

FORTY-FIRST DAY

Thursday, March 29, 1990

The Senate of the Fifteenth Legislature of the State of Hawaii, Regular Session of 1990, convened at 11:35 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by the Reverend Doctor Christopher Eng, United Church of Christ, after which the Roll was called showing all Senators present with the exception of Senators Aki and Holt who were excused.

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

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

Senator McCartney, on behalf of Senator Hagino and himself, introduced student "shadows," Tina Kanahele, Sesika Pulotu and Barbra Ferre, from Kahuku High School who were seated in the gallery.

Senator McCartney, on behalf of Senate President Wong, also introduced representatives of the Hawaii Census Bureau as follows:

"Mr. President, it gives me great pleasure to recognize and introduce some representatives from the Hawaii Census Bureau and to talk about the important event that's going to occur in our life here in Hawaii and nationally, the National Census Day on April 1st.

"The Senate certificate that we present to them today outlines the importance of our national census and says:

'1990 marks the 20th National Census. The genesis of the national census is rooted in the democratic traditions of our country. Article I, Section 2, of the United States Constitution mandates the undertaking of the census every ten years. The intent being to monitor the population changes of the states so that membership in the United States House of Representatives can be equitably allocated. Moreover, billions of federal dollars for a wide range of programs will be distributed to local governments based on population, age, ethnic composition, income and other census statistics. It is important for Hawaii residents to participate fully and accurately in the census to secure the most benefits for our state. An actual count is also important because census data are used for a variety of research purposes -- including scientific, economic, demographic, sociological, political and business.'

"Mr. President, I would like to introduce the two representatives here with us on the floor of the Senate. First, Lisa Naito, a former colleague of ours who served in the House of Representatives, is the master district manager for the Hawaii Census Bureau. Second, Bernard Matano who is the Waipahu district census manager."

Ms. Naito and Mr. Matano rose to be recognized and were presented Senate certificates of recognition and leis.

Senator Koki then introduced Mrs. Romalda B. Spalding as follows:

"Mr. President, this morning I am honored to introduce a very special lady. It would take many pages and many hours to enumerate her credits and accomplishments.

"She has dedicated herself to excellence in education. She is internationally recognized by other educators for her unique, effective method of teaching phonics at all age levels. She developed her system in the 1940s following extensive work under the direction of the late Dr. Samuel T. Orton, noted New York neurologist and language learning authority. The Spalding Method has been found 100 percent effective in teaching reading.

"Mr. President, on behalf of the Hawaii State Senate I'm delighted to present a certificate to Mrs. Romalda B. Spalding. The certificate reads:

'To acknowledge her dedication to excellence in education as teacher, teacher of teachers, consultant, business woman and language arts educator/author;

'To recognize the success in developing the unique, effective method of teaching phonics at all age levels -- "Unified Phonics." The Spalding Method of teaching children the English language with all its richness and variety is captured in her book, "The Writing Road to Reading" which she co-authored with her husband.

'To commend her for the many special honors she has received, for her long and distinguished career and for her efforts to improving the reading and writing abilities of all young people.'

"Mr. President, I would like to introduce to this body, Mrs. Romalda B. Spalding. Mrs. Spalding is accompanied by officers of the Spalding Education Foundation: president Lynn Gumaer, vice president Betty Lou Miura, and secretary-treasurer Sandra Myhre."

Mrs. Spalding, seated on the Senate floor, rose to be recognized and was presented the congratulatory Senate certificate and lei. The officers of the foundation also rose to be recognized and were presented leis.

Senator Chang then introduced Mr. Henry F. Rice who was also seated on the floor of the Senate as follows:

"Mr. President, on behalf of Senators Hagino and Menor, both directors of West Oahu YMCA, and Senator Bertrand Kobayashi, a director of Kaimuki YMCA, I'm proud to introduce Mr. Henry F. Rice this morning.

"Mr. Rice celebrated his retirement from the Bank of Hawaii in January 1990. He began his career with the bank in 1965 as a management trainee. In 1980, he was appointed senior vice president and manager of Bank of Hawaii's Corporate Bank Division before moving on in 1983 to serve as manager of the General Banking Group. In 1985, he was appointed as senior vice president in charge of the bank's Private Financial Services Group, which includes the management of the Pacific Islands Division.

"Henry R. Rice is also an active member of such community organizations as the Hawaii Hotel Association, the Hawaii Visitors Bureau, the Strong Foundation, and is presently chairman of the Board of Directors of the Honolulu YMCA. In the past, he has also played an active role in the Hawaii 4-H Foundation and the Bishop Museum.

"The Senate of the Fifteenth Legislature of the State of Hawaii recognizes and congratulates Henry F. Rice on the celebration of his retirement and wishes him a long and happy retirement and continued success in all his future endeavors."

Mr. Rice rose to be recognized and was presented the congratulatory Senate certificate and lei.

Senator Chang also introduced: Mr. Don Anderson, executive director of the Metropolitan YMCA of Honolulu; Mr. Dye, former executive director of the YMCA; Mrs. Nora Kurosu from the YMCA; and Mrs. Dolly Ching, executive vice president of the Bank of Hawaii, all of whom were seated in the Senate gallery to share the observance of Mr. Rice.

Senator Tungpalan, on the introduction of Mrs. Romaldo Spalding, said:

"Mr. President, I want to say a few words about our honoree Mrs. Spalding. I'm a former pupil of St. Anthony's High School where the Spalding Method was used throughout my years there. I'm sorry to say that many of the schools have forgotten the use of phonics. It really should be reintroduced in our public schools because of the fine methods utilized. I was a person who had some learning problems and were it not for Spalding I don't think I'd have gotten on the road of success as I have. Thank you very much, Mrs. Spalding, for that."

At 11:48 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:54 o'clock a.m.

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 197 to 250) were read by the Clerk and referred to committees:

Gov. Msg. No. 197, submitting for consideration and confirmation to the Governor's Agriculture Coordinating Committee, the nomination of Tamotsu Kitagawa, term to expire June 30, 1994, was referred to the Committee on Agriculture.

Gov. Msg. No. 198, submitting for consideration and confirmation to the Natural Area Reserves System Commission, the nominations of Lani Stemmermann, Ph.D., and Kost A. Pankiwiskij, Ph.D., terms to expire June 30, 1994, was referred to the Committee on Agriculture.

Gov. Msg. No. 199, submitting for consideration and confirmation to the Aquatic Life and Wildlife Advisory Committee, City and County of Honolulu, the nominations of: Leighton Almeida and Edwin A. Ebisui, Jr., terms to expire June 30, 1994; and Raymond Tamaribuchi, term to expire June 30, 1991, was referred to the Committee on Agriculture.

Gov. Msg. No. 200, submitting for consideration and confirmation to the Aquatic Life and Wildlife Advisory Committee, County of Hawaii, the nominations of Henry Ota and Clyde E. Beaudet, terms to expire June 30, 1994, was referred to the Committee on Agriculture.

Gov. Msg. No. 201, submitting for consideration and confirmation to the Aquatic Life and Wildlife Advisory Committee, County of Maui, the nominations of Roland Kaopuiki, J. Leolani Abdul Killion and Irvin L. Sarsona, terms to expire June 30, 1994, was referred to the Committee on Agriculture.

Gov. Msg. No. 202, submitting for consideration and confirmation to the Aquatic Life and Wildlife Advisory Committee, County of Kauai, the nominations of William L. Curammeng, Sr., and Arthur K. DeFries, terms to expire June 30, 1994, was referred to the Committee on Agriculture.

Gov. Msg. No. 203, submitting for consideration and confirmation to the Board of Barbers, the nominations of Gary N. Suzukawa and Kikue Yamaguchi, terms to expire June 30, 1994, was referred to the Committee on Consumer Protection and Commerce.

Gov. Msg. No. 204, submitting for consideration and confirmation to the Consumer Advisory Council, the nominations of Martha H. Luna Goo, Mary Shigeko Monden, Richard H. Oshiro, Barry Utsumi and George Rainey, Jr., terms to expire June 30, 1994, was referred to the Committee on Consumer Protection and Commerce.

Gov. Msg. No. 205, submitting for consideration and confirmation to the Contractors License Board, the nominations of Raymond Shogo Nagata, Howard H. Tasaka and Robert M. Yamada II, terms to expire June 30, 1994, was referred to the Committee on Consumer Protection and Commerce.

Gov. Msg. No. 206, submitting for consideration and confirmation to the Credit Union Review Board, the nomination of Lane H. Shibata, term to expire June 30, 1994, was referred to the Committee on Consumer Protection and Commerce.

Gov. Msg. No. 207, submitting for consideration and confirmation to the Board of Dental Examiners, the nomination of Thad Kawakami-Wong, D.D.S., term to expire June 30, 1992; Angela M. A. Chin, D.M.D., Alan T. Miyamoto, D.D.S., and Carlina T. Bartolome, terms to expire June 30, 1994, was referred to the Committee on Consumer Protection and Commerce.

Gov. Msg. No. 208, submitting for consideration and confirmation to the Board of Electricians and Plumbers, the nominations of Wesley Mark Teruya and Mike Y. Miura, terms to expire June 30, 1994, was referred to the Committee on Consumer Protection and Commerce.

Gov. Msg. No. 209, submitting for consideration and confirmation to the Elevator Mechanics Licensing Board, the nominations of Daniel J. Tucker and Thaddeus R. Tomei, terms to expire June 30, 1994, was referred to the Committee on Consumer Protection and Commerce.

Gov. Msg. No. 210, submitting for consideration and confirmation to the Board of Professional Engineers, Architects, Surveyors, and Landscape Architects, the nominations of Crystal K. Rose, George K. Nishimura, Elmer D. Phillips and Stanley J. Shigemura, terms to expire June 30, 1994, was referred to the Committee on Consumer Protection and Commerce.

Gov. Msg. No. 211, submitting for consideration and confirmation to the Board of Examiners of Nursing Home Administrators, the nominations of Tsuneko Apaka and Dale Chikuami Hahn, terms to expire June 30, 1994, was referred to the Committee on Consumer Protection and Commerce.

Gov. Msg. No. 212, submitting for consideration and confirmation to the Board of Speech Pathology and Audiology, the nominations of Shannon Y. Ching, Debra Ann K. Ohta and Kenneal Y. C. Chun, M.D., terms to expire June 30, 1993, was referred to the Committee on Consumer Protection and Commerce.

Gov. Msg. No. 213, submitting for consideration and confirmation to the Board of Veterinary Examiners, the nominations of Bjarne N. Folling, D.V.M., and Janet Marie Everett-O'Gara, terms to expire June 30, 1994, was referred to the Committee on Consumer Protection and Commerce.

Gov. Msg. No. 214, submitting for consideration and confirmation to the King Kamehameha Celebration Commission, the nominations of: Lucy M. Akau, term to expire June 30, 1991; Lovey L. Y. C. Apana, Lyndon Nani Lee Rego, Owen M. K. Ho, Harold C. Johnston, Evangeline Ochie Bush and Samuel Spencer, terms to expire June 30, 1994; and Harriet Kealohaalii Smith, term to expire June 30, 1993, was referred to the Committee on Culture, Arts and Historic Preservation.

Gov. Msg. No. 215, submitting for consideration and confirmation to the Hawaii Education Council, the nominations of: Ron Harris-White, term to expire June 30, 1993; Andy Y. Nii, Barbara J. Furstenberg, Ph.D., Vivian S. P. Ing and Darlene E. Martin, terms to expire June 30, 1994, was referred to the Committee on Education.

Gov. Msg. No. 216, submitting for consideration and confirmation to the Education Commission of the States, the nomination of Doris M. Ching, Ph.D., term to expire June 30, 1994, was referred to the Committee on Education.

Gov. Msg. No. 217, submitting for consideration and confirmation to the Library Advisory Commission, City and County of Honolulu, the nominations of: Philip Soliven Adao, term to expire June 30 1993; Sally Ann Harper, Hazel K. Kauahikaua and Dorothy M. Bobilin, terms to expire June 30, 1994, was referred to the Committee on Education.

Gov. Msg. No. 218, submitting for consideration and confirmation to the Library Advisory Commission, County of Hawaii, the nominations of Frank G. Nelson and Fumiyo Yamanaka, terms to expire June 30, 1994, was referred to the Committee on Education.

Gov. Msg. No. 219, submitting for consideration and confirmation to the Library Advisory Commission, County of Maui, the nominations of: Robert Buchanan and Tatiana Trailov, terms to expire June 30, 1994; Janice S. Espiritu, term to expire June 30 1993; and Jane H. Taura, term to expire June 30, 1992, was referred to the Committee on Education.

Gov. Msg. No. 220, submitting for consideration and confirmation to the Library Advisory Commission, County of Kauai, the nominations of: Frederico R. Cuaresma, term to expire June 30, 1991; Peggy T. Cha, Priscilla T. Leong, Virginia A. Rapozo, Jean E. Sato and Jay Anthony Taylor, terms to expire June 30, 1994, was referred to the Committee on Education.

Gov. Msg. No. 221, submitting for consideration and confirmation to the Statewide Health Coordinating Council, the nominations of: Merrie Kim Aipoalani and Norman J. N. Holt, Sr., terms to expire June 30, 1993; and Stanley H. Raymond II, term to expire June 30, 1992, was referred to the Committee on Health.

Gov. Msg. No. 222, submitting for consideration and confirmation to the Honolulu Subarea Health Planning Council, the nominations of: T. Samuel Lee, Leonard P. Paresa, Jr., and Mark H. Yamakawa, terms to expire June 30, 1994; and Jean Mary Weaver, term to expire June 30, 1991, was referred to the Committee on Health.

Gov. Msg. No. 223, submitting for consideration and confirmation to the Central Oahu Subarea Health Planning Council, the nominations of: Doris Ahana, Sharon H. S. Ota and Kevin C. Zurlage, terms to expire June 30 1994; and Carl T. Hamada and David Sakata, terms to expire June 30, 1992, was referred to the Committee on Health.

Gov. Msg. No. 224, submitting for consideration and confirmation to the Waianae Coast Subarea Health Planning Council, the nominations of: Isabel "Bella" Burdett-Oclinarria, term to expire June 30, 1992; Sarah K. Cordeiro, Tylette L. Hun, Helen O'Connor and Sharlette K. Poe, terms to expire June 30, 1993; and Patricia C. DeSoto, Marion Glushenko, Christine S. Jackson, Terry Ann Jones and Joyce M. O'Brien, terms to expire June 30, 1994, was referred to the Committee on Health.

Gov. Msg. No. 225, submitting for consideration and confirmation to the Windward Oahu Subarea Health Planning Council, the nominations of: Elaine Kekulaleimanu Andrade, Ann M. Ditzler and Anthony Lenzer, terms to expire June 30, 1994; Susan De Sena Hewitt, term to expire June 30, 1991; and Anthony C. Ornellas, term to expire June 30, 1992, was referred to the Committee on Health.

Gov. Msg. No. 226, submitting for consideration and confirmation to the Hawaii County Subarea Health Planning Council, the nominations of: Bob T. Kita, Carol Lestina-Mattes and Sheldon C. N. Spencer, terms to expire June 30, 1991; Guy H. Nagai, term to expire June 30, 1992, and Shirley Ann Yamaoka-Greig, term to expire June 30, 1993, was referred to the Committee on Health.

Gov. Msg. No. 227, submitting for consideration and confirmation to the Maui County Subarea Health Planning Council, the nominations of: Mary M. Hew, Robert L. Johnson, Ph.D., and Terry Lee Noelani Poaipuni, terms to expire June 30, 1994; Gerald G. Rabaino, term to expire June 30, 1991; and Shirley K. Takahashi, R.N., term to expire June 30, 1990, was referred to the Committee on Health.

Gov. Msg. No. 228, submitting for consideration and confirmation to the Kauai County Subarea Health Planning Council, the nominations of: Charlotte Smith Kai and Setsuo Ushio, terms to expire June 30, 1994; and Abel Medeiros, term to expire June 30, 1992, was referred to the Committee on Health.

Gov. Msg. No. 229, submitting for consideration and confirmation to the County Public Health Facility Management Advisory Committee, City and County of Honolulu, the nominations of: Miyono Kunioka and Fred A. Pritchard, terms to expire June 30, 1991; Jean L. J. Lum, Ph.D., and Neal N. Tamura, D.D.S., terms to expire June 30, 1992; Sharon E. Ogawa and Dorothy K. Ono, terms to expire June 30, 1993; and Cliff K. Cisco, Rodolfo V. Ramos and Elizabeth Anne Taga, terms to expire June 30, 1994, was referred to the Committee on Health.

Gov. Msg. No. 230, submitting for consideration and confirmation to the County Public Health Facility Management Advisory Committee, County of Hawaii, the nominations of: Jitsuo Kotake and Clifton K. Tsuji, terms to expire June 30, 1991; Clyde T. Imada and Viola M. Watson, terms to expire June 30, 1992; Ralph C. Boyea and Nelson H. Kinoshita, terms to expire June 30, 1993; Charles Sakamoto, June Yoshiko Tanoue and Deen L. Wong, M.D., terms to expire June 30, 1994, was referred to the Committee on Health.

Gov. Msg. No. 231, submitting for consideration and confirmation to the County Public Health Facility Management Advisory Committee, County of Maui, the nominations of: Pepito Ragasa and Herbert Sakakihara, terms to expire June 30, 1991; Kimie Lane and Donald K. Matsui, terms to expire June 30, 1992; Wayne M. T. Lu and Mary E. Purdy, terms to expire June 30, 1993; and Lee Y. Matsui, James B. Takayasu and Wayne M.

Takehara, terms to expire June 30, 1994, was referred to the Committee on Health.

Gov. Msg. No. 232, submitting for consideration and confirmation to the County Public Health Facility Management Advisory Committee, County of Kauai, the nominations of: Ludvina K. Takahashi and Florence Tomita, terms to expire June 30, 1991; Richard Wilson Carmichael and Myrna Anne Pualehua Kai, terms to expire June 30, 1992; Juan M. Francisco and Yonemichi Miyashiro, M.D., terms to expire June 30, 1993; and Corrado A. Altomare, Mabel Jean Odo and Alan T. Tsunoda, terms to expire June 30, 1994, was referred to the Committee on Health.

Gov. Msg. No. 233, submitting for consideration and confirmation to the Advisory Commission on Drug Abuse and Controlled Substances, the nominations of: James K. Asato and Bobbie Horowitz, terms to expire June 30, 1991; Susan Zimmerman, term to expire June 30, 1993; and Anna Riley M. Horne and Danilo E. Ponce, M.D., terms to expire June 30, 1994, was referred to the Committee on Health.

Gov. Msg. No. 234, submitting for consideration and confirmation to the State Council on Mental Health and Substance Abuse, the nominations of: Susan Meyers Chandler, term to expire June 30, 1991; Phillip A. Michaels, term to expire June 30, 1992; and Michael Charles Pablin, term to expire June 30, 1993, was referred to the Committee on Health.

Gov. Msg. No. 235, submitting for consideration and confirmation to the Advisory Council for Children and Youth, the nominations of: Marian D. Rauch, Ph.D., Ernest Y. Martin and Godfrey "Kaipo" Kealalio II, terms to expire June 30, 1994; and Jerilyn G. O'Banion and Val T. Iwashita, Ed.D., terms to expire June 30, 1993, was referred to the Committee on Human Services.

Gov. Msg. No. 236, submitting for consideration and confirmation to the Advisory Council for Community Services, the nominations of: Vicky G. Ramil, term to expire June 30, 1991; and Frank DeCosta, Sr., term to expire June 30, 1994, was referred to the Committee on Human Services.

Gov. Msg. No. 237, submitting for consideration and confirmation to the Board of Human Services, the nominations of: Rose Marie H. Duey, Andre' S. Wooten and Asako T. Iwamoto, terms to expire June 30, 1994, was referred to the Committee on Human Services.

Gov. Msg. No. 238, submitting for consideration and confirmation to the Board of Vocational Rehabilitation, the nominations of: Paul Takehiro and Jenny C. Peters, terms to expire June 30, 1994, was referred to the Committee on Human Services.

Gov. Msg. No. 239, submitting for consideration and confirmation to the Civil Rights Commission, the nominations of: Daphne E. Barbee, term to expire June 30, 1991; Jackie Mahi Erickson and Richard J. Port, terms expire June 30, 1992; and Amefil Agbayani, Ph.D., and Josephine G. Epstein, terms to expire June 30, 1993, was referred to the Committee on Judiciary.

Gov. Msg. No. 240, submitting for consideration and confirmation to the Defender Council, the nominations of Robyn Ululani Au and Lynn Higashi Hiatt, terms to expire June 30, 1994, was referred to the Committee on Judiciary.

Gov. Msg. No. 241, submitting for consideration and confirmation to the Board of Registration, Island of Oahu, the nomination of Tirrell B. McGruder, term to expire

June 30, 1994, was referred to the Committee on Judiciary.

Gov. Msg. No. 242, submitting for consideration and confirmation to the Board of Registration, Island of Hawaii, the nomination of Mabel Ishii, term to expire June 30, 1994, was referred to the Committee on Judiciary.

Gov. Msg. No. 243, submitting for consideration and confirmation to the Board of Registration, Maui, Molokai, Lanai and Kahoolawe, the nomination of Martha A. Evans, term to expire June 30, 1994, was referred to the Committee on Judiciary.

Gov. Msg. No. 244, submitting for consideration and confirmation to the Board of Registration, Kauai and Niihau, the nomination of Malcolm Y. Doi, term to expire June 30, 1994, was referred to the Committee on Judiciary.

Gov. Msg. No. 245, submitting for consideration and confirmation to the Advisory Commission on Employment and Human Resources, the nominations of: Ethel Aiko Oda, Ph.D., term to expire June 30, 1991; and Fely Igne Libre, Catherine E. Ouye and Jo-Alyce Peterson, Ed.D., terms to expire June 30, 1993, was referred to the Committee on Labor and Employment.

Gov. Msg. No. 246, submitting for consideration and confirmation to the Tourism Training Council, the nominations of: Philia L. Lau, Eberhard Linke and Winona Whitman, terms to expire June 30, 1994, was referred to the Committee on Tourism, Recreation and Planning.

Gov. Msg. No. 247, submitting for consideration and confirmation to the Board of Taxation Review, First Taxation District (Oahu), the nomination of Robert F. Maynard, term to expire June 30, 1994, was referred to the Committee on Ways and Means.

Gov. Msg. No. 248, submitting for consideration and confirmation to the Board of Taxation Review, Third Taxation District (Hawaii), the nomination of Albert "Benny" Rodero, term to expire June 30, 1994, was referred to the Committee on Ways and Means.

Gov. Msg. No. 249, submitting for consideration and confirmation to the Board of Taxation Review, Second Taxation District (Maui), the nominations of: Filemon M. Nanod, term to expire June 30, 1993; and George Y. Kondo, term to expire June 30, 1994, was referred to the Committee on Ways and Means.

Gov. Msg. No. 250, submitting for consideration and confirmation to the Board of Taxation Review, Fourth Taxation District (Kauai), the nomination of Belma A. Baris, term to expire June 30, 1994, was referred to the Committee on Ways and Means.

HOUSE COMMUNICATION

Hse. Com. No. 395, returning Senate Bill No. 2112 which passed Third Reading in the House of Representatives on Wednesday, March 28, 1990, was read by the Clerk and was placed on file.

STANDING COMMITTEE REPORTS

Senator Menor, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 2809) recommending that H.B. No. 2020 pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Menor, seconded by Senator Levin and carried, the report of the Committee was adopted and H.B. No. 2020, entitled: "A BILL FOR AN ACT RELATING TO PROBATE," passed Second Reading and was placed on the calendar for Third Reading on Monday, April 2, 1990.

Senator Menor, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 2810) recommending that H.B. No. 2188, as amended in S.D. 1, pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Menor, seconded by Senator Levin and carried, the report of the Committee was adopted and H.B. No. 2188, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO OFFENSES AGAINST PROPERTY RIGHTS," passed Second Reading and was placed on the calendar for Third Reading on Monday, April 2, 1990.

Senator Menor, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 2811) recommending that H.B. No. 2614, as amended in S.D. 1, pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Menor, seconded by Senator Levin and carried, the report of the Committee was adopted and H.B. No. 2614, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO SMALL CLAIMS, DISTRICT COURTS," passed Second Reading and was placed on the calendar for Third Reading on Monday, April 2, 1990.

Senator Menor, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 2812) recommending that H.B. No. 2843, H.D. 1, as amended in S.D. 1, pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Menor, seconded by Senator Levin and carried, the report of the Committee was adopted and H.B. No. 2843, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO VOTERS," passed Second Reading and was placed on the calendar for Third Reading on Monday, April 2, 1990.

RE-REFERRAL OF SENATE RESOLUTIONS

The Chair re-referred the following Senate concurrent resolution and Senate resolution:

Senate Concurrent Resolution	Referred to:
No. 240 and Planning	Committee on Tourism, Recreation
Senate Resolution	Referred to:
No. 222	Committee on Tourism, Recreation and Planning, then to the Committee on Legislative Management

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

"Mr. President, when organizations testify before your Senate committees, we tend to take them at face value -- we assume they're being honest about their backgrounds and credentials. We rarely take the time to check references to see if credentials boasted by organizations are valid. We rarely try to find out if a supposedly

objective, scientific organization has any conflict of interest.

"Well, it turns out that more caution may be advisable. It turns out that this Legislature has been sleazed.

"Last year, the Pacific Whale Foundation (PWF) was instrumental in killing bills that would have restricted or banned parasails and jet skis. The Maui-based PWF testified in your committee hearings that there is insufficient evidence to conclude that parasails and jet skis have a negative impact on whales and their calves.

"I'd like to share with you a Pacific Whale Foundation statement before this body:

'Our position with respect to the operation of thrillcraft and parasails is based solely on a consideration of the scientific data concerning the distribution and behavior of humpback whales'

"It turns out, that's a lie.

"On the very day that the PWF was here at the Capitol to testify last year providing their 'unbiased, scientific opinion' that parasails and jet skis need not be banned, foundation employees were at that very moment on Maui booking parasail and jet ski rides.

"What I have here is an invoice or a voucher from a company called Air, Land and Sea, an ocean activities booking company. There are several activity desk phone numbers listed on that invoice, but the office number printed on the invoice is 874-1000. If you had called 874-1000 last year to book a ride on a jet ski or parasail, the person answering the phone would have greeted you with 'Pacific Whale Foundation.'

"I have here documents showing that Greg Kaufman, who is the president and founder of the PWF, bought into Air, Land and Sea in 1985. And within a couple of years after that became the sole owner of Air, Land and Sea.

"Air, Land and Sea was purchased by Kaufman for the purpose of booking people on his whale-watch boats, and for selling tickets for rides on parasails and jet skis.

"The PWF representatives testifying before your committees posed as objective scientists. They claimed their opposition to a thrillcraft ban was based 'solely on a consideration of the scientific data' The chairman of your Energy and Natural Resources Committee, last year, listened to the testimony of an internationally respected whale researcher, Mark Ferrari, and then listened to the PWF. Your chairman offered what was a legitimate expression of confusion. He said, 'Here we have the Ferraris saying that jet skis and parasails are detrimental to whales and their calves, and the PWF saying the opposite. So what are we to do? Nothing. The conflicting testimony caused confusion and inaction.

"The reality is that the PWF has a clear conflict of interest -- they have made money off parasails and jet skis and they are major players in the whale-watch business. They therefore had a special interest in the defeat of any legislation that would restrict thrillcraft operations and have a potential negative impact on their whale-watch enterprise.

"Unfortunately, Mr. President, this one example is but the tip of the iceberg. The PWF is one of a half-dozen organizations in Hawaii with state and federal government permits to research whales. Without this permit, the average person or for-profit whale watch entity must stay at least a 100 yards away from a whale. A key benefit of

the permit, therefore, is that it allows researchers to get much closer to whales.

"My research provides documented evidence that the PWF has systematically and recklessly exploited their research permit to exploit for profit the very whales they pretend to be researching and protecting.

"One of the conditions of the PWF research permit is that it not be used for commercial purposes. In other words, researchers cannot legally make money off their permit. But that is precisely what Kaufman and the PWF are all about.

"This two-page advertisement appeared this month in Japan in a magazine called 'Marine Diving.' It's a very fancy, expensive, well-written ad. It's all in Japanese; I've had it translated. The headline says, 'Come swim with the Whales.' For 225,000 yen, approximately \$1500, Japanese tourists are being encouraged to come to Hawaii and swim with the whales. The photo that's on the top of the first page of the ad shows somebody with snorkel gear an arm's length away from a whale under the water. And this is what Japanese tourists are being encouraged to come to Hawaii to do under the guise of research. This ad makes it unmistakably clear that PWF is using its permitted access to whales to make money at the whale's expense. The ad goes on to say that for your 225,000 yen you can have an adventure vacation of your lifetime, come listen to the whales singing.

"Pressed, the PWF claims this is a part of their research intern program. Former PWF employees, however, say these lay people -- these tourists who have paid to swim with the whales -- are not trained to do any research at all. According to one previous researcher, this program is simply an 'adventure holiday' for tourists and one more money-making scam for the PWF.

"The same researcher said that the research activity of the PWF is 'a smokescreen to fool the public.' She said the research data is collected but never assimilated. She said she left the PWF when she discovered that 'its commercial interests overwhelmed its scientific interest.'

"The PWF further exploits its research permit by regularly selling its whale access privilege to filmmakers. One example is a 1989 agreement between the PWF and a Japanese filmmaker, Mitsuaki Iwago of NHK, the Japanese public TV station. The agreement, unbeknownst to the National Marine Fisheries, allowed Iwago to rent the PWF's research permit for \$300 a day. PWF employees took Iwago on excursions for the sole purpose of getting up-close footage of whales for his TV documentary -- a clear violation of the terms of PWF's permit.

"Incidentally, Kaufman allowed his permit to be used in this fashion for several weeks in exchange for the daily fee plus a commitment from Iwago to help PWF get a foothold in the whale-watch business in Japan -- further rewards not in keeping with the terms of his federal permit.

"Actually, the examples that I shared with you are but the latest in a long string of sleazy maneuvers by Kaufman and the PWF.

"When Kaufman first applied for the National Marine Fisheries Service (NMFS) permit, he told the agency that he had a college degree. But when an employee of NMFS checked on it, that they had learned that he had never received a degree from that college. When confronted, Kaufman admitted that he had falsified his application and reportedly said, 'I never dreamed you'd check up on it.'

"Kaufman has also claimed to have received a doctorate degree from the University of New Zealand. This is also false.

"In 1982, Maui News reporter Gary Kubota revealed that the PWF was falsely telling the public that it was exempt from federal taxes and that donations to it were tax deductible. When confronted, Kaufman said the erroneous statement was 'unintentional.'

"This pledge sheet for a PWF 'Whalewatch to Save the Whales' has this 'unintentional' tax deduction notice in bold letters both on the front and on the instruction sheet attached to it. 'Pledges Are Tax Deductible,' it says on both sheets -- unintentionally in bold. (Incidentally this pledge sheet was copied virtually verbatim from a Greenpeace 'Walk for the Whales' pledge sheet. Kaufman plagiarized the entire Greenpeace pledge sheet and its instructions and then rushed to have his fundraiser a week before Greenpeace's effort.)

"In this May 13, 1980 letter, signed by Greg Kaufman, he wrote to Greenpeace International soliciting financial help. In this letter he claims to be the scientific advisor for the Greenpeace Hawaii office. But the person who was president of Greenpeace Hawaii at the time says Kaufman was never a scientific advisor to the organization and in fact has never been involved in Greenpeace Hawaii at all.

"While holders of a whale research permit are not supposed to make money off the permit, Kaufman has for years used his permit to get close to whales and then profit from the photographs and video footage obtained from such close proximity. This price sheet distributed in Maui hotels in the early 1980s reveals that Kaufman charges as much as \$385 for one photo of a breaching whale.

"Employees of the National Marine Fisheries Service and others have told me that Kaufman has been seen harassing whales for up to an hour and a half trying to obtain the perfect photo for sale. When a photo of a breaching whale with the West Maui mountains, for instance, in the background ends up for sale for \$385, and Kaufman is subsequently questioned by the National Marine Fisheries about exploiting his research permit, he claims he wasn't flying his research flag at the moment when he happened to get the photo. According to a NMFS source, Kaufman, typically, says, and this was provided to me by a National Marine Fisheries person, typically he says, 'We had just finished our research for the day, taken our research flag down and were about to come ashore when all of a sudden this whale breached right in front of us and I happened to get the photo. I was just lucky that day.'

"Also of interest is the PWF's Adopt-a-Whale fundraising program. This is a promotional piece put out by PWF that says, 'How would you like to add a 80,000 pound member to your family? You can, through the PWF's Adopt-a-Whale program! For a minimum \$50 donation, PWF will name a humpback whale after you, a friend, or your favorite name. In return for your donation, you will receive a handsome adoption certificate complete with a photograph of your whale, suitable for framing and a map of its last location and an informative letter about your whale'

"According to PWF former employees, what the foundation failed to tell anybody was that dozens and dozens and dozens of people 'adopted' the same whale over and over again. I'm told that, originally, the plan was just to have one person adopt one whale, but when

the foundation began getting hard up for money they began 'adopting' the same whale over and over again.

"In this letter to a potential donor, dated June 5, 1981, Kaufman claims that 'Of the monies that are donated to the foundation, over 95% of the funds are used directly in "saving" whales.' To the contrary, former PWF employees and bookkeepers for the foundation tell me that is not true. Former employees maintain that very little of the money from such donations goes into 'saving' whales or whale research.

"This June 12, 1988 letter to the National Marine Fisheries was written by a person who had worked for Kaufman and PWF as a senior research assistant for two years, until April of 1987. In this letter the researcher writes: 'Mr. Kaufman claims to have conducted research for over 11 years in Hawaii. However, he has yet to publish any of his Hawaiian data. His "research" appears to be a front for soliciting money from the public.'

"This researcher (and several other PWF employees I've talked to) also charged Kaufman with harassing the very whales he is supposed to be protecting. She relates in her letter one incident in 1987 when Kaufman returned from a day on his research boat with a Japanese film crew and informed the office staff that he had twice run his boat over a whale. She said, 'Kaufman jokingly suggested it would be easy to recognize this particular whale in the future due to the propeller nicks.'

"This researcher further writes that Kaufman 'discourages his researchers from publishing data which conflict with his whalewatch and business interests despite the fact that such data would be of direct use to the National Marine Fisheries in helping protect the whales and their habitat through whalewatching regulations.'

"Along the same lines, this researcher said Kaufman refused to publish study results showing that a jet ski operator near Maalea Bay was having a detrimental effect on whales and calves. She wrote, 'Mr. Kaufman informed us that he was not interested in publishing these data as it was a conflict of interest with his whale-watching business and with his role in instigating that the jet ski operation be installed in this particular locale.'

"The writer also made a charge that I heard from numerous people in this investigation that Kaufman insists that Americans going to work for PWF in Australia -- and Australians coming to work for PWF here -- lie to immigration officials, claiming to be visitors rather than workers. Other sources confirm that these immigration violations continue to this very day with Australian citizens working for and being compensated by PWF without a green card -- without a work-permit visa.

"In this letter dated March 4, 1988, another former researcher for the PWF took the extraordinary step of speaking out against his former employer. This letter is long and I'll just hit on a few of the main points. This researcher writes that there are many reasons that Kaufman should not be granted a research permit for marine mammals, including (1) 'The lack of scientific direction from Kaufman;' (2) 'The fact that not one publication in a respected peer-reviewed scientific journal has resulted from Mr. Kaufman's many years of research in Hawaii;' (3) 'Employees have been discouraged from analyzing data and writing papers by Kaufman;' (4) 'The fact that Kaufman presented false resight information to the "Adopt-a-Whale" parents' (5) 'That myself and other Australians were told by Mr. Kaufman to enter the United States on a holiday visa and to say to U.S. immigration officials we were holidaying in Hawaii when in fact we were working and being paid'

"Alarming, I am receiving mounting evidence of harassment of whales by the PWF. In citing his reasons in opposition to the PWF holding a permit, this researcher writes, 'Mr. Kaufman's attitude toward whales, research and other marine mammal scientists, employees, and the public lead me to believe he is not a fit person to hold a marine mammal research permit. I have seen Mr. Kaufman drive a boat around whales in such a way that I can come to no conclusion other than he is goading the animals. He has shown to me his method of causing an animal to bring its tail out of the water, which is to accelerate quickly up behind the whale in the hope of forcing the whale into diving. I have seen Mr. Kaufman drive around whales in such a way as to make the animal do something spectacular for a photograph such as a breach or tail slap.'

"One last letter from a person who also has extensive and impressive credentials in the area of humpback whale research who worked as a senior research associate for the PWF during the 1986-87 whale season. In this letter, this person writes that the PWF engages in 'research techniques which blatantly violate permit restrictions and unduly compromise the study subject' -- the whale.

"This researcher, too, charges that Kaufman's 'research techniques' harass and endanger the whales. He further corroborates the statements of others charging that Kaufman abuses his whale research permit by using it to take tourists and filmmakers right into the middle of whale pods. The researcher writes, '... the research permit states that photography should not influence or control the conduct of the research. This is basically impossible to comply with if working on a documentary with a highly paid film crew wanting those dramatic shots of whales under the boat or plane, etc. One such sequence was on a TV special about PWF during which the commentator mentioned how the whale actually hit the boat.'

"He continues, 'The fact that PWF is heavily involved in both aspects of whale watching provides ample opportunity for conflicts of interest to arise. This point was made painfully clear to me by Mr. Kaufman who told me that if the data I was analyzing suggested (as it appeared to) that there was a higher incidence of mother/calf pods in the northern end of Maalea Bay that I could not publish it because of his concerns about increased regulations on his whale watch boat which leaves from this region.'

"Mr. President, this researcher concludes his letter with the following: 'Finally, I had to address these issues when I realized that PWF's testimony helped to influence the National Marine Fisheries into recommending against the Hawaiian Humpback Whale Sanctuary. This is especially disturbing now that the conflicts of interest have become so obvious.' He adds, 'My criticism should be respected as firsthand accounts of a former agent under the permit in question.'

"Mr. President, I have spoken with more than 40 people in my looking into the PWF. Researcher after researcher agrees that Kaufman and the PWF are totally untrustworthy because of their financial interest in whale-watching, rather than in the whales themselves. But no researcher put it quite as well as one who is internationally known and respected for his whale research. He said that Kaufman and his chief researcher, Paul Forestell, are what he called the Jim and Tammy Baker of whale conservation. He said, 'What Jim and Tammy Baker are to religion, Kaufman and Forestell are to humpback whales. They claim to do research, they claim to be conservationists ... but they're not really concerned about the environment. They're mainly

concerned about making a lot of money, and building an empire.'

"By that yardstick, Mr. Kaufman has indeed succeeded. The PWF today has seven whale-watch boats that take tourists out on the water in search of whales. These boats are part of the for-profit side of the PWF, called Pacific Whale Foundation Cruise Co. The names are obviously very similar, and for obvious reasons. Kaufman wants tourists and others to believe that the money they pay to ride on one of his boats contributes to whale research.

"As this photo of a PWF Cruise Co. sign makes clear, Kaufman claims that any money you pay to go on the whale-watch goes into 'whale conservation and research.' That's simply not true. The money paid for whale-watches with the PWF Cruise Co. goes directly into the for-profit side.

"A former PWF bookkeeper told me the only time money from the for-profit side of Kaufman's enterprise would go into the non-profit side was when Kaufman wanted to keep his income from being taxable. For instance, this bookkeeper told me that if a tourist paid \$45 for a snorkeling outing, Kaufman would arbitrarily choose some amount, say \$10, to list as a donation to the PWF simply as a means of avoiding paying taxes on the entire amount.

"Many of us in this Legislature have been lobbied by the parasail operators. They want desperately to put as much distance as possible between themselves and the jet skis. Three Maui parasail operators had difficulty this year finding someone to conduct a study that would conclude that parasails do not bother whales. Finally, they offered \$24,000 for any research group, any organization, to do the study. Guess who came forward to take the job. Yep ... the PWF. Kaufman gets the \$24,000 from the parasail operators plus the free use of a parasail boat from January 3rd through April 30th of this year. A good businessman, Kaufman manages to get paid at both ends: the people he's taking out on the parasail boats he's using free of charge are the tourist who pay him 225,000 yen to swim with the whales.

"What's particularly repulsive is that Kaufman knows that parasails and jet skis are detrimental to whales. In this June 19, 1988 tape of 'NBC News, Sunday Today,' Kaufman was interviewed and states emphatically that thrillcraft have driven whales away from Maui shores. In this tape, Kaufman says, and I quote him, 'In the last five to six years, mothers and calves have been driven off-shore by jet skis and parasails' He adds that in Maui waters there are fewer mothers and calves, and bluntly states that they've been displaced by the noisy thrillcraft. He says, 'Studies clearly indicate that sound is affecting the whales.' He concludes this interview by asking and answering an interesting question: 'Is 15 minutes of excitement on a parasail or a jet ski worth the extinction of another animal from the face of this earth? I don't think so.'

"Why would Kaufman make such statements on national television in 1988 and totally contradict himself a year later in testimony against restrictions on jet skis and parasails? The only explanation I can accept is that he tells the truth when he knows his comments will have national exposure, and then lies here at home, willing to misrepresent studies and contradict other researchers to protect his financial interests.

"I talked to Greg Kaufman yesterday, Mr. President, and he typically denied everything -- including any involvement with the PWF ad in the Japanese magazine. He concluded our conversation by saying, 'Don't worry,

I'm going to come forth with my sources and they will impeach all of your sources.'

"Last night, I received a letter from The Cousteau Society -- one of my sources that Greg Kaufman evidently considers impeachable. This is a letter from Jean-Michel Cousteau. I would like, with your indulgence, to read part of this. It says:

'Dear Senator Reed,

I have been quoted as stating that it is a "proven fact" that thrillcraft harm whales. Paul Forestell of Pacific Whale Foundation has disagreed, countering that there is "no scientific evidence" of direct harm. I believe our difference of opinion has severe environmental consequences.

The gathering of scientific evidence is a slow, expensive process. The scientific method demands rigor and we thus abide by its findings. I realize that there is no published scientific data to prove that any craft are harmful to humpbacks in Maui or elsewhere. Such studies are worthy of funding, especially as our interest in these marine mammals increases and as the number of boats, thrillcraft and whalewatchers increases.

But when seeking answers to environmental questions, waiting for scientific evidence can be a smokescreen behind which questionable practices and behaviors continue while damage is done.

What is needed in Maui is a different view of determining harm. In our legal system, we assume an individual innocent until proven guilty. If that were to be our position in Maui, then it would be up to the whales or their advocates to prove that they are harmed by human behavior. That would, of course, become most possible after harm was done and data collected. This seems to be a comfortable position for Pacific Whale Foundation.

But humpback whales are an endangered species, here in Maui to mate and give birth, the most vulnerable point in a cycle of life, death, and perpetuation of a unique life form. To harm them to the point of being sure could make it too late to reverse the damage.

We must begin to assume guilt until innocence is proved, to assume the toxic dump, or plant, or intruder is guilty of environmental harm until proven innocent. The burden of proof must rest on the intruder, not on the voiceless victims.

Where is the middle ground? Perhaps we can begin to rely on a more ancient wisdom -- intelligent observation. Let us turn to scientists who are willing to share their observations -- such as Mark and Debbie Ferrari and others have done -- in order to help us determine risks and make timely decisions.

I consider it a proven fact that based on such observations, whales are being adversely affected by boats and thrillcraft, having to spend additional energy avoiding such craft. For an endangered species with a newborn calf, we can take a risk on the side of protection while we wait for scientific evidence.

My father and I have seen so much abundance disappear over the past 40 years. We stubbornly and optimistically believe that the seas are resilient and will rebound if we can discipline ourselves, if we can more gently wait to act until we are more sure of the consequences. I am equally sure that all in nature that cannot speak for itself in this debate, including the humpback whales of Maui, will suffer if we insist on

waiting until we are utterly sure of the damage inflicted.

Because humpbacks are a migratory species, the burden of responsibility for what happens to them in Maui becomes a concern of more than local interests. They are a cosmopolitan species, one which becomes an international responsibility, symbolic of global connections.'

And Mr. Cousteau concludes,

'Exactly because there is no scientific evidence that the whales are not harmed, I cannot accept Paul Forestall's comments as anything but self-serving. I urge you to carefully consider what is at risk here from the broadest long-term view.'

"Mr. President, as is probably apparent by now, I have accumulated far more information than I can take our time to share.

"So in conclusion, let me say that I am convinced, and share with other members of this Senate my conclusion that the PWF is not to be believed. As a research organization, it has absolutely no credibility in the international research community -- nor in my mind. In fact, my investigation of Kaufman and Forestall and the PWF has convinced me that they will do anything and say anything -- even support a position that is harmful to whales -- in order to support their exploitation of whales for their personal profit.

"Mr. President, I have written to the director of the National Marine Fisheries and to the Department of Land and Natural Resources (DLNR). I'm asking both agencies to rescind the PWF's research permits. I believe evidence of abuses and violations of those permits on the part of PWF is abundant and undeniable. And I submit that the incidents to which I've referred are but the tip of the iceberg.

"I will also provide to the National Marine Fisheries and the DLNR a complete list of the scientists, researchers, and former PWF employees who are willing to corroborate and add to every allegation that I've made this morning.

"Further, I'm asking the Internal Revenue Service to audit both the non-profit and for-profit sides of the PWF.

"At the very least, Mr. President, I hope that this has cleared up any confusion that has existed in this Senate over why the PWF would oppose laws keeping whale-watch vessels away from whales, why the PWF would claim that jet skis and parasails do not bother whales and their calves, and why the PWF would lead the effort to kill bills restricting parasails and jet skis. Now we know why."

Senator Matsuura then remarked:

"Mr. President, just to comment on the previous speaker's remarks.

"The Senator from Maui can be assured that your Committee on Energy and Natural Resources will look into the matter that was just discussed. This is the first time that I'm hearing all of this. I'm sure that previous employees of the Pacific Whale Foundation have provided the Senator from Maui with enough information to warrant some kind of hearing to clarify his concerns. If the allegations are correct, I will make sure that their privileges as a foundation be denied. Thank you very much."

The Chair then made the following observation:

"Members of the Senate, the Chair would like to ask the chairman of the Committee on Energy and Natural Resources to gather the testimony presented by the Pacific Whale Foundation and to see if, in fact, the testimony presented to the committee has any credibility. That report should be brought to the President's office and we will act accordingly."

Senator McMurdo then added:

"Mr. President, I would just like to commend the Senator from Maui for the work that he did on gathering the information and this proof on the Pacific Whale Foundation. It appears to me to be proof at this point and I have no reason to doubt it. I would like to thank him, on behalf of the Senate."

The President then stated:

"Members of the Senate, I want to make it very clear that this is not a witch hunt. I think we must ascertain here that people who testify before standing committees of the Legislature are being truthful. That's the basic bottom line."

ADJOURNMENT

At 12:30 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., Friday, March 30, 1990.