

TWENTY-FIRST DAY

Wednesday, February 15, 1989

The Senate of the Fifteenth Legislature of the State of Hawaii, Regular Session of 1989, convened at 11:40 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by Mr. DeWitt Barnett, Honolulu Religious Society of Friends, after which the Roll was called showing all Senators present with the exception of Senators McMurdo and Nakasato who were excused.

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

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

Senator A. Kobayashi introduced a group of 25 first grade students from Punahou School, accompanied by their teacher, Mrs. Susan James, and parents, Mrs. Donna Woo and Mr. Murray Towill. Sitting among the students was Tiffany Woo, daughter of Senate Clerk David Woo.

Senator Chang introduced the Honorable Wilson Ifunaoa from the Solomon Islands, "... who serves as permanent secretary of foreign affairs and ambassador to the countries of Europe. He formerly served as permanent secretary for the Home Affairs Ministry and as secretary to the cabinet in the office of the Prime Minister. He is travelling in the United States ... travelled in Asia, Western Europe, the Pacific and the Caribbean Islands ... is interested in international relations, Pacific affairs and issues related to the economic development of the Pacific Islands." Ambassador Ifunaoa was accompanied by his sponsors, Thavanh Svengsouk, director of the U.S. Information Agency, Honolulu Reception Center, and Mr. Clarence Takeuchi, escort officer.

Ambassador Ifunaoa and his escorts, who were present on the Senate floor, rose to be recognized.

Senator Solomon introduced Mrs. Kunitake from Kona, "lobbying quite strenuously regarding the old Kona Airport."

At 11:47 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:50 o'clock a.m.

MESSAGE FROM THE GOVERNOR

Gov. Msg. No. 132, transmitting a report on liquor tax revenues, dated January 23, 1989, prepared by the Department of Taxation in response to Act 344, SLH 1986, was read by the Clerk and was placed on file.

HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 3 and 4) were read by the Clerk and were disposed of as follows:

Hse. Com. No. 3, transmitting House Concurrent Resolution No. 2, which was adopted by the House of Representatives on February 14, 1989, was placed on file.

By unanimous consent, H.C.R. No. 2, entitled: "HOUSE CONCURRENT RESOLUTION SUPPORTING HAWAII'S CONGRESSIONAL DELEGATION IN ITS

EFFORTS TO MAINTAIN SUPPORT FOR THE U.S. SUGAR INDUSTRY," was referred to the Committee on Agriculture.

Hse. Com. No. 4, transmitting House Concurrent Resolution No. 3, H.D. 1, which was adopted by the House of Representatives on February 14, 1989, was placed on file.

By unanimous consent, H.C.R. No. 3, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION COMMENDING AND SUPPORTING THE WORK OF THE UNITED STATES DEPARTMENT OF AGRICULTURE TO ERADICATE FRUIT FLIES IN HAWAII," was referred to the Committee on Agriculture.

STANDING COMMITTEE REPORTS

Senator Crozier, for the Committee on Housing and Hawaiian Programs, presented a report (Stand. Com. Rep. No. 10) recommending that S.B. No. 1772, as amended in S.D. 1, pass First Reading and be recommitted to the Committee on Housing and Hawaiian Programs.

On motion by Senator Blair, seconded by Senator Reed and carried, the report of the Committee was adopted and S.B. No. 1772, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE DEPARTMENT OF HAWAIIAN HOME LANDS," passed First Reading and was recommitted to the Committee on Housing and Hawaiian Programs.

Senator Crozier, for the Committee on Housing and Hawaiian Programs, presented a report (Stand. Com. Rep. No. 11) recommending that S.B. No. 243 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Blair, seconded by Senator Reed and carried, the report of the Committee was adopted and S.B. No. 243, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION TO THE OFFICE OF HAWAIIAN AFFAIRS," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Ikeda, for the Committee on Agriculture, presented a report (Stand. Com. Rep. No. 12) recommending that S.B. No. 260 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Blair, seconded by Senator Reed and carried, the report of the Committee was adopted and S.B. No. 260, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR AN AGRICULTURAL LEASEHOLD SURVEY," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Ikeda, for the Committee on Agriculture, presented a report (Stand. Com. Rep. No. 13) recommending that S.B. No. 144, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Blair, seconded by Senator Reed and carried, the report of the Committee was adopted and S.B. No. 144, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO A DEPARTMENT OF ENVIRONMENTAL PROTECTION," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Cobb, for the Committee on Consumer Protection and Commerce, presented a report (Stand. Com. Rep. No. 14) recommending that S.B. No. 210 pass Second Reading and be referred to the Committee on Judiciary.

On motion by Senator Blair, seconded by Senator Reed and carried, the report of the Committee was adopted and S.B. No. 210, entitled: "A BILL FOR AN ACT RELATING TO MOTOR VEHICLE ACCIDENT REPARATIONS," passed Second Reading and was referred to the Committee on Judiciary.

Senator B. Kobayashi, for the Committee on Education, presented a report (Stand. Com. Rep. No. 15) recommending that S.B. No. 527, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Blair, seconded by Senator Reed and carried, the report of the Committee was adopted and S.B. No. 527, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," passed Second Reading and was referred to the Committee on Ways and Means.

ORDER OF THE DAY

RE-REFERRAL OF SENATE BILL

The President re-referred the following Senate bill that was introduced:

Senate Bill	Referred to:
No. 1565	Committee on Judiciary, then to the Committee on Ways and Means

At this time, Senator Crozier, chairman of the Committee on Housing and Hawaiian Programs, requested a waiver of the 48-hour Notice of a Public Hearing on Senate Bill Nos. 1772 and 1932, and the President granted the waiver.

Senator Holt, chairman of the Committee on Tourism, Recreation and Planning, requested a waiver of the 48-hour Notice of a Public Hearing for the subjects listed on the agenda of the Senate Tourism, Recreation and Planning Committee's hearing notice for Thursday, February 16, 1989, and the President granted the waiver.

At this time, Senator Solomon rose to speak on a point of personal privilege as follows:

"Mr. President, your Senate Committee (on Agriculture) had a joint hearing this morning with the House Agriculture Committee on House Bill 958 and Senate Bill 882, relating to farm loans to the Hilo Coast Processing Company in order for it to maintain and improve its ability to produce and manufacture sugar, sugarcane byproducts and generate electric power.

"As you well know, Mr. President, the sugar industry is critical to the health of the Big Island economy. It is more crucial in some areas such as Hilo and the Hamakua Coast where the industry is the most critical factor in the social and economic survival of the communities and associated businesses.

"As is the case for all agricultural industries, the sugar industry consists of four major activities that are totally interdependent and must be fully coordinated for the industry to prosper. These activities are: production, processing, marketing and consumption. Each of these activities and the linkages between them must be strong for the total system to succeed.

"As you well know, Mr. President, last year in the Senate we took a very strong position on the issue of collateral. And at this time, Mr. President, I would like to ask if the chairman on Agriculture would yield to a question?"

The President posed the question to the chairman and Senator Ikeda having answered in the affirmative, Senator Solomon asked:

"Mr. President, I would like to ask the chairman on Agriculture, has the issue of collateral been addressed to your satisfaction?"

Senator Ikeda responded as follows:

"Mr. President, I would like to inform you and this honorable body that your committee has made a decision to move the bill out of the Committee on Agriculture and on to your Committee on Ways and Means.

"As you know, sufficient collateral was one of our major concerns. Based on the testimony given at this morning's hearing by the representative from HELCO, it is evident that the power plant and the land under it can be considered sound collateral. However, we have amended the bill to broaden its scope.

"Rather than just say the power plant and the land under it or any other collateral source, the bill now reads 'the power plant land under it and/or any other collateral sources,' so that the Department of Agriculture will be able to assess all of the available assets and move accordingly."

Senator Solomon continued:

"Thank you, Mr. President.

"Speaking in support of the amendment, I think, Mr. President, that we have come a long way in terms of this honorable body having an opportunity to be able to scrutinize and to look at the meaning and what these loans are all about.

"The sad part about the whole negotiation or the way that the hearing progressed is that we were unable, Mr. President, to get a commitment on the part of the HCPC as to whether or not they will be continuing in the sugar business. I think, Mr. President, that this is an issue that we still have time to negotiate with Hilo Coast Processing so that we can get a clear picture as to their future in terms of maintaining and staying on the Hamakua Coast in terms of the sugar industry.

"Thank you."

The Chair responded:

"My understanding is that the referral is from the Committee on Agriculture to Ways and Means."

Senator Holt then said:

"Mr. President, to continue on just on a related matter, since we're talking about sugar and the future of sugar being important to all of us, your Committee on Tourism, Recreation and Planning and the Committee on Agriculture will be holding a hearing tomorrow on a bill which will establish a sugar industry crisis management program in the Office of State Planning. Thank you."

Senator Hagino also rose to speak on a point of personal privilege and remarked:

"Mr. President, before I state my point, I would like to say that I am speaking as an individual and not as Majority Leader.

"Mr. President, I was greatly disturbed and saddened by the comments made on the floor yesterday just before we adjourned. My first reaction was not to react publicly but the integrity of the Fifteenth Legislature was questioned and that cannot go unanswered.

"The speakers were not happy with the legislative timetable that played a part in the avalanche of bills that were introduced two Fridays ago, which caused the jam in the printing of the bills, which in turn aggravated the public who were not able to get copies of the bills.

"Mr. President, the legislative timetable was agreed upon in caucus. I specifically remember bringing to the members' attention the early bill cutoff date. One Senator made the point that the cutoff date should not be on a Friday but should be on a Monday. Other than that, no other Senator raised any objection to the timetable.

"One of yesterday's speakers was particularly upset with the amount of waivers that were being granted. I agree on that point. I remember about a week ago, leaning to my right, and making a comment that the waivers were starting just a little bit early. But let's look at the reason for requesting these waivers. In some instances, hearing notices were already sent out but similar bills were referred to that committee the following day. Rather than make the public come to two different hearings in the same committee, a waiver was asked for. Some bills were short form bills which do not have the content in them in the first place. I have yet to hear anyone testifying for or against short form bills. Other waivers were asked two days prior to the hearing, but it would not be a 48-hour notice. It would have been a 46 or 45 hours notice.

"I agree, Mr. President, we may need a rule change that even with a waiver a notice should be published to inform the public what bills are going to be heard. And still others were made because of last minute requests from colleagues or the general public themselves.

"Mr. President, it was insinuated that we were deliberately trying to shut out the public. I assure you that that was not the case, and I say that for every chairman that asked for a waiver. The Ways and Means chairman asked for waivers, and in all the years that I have known him he has bent over backwards to accommodate the public. He has opened up the budget conferences to the public like it never was before, even to the point of making worksheets, budget worksheets available to them.

"If we had a unicameral legislature then I would share the concerns expressed yesterday. However, waiving the 48-hour notice does not automatically shut off the public. Most of these bills have double referrals and will be heard in another committee. If the bill passes the Senate it will have additional exposure to the public in the House.

"What about the bill that was waived and held in committee? Very simply, that bill is held over to the next session. It does not die.

"I looked at the bills that were waived and none of them had the urgency that it be passed this session.

"Mr. President, yesterday's speaker said that in our rush to get bills out we should not judge the session by the quantity or quality of bills that we pass or be beholden to leadership. The leadership of the Senate has never pressured a chairman to get a bill out of committee. If

that person was so bothered by the amount of requests for waivers, why was there no objection to the granting of waivers or a call for a recess to discuss this matter?

"I am disappointed that yesterday's speaker chose the route he did to make his point known. I find it ironic that we were being blamed for not following procedures in shutting out the public when that same person has chosen to shut his colleagues out by going public without giving us the benefit of trying to work it out among ourselves.

"Thank you, Mr. President."

Senator Blair then rose to state:

"Mr. President, a request was made to you, on behalf of myself and some of my colleagues, to delay the first lateral. The response was that the timetable is an agreement with the House which cannot be changed. That is a fair enough comment, but I don't think I should be faulted for going public after receiving that response.

"I think most people don't understand the basic circumstances that led to the problem. This year we're having our bill cutoff date two days later than it was last year, and the time between the introduction deadline and the first lateral is shorter than it was last year.

"The other fact that we have to appreciate is that, as compared with the Fourteenth State Legislature, the amount of time available for both primary committee chairman and the Ways and Means Committee has been constricted by eight days. That's really what caused the problem.

"In response to whether or not I spoke up when we were unilaterally handed, with no previous communication, a copy of the timetable and told to react instantaneously; the previous speaker is quite correct that I did not react to it. But once we see that the timetable that we've selected is creating problems, we should be able to respond to those problems and make amendments. We shouldn't say, simply because we have previously agreed with the House, that, notwithstanding that as a result of the timetable the public is being shut out of the process, there is nothing to be done.

"I indicated that I didn't think that anyone was deliberately trying to foreclose public input. It was deliberate only in the sense that everyone knew what was happening and refused to do anything about it. I don't think we should be limited by our initial reaction to the timetable that was handed to us by the Majority Leader at the caucus. Nothing should prevent us from reconsidering the timetable, especially when we see that problems are being created.

"I think, Mr. President, that there is still time. Although it may be too late for the primary matter committee chairman, it isn't too late for the Ways and Means Committee. We can still go back to the House and amend the first crossover deadline. If we don't go back to what it was in 1987, at least, we can offer to make some progress in that direction. My fear is that a lot of people who scrambled to get bills to the Ways and Means Committee are going to find out that the bills that they worked so hard on are not going to have adequate time at Ways and Means Committee anymore than they had time in the primary committee.

"I hope that there's still time available to take remedial action. Notwithstanding that yesterday's recommendation has apparently not met with favor, I offer as an alternative that the Senate and the House look at the first crossover deadline and make some adjustment. Thank you."

Senator Cobb added his comments and remarked:

"Several points, Mr. President. First of all, I was perhaps the one Senator that did raise objection to the timetable in terms of wanting a weekend both for cutoff and, certainly, for the first and second crossover. My prediction is, absent that weekend, a lot of bills are going to die simply because of the bottleneck, even if the staff is getting them down early. My own staff is certainly working very hard in that regard.

"Secondly, though I think if a structural or procedural problem arises, it is appropriate to discuss it first with the leadership and then with the caucus before coming here. If a matter cannot be resolved just like the matter of referral, then obviously the floor of the Senate is the proper form.

"Thank you, Mr. President."

The Chair then responded:

"Begging the members' indulgence, I'd just like to make a few comments at this time. One of the important things is that it is truly unfortunate that we were not able to get the bills out to the general public on a timely basis. But I want to make it very clear for those in the audience and those here on the floor that the Senate will not tolerate any cutting off of public participation. I do want to make it clear that there are opportunities for the public still to be heard.

"As a request from the Chair to all standing committee chairmen, in the next day or so if requests come in from the public wanting to have certain bills heard, the committee chairman should consider waiving those bills on to allow time for the bills to be heard in the next committee.

"I know it's very difficult for subject matter committees to get everything on deck and ready for movement on time. But, faced with the situation as it existed a week ago, it was totally impossible to mechanically print all the bills quickly and that's one cause of the problem. There will be several opportunities for input, should some of you chairmen decide to move measures by waiver on to the last committee.

"There will be opportunity for input in the final committee; there will be opportunity for input after the crossover in the House; there will be input when the House sends its bills over to the Senate. So we are trying to avoid some of the cramping of time to get committee reports out.

"But in general, I think the staff did a heck of a job in moving all of the measures. And in particular, I'd like to commend the printshop for running on the last nine days, 20 hours a day, to try to get the bills prepared and available to the general public. As all of you know, there are no charges for any bills that the general public seeks from our printshop. And the request list for bills has grown enormously over the past three years and this goes for the lobbyists themselves too. They know better than anybody else that we try to get it to them as fast as we possibly can, at no cost to them, and no cost to the general public. I want that to be known because maybe it's not known that we have boxes for lobbyists and the general public in our printshop numbering over two or three hundred ... to make sure that everyone in the public has an opportunity to receive bills that are introduced in the Legislature. I think we've made an earnest attempt.

"I want to repeat, there is no effort on the part of the Senate to disallow public input on bills. And again, I ask

all chairmen, in the next two days or so, if there are requests from the public that they feel that they were not given sufficient time for input on a bill, I would ask all chairmen to waive the bill on to the final committee so as to have that opportunity for input. For those bills with single referral, time is still available for the public to have input. It's the moving of bills on the first lateral that may cause a problem. If there is a problem with the general public, I'm sure that respective chairman will do the right thing."

Senator Blair then remarked:

"Thank you, Mr. President. I would like to reiterate two points.

"Some people would like to execute the messenger because they don't like the message. But the matter was brought up with leadership and I was advised, in no uncertain terms, that the deadline was final.

"Secondly, I think some are missing the point. The point is that there is a structural problem. That structural problem is the first crossover has been moved up by eight days and it's compressed the first half of the legislative session. If we don't address that, we're doomed to repeat our errors and that would be the greatest sin of all. I hope that the Majority Leader will call a caucus and discuss amendments to the first crossover deadline. I'll go into my concerns in greater detail. But if the position of the President of the Senate and the Speaker of the House is that the timetable is cast in stone, then that is proof that following a different procedure would have been equally pointless. Thank you."

The Chair responded:

"The decision has been cast in stone. I have spoken with the Speaker this morning. There's no change to the schedule. The schedule will proceed, as printed."

ADJOURNMENT

At 12:14 o'clock p.m., on motion by Senator Blair, seconded by Senator Reed and carried, the Senate adjourned until 11:30 o'clock a.m., Thursday, February 16, 1989.