute does not deserve softer treatment than a murderer. She deserves tougher treatment.

"But as this case clearly illustrates, law enforcement in this state is impotent when it comes to stopping criminals who kill with the AIDS virus.

"During the regular session this year I introduced Senate Bill 2590 specifically to deal with this type of crime. The bill would make it a class A felony to knowingly expose another person to the AIDS virus. That bill never made it out of committee. Interestingly, one of the reasons that bill died in committee was that the ACLU -- in fact the ACLU was represented by Kirk Cashmere, the same ACLU attorney who berated law enforcement yesterday for arresting the prostitute and thereby 'violating her civil rights' -- in speaking against Senate Bill 2590 the ACLU's Cashmere said, 'There is no demonstrable need for such a statute.' And I read from a portion of the ACLU's testimony in opposing 2590: 'The ACLU is unaware there has been a problem with persons who know that they are antibody positive or who have been diagnosed with AIDS or ARC who continue to engage in high risk behavior which would put others at risk of infection. Absent a clear and compelling reason for such legislation, it should not be enacted.'

"Now it should be obvious to all that there is a clear and compelling reason for such legislation. There is a clear and compelling reason to enact laws to protect the public from AIDS infected people who have no qualms about killing people for money."

Senator Cobb also rose on a point of personal privilege and remarked:

"Mr. President, I rise on a point of personal privilege to expand on the same subject.

"As far as this Senator is concerned, the law of confidentiality is not meant in anyway to protect illegal activities.

"A few months ago there was a case in Chicago where it was determined if a person spits at another person and the person doing the spitting may have AIDS or suspected of having AIDS, that person can and should be tested for AIDS. And if found to have it, can be charged with attempted murder.

"The same would apply for prostitution and I support the interpretation of the Honolulu Police Department to test for AIDS in this case.

"Furthermore, Mr. President, all of the testimony before my committee has never at anytime indicated any shield of confidentiality or requirement for consent for testing for a person accused of illegal activities. Therefore, Mr. President, either the interpretation of the law needs to be corrected or the law should be corrected.

"Thank you."

#### CONFERENCE COMMITTEE REPORTS

On motion by Senator Blair, seconded by Senator A. Kobayashi and carried unanimously, the Senate authorized the Senate Clerk to receive conference committee reports prior to midnight. In consequence thereof, subsequent to its recessing at 11:34 o'clock a.m., and in accordance with Article III, Section 15 of the Constitution of the State of Hawaii, action on the following bills and conference committee reports was deferred for a period of 48 hours:

Conf. Com. Rep. No. S1 and House Bill No. 2032, H.D. 2, S.D. 2, C.D. 2, as amended in C.D. 3, entitled: "A BILL FOR AN ACT RELATING RELATING TO TELECOMMUNICATIONS AND INFORMATION," and

Conf. Com. Rep. No. S2 and Senate Bill No. 3264,  
S.D. 1, H.D. 1, C.D. 2, as amended in C.D. 3,  
entitled: "A BILL FOR AN ACT RELATING TO  
CAPITAL IMPROVEMENT PROJECTS."

ADJOURNMENT

At 4:00 o'clock p.m., the Senate adjourned until 11:00  
o'clock a.m., Monday, May 23, 1988.

## SECOND DAY

Monday, May 23, 1988

The Senate of the Fourteenth Legislature of the State of Hawaii, Special Session of 1988, convened at 11:10 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by the Reverend Richard C. Rowe of St. Stephen's Episcopal Church, after which the Roll was called showing all Senators present with the exception of Senator Solomon who was excused.

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

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

Senator J. Wong, in recognition of the crew of Aloha Airlines Flight 243 and before the introduction of the crew, remarked:

"Mr. President, my fellow colleagues. Aloha Airlines Flight 243 is a significant part of Hawaii's history and I'm positive that you as well as my fellow colleagues share my sincerest regret for the structural failure of an in-flight aircraft which caused one apparent death and numerous injuries to passengers.

"I'm equally sure that you share with me the relief that the heroic flight crew we honor today was able to bring the aircraft and its passengers to safety under extreme adversities and unprecedented circumstances, and thus avoid a major catastrophe.

"Mr. President, Hawaii depends on the transportation industry very acutely for its economic lifeblood. We are air dependent, ocean dependent, land dependent and most importantly people dependent. The success of the transportation industry and its affiliated industries such as the tourist industry depends on people performing and executing to the best of their ability their responsibilities with competence and caring.

"Today, it is an honor and a privilege to have such people from Aloha Airlines here with us on the floor of this august body to receive the recognition they deserve.

"At this time I would like to yield to Senator Matsuura, co-sponsor of the certificates of recognition, who will have the honor of introducing the flight crew and I will introduce the other honorees."

Senator Matsuura then introduced the members of the flight crew: Capt. Robert Schornstheimer, First Officer Madeline 'Mimi' Tompkins and flight attendants Michelle Honda, Jane Sato-Tomita and Amy Jones-Brown who were seated on the floor of the Senate.

All of the honorees rose to be recognized and were presented Senate certificates of recognition, and plumeria leis in remembrance of Mrs. C.B. Lansing who always wore plumeria flowers in her hair.

Senator Matsuura remarked:

"They say that whether a person becomes a hero or a coward is determined in a split second and I must commend the flight crew ... all of you are certainly heroes.

"We also have a posthumous certificate to Mrs. C.B. Lansing.

"I'm sure there are hundreds of people who would like to be here to express their gratitude to Mrs. Lansing and to extend their condolences to the immediate family.

"Mrs. Lansing really enjoyed and loved her work. Perhaps this is because she loved people and enjoyed extending a helping hand to anyone in need ... and she did it with a smile and always with kindness ... Mrs. C.B. Lansing was an example of a mark of a good person."

Mrs. Mae Takahashi, director of in-flight services, representing Mrs. Lansing, accepted the Senate certificate

Senator J. Wong then introduced the following: Dr. Hung Wo Ching, founder of Aloha Airlines and now vice chairman of the board; Mr. Sheridan Ing, chairman of the board; Mr. Larry Cabrinha, director of flight operations; Mrs. Mae Takahashi, director of in-flight services; Mr. Milton Goto, director of communications; and Mrs. Stephanie Ackerman, public relations manager.

Senator J. Wong added:

"Both of our inter-island air carriers have compiled enviable records during the past fifty years for safety and maintenance.

"The leaders, owners and administration of Aloha are responsible for this accomplishment and for making Aloha what it is today - an efficient, competitive, well-run organization of people from Hawaii.

"We are very proud and grateful to all of you for setting the standards in Hawaii's air transportation industry."

Senator Cobb added his comments as follows:

"Mr. President, ... things that haven't been mentioned publicly although I saw a press release on the subject was that Aloha Airlines voluntarily pulled several of its older aircraft off flying status because of questions they had which exceed the industry standards in terms of stress and safety and they are operating at a very compressed schedule because of that and they, in fact, having to scrounge additional aircraft in order to get back on full flying status. As a regular flyer on Aloha I am one who appreciates that.

"But more to the point, we have a convention this weekend on Maui and I have been privileged to book my flight on Aloha Airlines going and coming.

"I'd like to note publicly that Aloha Airlines not only has an enviable record of flying on time but now has a very demonstrated record that when lives are on the line, they are on the line and a lot of people in this state owe their lives and the lives of family members to the professionalism and the courage of the crew here with us today.

"On behalf of my colleagues, mahalo, again. Thank you, Mr. President."

Senator Aki then introduced a former colleague and now superintendent of schools, Mr. Charles Toguchi.

Senator Chang introduced eight lawyers and business representatives from various regions in China. They are in Honolulu to participate in the China Lawyers' Training Program conducted by the U.S.-Asia Law Institute at the



University of Hawaii School of Law and the East-West Center under an agreement with the Chinese Ministry of Justice -- Ms. Chen Lu Tao, Shenzhen International Economic Law Office; Ms. Huang Lian-Xi, Zhejiang Economic Law Office for Foreign Affairs; Ms. Huan Xiaoyan, Guangdong International Commerce Law Office; Ms. Liu Yan Li, China Patent Agent Ltd.; Mr. Ma Qun, Jiangsu Foreign Economic Law Office; Mr. Xu Weihua, Shanghai Law Firm for Foreign Economy and Trade; Mr. Xu Yaowu, Global Law Office, Beijing; and Ms. Zhang Zhenya, Guangdong Foreign Economic Law Office.

The delegation was accompanied by Professor Ron Brown and Visiting Professor Liu Chu, University of Hawaii School of Law, and Professor Randall Edwards, leading China law expert at Columbia University.

At 11:24 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:38 o'clock a.m.

Senator Menor, on behalf of Senator Hagino and himself, introduced Mr. Hugh Yoshida, executive secretary of the Oahu Interscholastic Association, "former outstanding football coach of Leilehua High School, respected leader, and a close personal friend."

#### HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. S1 and S2) were read by the Clerk and were disposed of as follows:

Hse. Com. No. S1, informing the Senate that the Speaker on May 20, 1988, appointed Representatives Ige, D. and Souki, co-chairmen, Fukunaga, Ihara Jr. and O'Kieffe as managers on the part of the House to the Committee on Conference for the consideration of amendments on House Bill No. 2032, H.D. 2, S.D. 2, C.D. 2, was placed on file.

Hse. Com. No. S2, informing the Senate that the Speaker on May 20, 1988, appointed Representatives Souki, chairman, Arakaki, Fukunaga, Horita, Ige, D., Ige, M., Ihara Jr., Isbell, Kanoho, Kawakami, Kotani, Leong, Tajiri, Cavasso, Marumoto and Ribellia as managers on the part of the House to the Committee on Conference for the consideration of amendments on Senate Bill No. 3264, S.D. 1, H.D. 1, C.D. 2, was placed on file.

#### ORDER OF THE DAY

Stand. Com. Rep. No. S1 (Gov. Msg. No. 317):

Senator Hee moved that Stand. Com. Rep. No. S1 be received and placed on file, seconded by Senator Menor and carried.

Senator Hee then moved that the Senate consent to the nomination of George M. Masuoka as Judge of the Circuit Court of the Fifth Circuit, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, seconded by Senator Menor.

Senator Hee rose to speak in support of the nomination and said:

"Mr. President, I rise to urge all members to confirm Mr. George M. Masuoka, to the Circuit Court of the Fifth Circuit on Kauai.

"I would like to make a few remarks with regard to the confirmation process and the duties which the Senate is beholden to as part of our legislative office.

"In the preamble and preliminary statement of the Code of Professional Responsibility, it begins and I quote: 'The continued existence of a free and democratic society depends upon recognition ... the concept of justice is based upon the rule of law grounded in respect for the dignity of the individual and his capacity to reason for enlightened self-government. Law so grounded makes justice possible but only through such law does the dignity of the individual attain respect and protection. Without it, individual rights become subject to unrestrained power, respect for law is destroyed, and rational self-government is impossible.'

"In the Canons of Ethics, canon number one, 'a judge should uphold the integrity and independence of the judiciary. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing and should himself observe high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this code should be construed and applied to further this objective.'

"Mr. President and members, as we well know, having experienced a previous confirmation process for the First Circuit, this procedure, similar to that one, was not without its critics. Mr. Masuoka, we have come to learn from his judicial experience, has been a judge since 1979 on a per diem basis. As a judge, Mr. Masuoka has upheld the highest standards of integrity and independence.

"As a lawyer who was born and raised on Kauai and whose roots and family are still embedded in the bedrock of Kauai, Mr. Masuoka had many, many supporters who willingly participated on Kauai when the Senate Judiciary Committee held public hearings on May 6th.

"And, as it should be, Mr. Masuoka had his critics. Initial criticism of Mr. Masuoka was unethical behavior when Mr. Masuoka worked as an attorney. We are satisfied, having done a thorough investigation, having reviewed the Canons of Ethics, the Ethical Code, and the Hawaii Rules of Court, we are convinced that such unethical behavior was unfounded.

"A more serious allegation against the nominee was the alleged violation of having served as an attorney for compensation and subsequently serving on the bench for the same individual who was then one of the parties in a court action. Having likewise done a very thorough review and having had the benefit of the first confirmation procedures, the judiciary staff knew how and where to get to the heart of the matter.

"We have found out and we are convinced that, one, Mr. Masuoka did not represent the prevailing party as a private attorney and, two, that Mr. Masuoka took the case only after Judge Clifford Nakea dismissed himself because Judge Nakea was then the private attorney who represented the prevailing party.

"As far as the Judiciary Committee is concerned, we believe Mr. Masuoka is the best candidate. The governor should be congratulated. Mr. Masuoka should be congratulated and I would like to, lastly, congratulate the Senate Judiciary Committee who took the time and efforts to participate. For this I am indebted to all of you.

"I would like to now yield to Senator Lehua Fernandes Salling who would like to say a few words and introduce

Judge Masuoka after the confirmation procedure. Thank you, Mr. President."

Senator Fernandes Salling also in support of the nominee remarked:

"Mr. President, Mr. Chairman and fellow colleagues, I rise to speak in favor of the action which is before us for our consideration today and I wish to take this opportunity to congratulate George M. Masuoka and the citizens of Kauai, now that we are approaching the final appointment of a circuit court judge who is fully qualified and able to carry out the duties and responsibilities of this high office.

"Speaking on behalf of the legal community as well as our people, I wish Mr. Masuoka continued success and all of the best during the next ten years. A time which is certain to be exciting and challenging for all of us as we confront many difficult and controversial issues.

"Spike' as we have affectionately called him, perhaps for the last time, will face certain unique challenges inherent in the one judge judiciary which we still have in the Fifth Circuit.

"As a 'keiki o ka aina' who has attained the great honor of appointment by our esteemed governor, as a man who has had to overcome personal tragedy, and, finally, as a scarred veteran of the careful scrutiny of our Senate Judiciary Committee and of a Senate Special Session convened in his honor, we are confident that our new judge will rise to meet the challenges of his office with dignity and skill and with compassion and understanding.

"I urge all the members of this body to unanimously confirm George 'Spike' M. Masuoka. Thank you."

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

Ayes, 24. Noes, none. Excused, 1 (Solomon).

Senator Fernandes Salling then rose to introduce to the members of the Senate Judge Masuoka who was sitting in the gallery together with his wife Sharon, his two daughters, his mother, and a group of relatives and friends.

Senator Hee rose to introduce Mrs. Chieko Itokazu, Judge Masuoka's mother-in-law, who was among the group.

#### FINAL READING

Conf. Com. Rep. No. S1 (H.B. No. 2032, H.D. 2, S.D. 2, C.D. 3):

On motion by Senator Chang, seconded by Senator Yamasaki and carried, Conf. Com. Rep. No. S1 was adopted and H.B. No. 2032, H.D. 2, S.D. 2, C.D. 3, entitled: "A BILL FOR AN ACT RELATING TO TELECOMMUNICATIONS AND INFORMATION," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 20. Noes, 4 (George, Herkes, Kobayashi, A. and Reed). Excused, 1 (Solomon).

Conf. Com. Rep. No. S2 (S.B. No. 3264, S.D. 1, H.D. 1, C.D. 3):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Conf. Com. Rep. No. S2 was

adopted and S.B. No. 3264, S.D. 1, H.D. 1, C.D. 3, entitled: "A BILL FOR AN ACT RELATING TO CAPITAL IMPROVEMENT PROJECTS," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Solomon).

Senator George rose on a point of personal privilege as follows:

"Mr. President, I should like to read from a letter I received last Friday afternoon from the attorney general. He writes:

"This is in response to your letter requesting our opinion as to whether the position of the deputy state librarian is civil service or exempt.

"Our review of this matter has led us to conclude that the deputy state librarian position is not exempt from the civil service and that the requirements set forth in chapter 76, Hawaii Revised Statutes, apply.

"The position must be established and filled as a civil service one pursuant to Hawaii Revised Statutes, sections 76-13 and 76-23."

"The opinion, of course, confirms the research undertaken by the Senate Women's Caucus which we reported to you on April 20th. This is an announcement in which I take no particular pleasure. It's rather disagreeable to say I told you so.

"The attorney general indicated that the opinion has been sent only to the director of personnel services and to the state librarian and it seems important to notify both the general public, my colleagues, and the qualified professionals in the library system of the probably impending vacancy. Thank you."

Senator Young, also on a point of personal privilege, remarked:

"Mr. President, on the same line and a point of personal privilege.

"I would like to commend Senator George and the Women's Caucus for the time and diligence given to this controversial matter. As stated on the onset, the appointment was not a 'witch haunt' but rather a disagreement on the selection process of the deputy director.

"Our satisfaction is knowing that we had success in shedding light on this matter and correcting a situation that we felt was wrong.

"Again, to the Women's Caucus of the Senate, thank you for a job well done."

The Chair then made the following observation:

"Members of the Senate, before leaving, the Chair would like to wish you a good campaign season; that is, for those of you who are running. And for those of you who are not running for public office, my campaign seeks your help.

"I wish to see all of you again next year."

#### ADJOURNMENT

Senator Blair moved that the Senate of the Fourteenth Legislature of the State of Hawaii, Special Session of

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1988, adjourn Sine Die, seconded by Senator A. Kobayashi and carried.

At 11:52 o'clock a.m., the President rapped his gavel and declared the Senate of the Fourteenth Legislature of the State of Hawaii, Special Session of 1988, adjourned Sine Die.

GOVERNOR'S MESSAGES RECEIVED AFTER THE ADJOURNMENT  
OF THE LEGISLATURE SINE DIE

Gov. Msg. No. 338, informing the Senate that on June 6, 1988, he signed into law House Bill No. 2032 as Act 1 - Special Session of 1988, entitled: "RELATING TO TELECOMMUNICATIONS AND INFORMATION."

Gov. Msg. No. 340, informing the Senate that on June 7, 1988, he signed into law Senate Bill No. 3264 as Act 2 - Special Session of 1988, entitled: "RELATING TO CAPITAL IMPROVEMENT PROJECTS."

HOUSE COMMUNICATIONS RECEIVED AFTER THE ADJOURNMENT  
OF THE LEGISLATURE SINE DIE

Hse. Com. No. S3 informing the Senate that the report of the Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House to Senate Bill No. 3264, S.D. 1, H.D. 1, C.D. 2, was adopted by the House of Representative on May 23, 1988; and Senate Bill No. 3264, S.D. 1, H.D. 1, C.D. 3, passed Final Reading in the House of Representatives on May 23, 1988, by not less than two-thirds vote of all the members to which the House is entitled.

## CONFERENCE COMMITTEE REPORTS

**Conf. Com. Rep. No. S1 on H.B. No. 2032**

The purpose of this bill is to create the mechanism whereby the State of Hawaii would become a leader in the field of telecommunications and information technology in the Pacific Basin and throughout the world.

To address concerns raised by the Governor in his statement of objections to House Bill No. 2032, dated May 16, 1988 your Committee has amended this bill by changing fiscal year 1987-1988 to fiscal year 1988-89 on page 27, lines 8 and 18 and by adding the phrase "for fiscal year 1988-89" after the dollar amount of \$2,950,000 on page 28, line 8.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2032, H.D. 2, S.D. 2, C.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2032, H.D. 2, S.D. 2, C.D. 3.

Senators Chang, Yamasaki, Blair, Mizuguchi and A. Kobayashi  
Managers on the part of the Senate

Representatives D. Ige, Souki, Fukunaga, Ihara Jr. and O'Kieffe  
Managers on the part of the House

**Conf. Com. Rep. No. S2 on S.B. No. 3264**

The purpose of this bill is to appropriate \$25,215,000 to meet the needs of the State through various capital improvement projects.

To address concerns raised by the Governor in his statement of objections to Senate Bill No. 3264, dated May 13, 1988 your Committee has amended this bill by changing fiscal year 1987-88 to fiscal year 1988-89 on page 1, line 8 and moving all appropriations listed on page 2 through page 137 from fiscal year 1987-88 to fiscal year 1988-89. The effect of the amendment is to make all appropriations in the bill for the 1988-1989 fiscal year.

Your Committee believes that the projects contained herein reflect the legislature's continued commitment to project which reflect the needs and desires of the people of the State of Hawaii.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 3264, S.D. 1, H.D. 1, C.D. 2, as amended herein, and recommends it pass Final Reading in the form attached hereto as S.B. 3264, S.D. 1, H.D. 1, C.D. 3.

Senators Yamasaki, Mizuguchi, Aki, Blair, Fernandes Salling, Hagino, B. Kobayashi, Matsuura, Nakasato, Young Herkes, Ikeda and A. Kobayashi  
Managers on the part of the Senate

Representatives Souki, Fukunaga, Arakaki, Horita, D. Ige, M. Ige, Ihara Jr., Isbell, Kanoho, Kawakami, Kotani Leong, Tajiri, Cavasso, Marumoto and Ribellia  
Managers on the part of the House

Representatives Marumoto and Ribellia did not sign the report.

## STANDING COMMITTEE REPORTS

**SCRep. S1      Judiciary on Gov. Msg. No. 317**

Recommending that the Senate consent to the nomination of GEORGE M. MASUOKA as Judge of the Circuit Court of the Fifth Circuit, for a term of ten years, in accordance with the provisions of Article VI, Section 3, of the Constitution of the State of Hawaii.

Signed by all members of the Committee except Senators McMurdo and Solomon.

| NUMBER AND TITLE  | Received<br>Referred | First<br>Reading | Second<br>Reading | Third<br>Reading | Action of<br>House | Conference<br>Committee | Final<br>Action | Action of<br>Governor | Further<br>Action | Act<br>No. | Vetoed |
|---|----------------------|------------------|-------------------|------------------|--------------------|-------------------------|-----------------|-----------------------|-------------------|------------|--------|
| S.B. 3264 A BILL FOR AN ACT<br>RELATING TO CAPITAL IMPROVEMENT<br>PROJECTS. |                      |                  |                   |                  | 7<br>11            | 3<br>5                  | 8               | 1<br>10               |                   | 2          |        |



| NUMBER AND TITLE  | Received<br>Referred | First<br>Reading | Second<br>Reading | Third<br>Reading | Action of<br>House | Conference<br>Committee | Final<br>Action | Action of<br>Governor | Further<br>Action | Act<br>No. | Vetoed |
|---|----------------------|------------------|-------------------|------------------|--------------------|-------------------------|-----------------|-----------------------|-------------------|------------|--------|
| H.B. 2032 A BILL FOR AN ACT<br>RELATING TO TELECOMMUNICATIONS AND<br>INFORMATION. |                      |                  |                   |                  | 7                  | 3<br>4                  | 8               | 2<br>10               |                   | 1          |        |