

SIXTY-FIRST DAY

Tuesday, May 1, 1990

The Senate of the Fifteenth Legislature of the State of Hawaii, Regular Session of 1990, convened at 12:01 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by Senator Eloise Y. Tungpalan, Hawaii State Senate, after which the Roll was called showing all Senators present.

The President had not read and approved the Journal of the Sixtieth Day.

ORDER OF THE DAY

MATTERS DEFERRED FROM
MONDAY, APRIL 30, 1990

HOUSE COMMUNICATIONS

Hse. Com. No. 837, informing the Senate that the report of the Committee on Conference on the disagreeing vote of House to the amendments proposed by the Senate to H.B. No. 2500, H.D. 1, was adopted by the House; and H.B. No. 2500, H.D. 1, S.D. 1, C.D. 1, passed Final Reading in the House of Representatives on April 30, 1990, was placed on file.

At 12:04 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:07 o'clock a.m.

Hse. Com. No. 838, returning S.C.R. 100, S.D. 1, which was adopted by the House of Representatives on April 30, 1990, in an amended form, was placed on file.

On motion by Senator Blair, seconded by Senator Reed and carried, the Senate disagreed to amendments proposed by the House to S.C.R. 100, S.D. 1 and S.C.R. No. 100, S.D. 1, H.D. 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING A STUDY OF MANDATORY ERRORS AND OMISSIONS INSURANCE COVERAGE FOR REAL ESTATE SALESPERSONS, BROKERS, MANAGERS, AND AGENCIES," was placed on file.

Hse. Com. No. 839, returning S.C.R. No. 141, S.D. 1, which was adopted by the House of Representatives on April 30, 1990, in an amended form, was placed on file.

On motion by Senator Blair, seconded by Senator Reed and carried, the Senate agreed to the amendments proposed by the House to S.C.R. No. 141, S.D. 1, and S.C.R. No. 141, S.D. 1, H.D. 1, entitled: "SENATE CONCURRENT RESOLUTION ENCOURAGING THE DEPARTMENT OF AGRICULTURE TO APPROVE THE INTRODUCTION OF THE FLORIDA LARGEMOUTH BASS (*MICROPTERUS SALMOIDES FLORIDANUS*) BY THE WESTIN KAUAI HOTEL TO ITS FRESHWATER LAGOON FOR THE PURPOSE OF STUDYING ITS ADAPTATION TO HAWAIIAN WATERS," was finally adopted.

Hse. Com. No. 840, returning S.C.R. 216, which was adopted by the House of Representatives on April 30, 1990, in an amended form, was placed on file.

On motion by Senator Blair, seconded by Senator Reed and carried, the Senate agreed to the amendments proposed by the House to S.C.R. No. 216, and S.C.R. No. 216, H.D. 1, entitled: "SENATE CONCURRENT RESOLUTION URGING THAT THE GOVERNOR

REQUEST THE FEDERAL GOVERNMENT TO RELINQUISH ITS USE OF MAKUA VALLEY," was finally adopted.

Hse. Com. No. 841, returning S.C.R. No. 225, S.D. 1, which was adopted by the House of Representatives on April 30, 1990, in an amended form, was placed on file.

On motion by Senator Blair, seconded by Senator Reed and carried, the Senate disagreed to the amendments proposed by the House to S.C.R. No. 225, S.D. 1, and S.C.R. No. 225, S.D. 1, H.D. 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE CITY AND COUNTY OF HONOLULU TO PROCEED WITH STEPS NECESSARY TO ACQUIRE THE QUEEN EMMA GARDENS APARTMENT PROJECT, AND REQUESTING THE HOUSING FINANCE AND DEVELOPMENT CORPORATION TO CONDUCT A FEASIBILITY STUDY ON THE ACQUISITION OF FEDERALLY-SUBSIDIZED RENTAL HOUSING PROJECTS," was placed on file.

Hse. Com. No. 842, returning S.C.R. No. 245, S.D. 1, which was adopted by the House of Representatives on April 30, 1990, in an amended form, was placed on file.

On motion by Senator Blair, seconded by Senator Reed and carried, the Senate agreed to the amendments proposed by the House to S.C.R. No. 245, S.D. 1, and S.C.R. No. 245, S.D. 1, H.D. 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES AND THE DEPARTMENT OF THE ATTORNEY GENERAL TO INVESTIGATE AND DETERMINE THE APPROPRIATENESS OF PROPOSED MAJOR RENOVATIONS AT PARADISE PARK, MANOA VALLEY, OAHU," was finally adopted.

THIRD READING

H.B. No. 2944, H.D. 1:

By unanimous consent, H.B. No. 2944, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE INCOME TAX," was recommitted to the Committee on Ways and Means.

At this time, Senator Cobb asked:

"Mr. President, is a recommittal debatable?"

The Chair answered: "No."

Senator Cobb continued: "I'll rise later on a personal privilege on this. Thank you."

Senator Reed then rose to ask if the chairman of Ways and Means Committee would yield to a question and the Chair having posed the question to the chairman and Senator Yamasaki responding in the affirmative, Senator Reed asked:

"Mr. President, why is it necessary to recommit this bill?"

Senator Yamasaki answered:

"Mr. President, there's been an agreement between the House and Senate on this measure, relating to mass transit, and we will be voting on another bill later on."

At 12:10 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:15 o'clock a.m.

FINAL READING

S.B. No. 3246, H.D. 2:

Senator Yamasaki moved that S.B. No. 3246, H.D. 2, having been read throughout, pass Final Reading, seconded by Senator A. Kobayashi.

Senator Blair rose to speak against the measure as follows:

"Mr. President, I won't reiterate what I said this morning but I do need to make a correction. I misstated the position of the Department of Taxation. I was confusing their testimony on House Draft 1. I thought it was their testimony on House Draft 2. Notwithstanding the fact that they have reached that agreement, I still think the fundamental policy decision is incorrect and will be voting 'no.'"

Senator B. Kobayashi rose to speak in support of the bill and remarked:

"Mr. President, this bill is definitely a half a loaf bill, but it does allow the state to collect future obligations from time share units. It does, indeed, forgive past obligations but we presently have litigation that would suggest that without this bill the state will be unable to collect future obligations. So we're at least getting future revenues with this bill. Thank you."

Senator Cobb rose to ask if the previous speaker would yield to a question and the Chair posed the question to Senator B. Kobayashi and Senator B. Kobayashi responded:

"Mr. President, I will, but this is not my bill."

Senator Cobb interjected:

"No, but since you spoke in favor of it, I'd just would like to rise on a point of parliamentary inquiry, and ask whether or not under the existing law time share operators pay the transient accommodations tax?"

The Chair responded:

"If you need an answer, the answer is 'no.'"

Senator Cobb then rose to speak against the measure and said:

"Thank you, Mr. President. Then I rise to speak against the bill.

"When the Senator from the 16th District was in the House, we spent long hours negotiating the subject of whether or not time sharing should be classified as a resort use or non-resort use, and the decision arrived at over a very difficult conference committee extending for a period of two years was that time sharing is definitely a resort use, that it has no place in residential neighborhoods and that its allowance in the county was strictly resort.

"I find it, therefore, incongruous that time sharing owners do not pay the transient accommodations tax since it is used virtually exclusively for tourists' transient accommodations. And I think if you reflect in the Archives and the deliberations that took place in 1979, 1980, 1981 and 1982, that element of legislative intent would be crystal clear.

"So the bill, in effect, falls short in two areas. One that it fails to clarify that time sharing is a transient use, subject to the transient accommodations tax; and two, the forgiveness of tax for those involved in time sharing -- neither of which I think is right or should be supported. And I will join the Majority Floor Leader in opposing this legislation."

Senator Blair, speaking against the measure, said:

"Mr. President, the suggestion was made that there is some sort of a case before the courts which has suggested that there would be a problem with the prospect of application of the statute. I'm not aware that any court has ruled on this issue, or whether there is anything in the record that indicates how the court would rule on the issue. But in any event, there's no difficulty with passing a law that would clarify matters prospectively and that's a separate and independent question on whether or not we forgive anything in the past."

The motion was put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 3246 and S.B. No. 3246, H.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE GENERAL EXCISE TAX," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 20. Noes, 5 (Blair, Cobb, Fernandes Salling, Levin, Reed).

Conf. Com. Rep. No. 20 (H.B. No. 3149, H.D. 1, S.D. 1, C.D. 1):

On motion by Senator Matsuura, seconded by Senator Holt and carried, Conf. Com. Rep. No. 20 was adopted and H.B. No. 3149, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO COASTAL ZONE MANAGEMENT," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Blair).

Conf. Com. Rep. No. 24 (H.B. No. 2258, H.D. 2, S.D. 2, C.D. 1):

On motion by Senator Yamasaki, seconded by Senator Aki and carried, Conf. Com. Rep. No. 24 was adopted and H.B. No. 2258, H.D. 2, S.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO LEGISLATIVE MANAGEMENT," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 34 (H.B. No. 2984, H.D. 1, S.D. 1, C.D. 1):

On motion by Senator Crozier, seconded by Senator Reed and carried, Conf. Com. Rep. No. 34 was adopted and H.B. No. 2984, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO KALAWAHINE LANDS," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 82 (H.B. No. 2287, H.D. 2, S.D. 2, C.D. 1):

On motion by Senator Yamasaki, seconded by Senator Chang and carried, Conf. Com. Rep. No. 82 was adopted and H.B. No. 2287, H.D. 2, S.D. 2, C.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO A FINANCIAL MALL," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 83 (H.B. No. 2288, H.D. 2, S.D. 2, C.D. 1):

On motion by Senator Yamasaki, seconded by Senator Chang and carried, Conf. Com. Rep. No. 83 was adopted and H.B. No. 2288, H.D. 2, S.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HIGH TECHNOLOGY," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 84 (H.B. No. 2290, H.D. 2, S.D. 2, C.D. 1):

On motion by Senator Yamasaki, seconded by Senator Chang and carried, Conf. Com. Rep. No. 84 was adopted and H.B. No. 2290, H.D. 2, S.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ECONOMIC DEVELOPMENT," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 133 (S.B. No. 2801, S.D. 1, H.D. 1, C.D. 1):

On motion by Senator McCartney, seconded by Senator Menor and carried, Conf. Com. Rep. No. 133 was adopted and S.B. No. 2801, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO COUNTY LICENSES," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 158 (S.B. No. 2338, S.D. 1, H.D. 2, C.D. 1):

On motion by Senator Yamasaki, seconded by Senator Hagino and carried, Conf. Com. Rep. No. 158 was adopted and S.B. No. 2338, S.D. 1, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO LEGISLATIVE MANAGEMENT," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 162 (S.B. No. 3119, S.D. 1, H.D. 1, C.D. 1):

Senator Yamasaki moved that Conf. Com. Rep. No. 162 be adopted and S.B. No. 3119, S.D. 1, H.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator A. Kobayashi.

Senator Levin rose to speak against the bill as follows:

"Mr. President, given the hour, I will be very brief. I think that the substance of this bill sets a very bad precedent, sends a very bad message. We've talked all year about the kinds of messages we're sending to the public, to the youth of our state, in particular, on various issues. Here we have a bill that, although it may be revenue neutral at the present time, clearly is going to be a tax reduction on the sale of cigarettes in the future. It

seems most inappropriate to reduce the tax on a product that is so detrimental to the health of the community. Therefore, I would ask that my colleagues vote against Senate Bill 3119."

The motion was put by the Chair and carried, Conf. Com. Rep. No. 162 was adopted and S.B. No. 3119, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE TOBACCO TAX," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 16. Noes, 9 (Blair, Crozier, Hagino, Kobayashi, B., Koki, Levin, McMurdo, Menor, Reed).

Conf. Com. Rep. No. 203 (H.B. No. 2884, H.D. 2, S.D. 1, C.D. 1):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Conf. Com. Rep. No. 203 was adopted and H.B. No. 2884, H.D. 2, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE COMPENSATION OF PUBLIC OFFICERS AND EMPLOYEES," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 206 (H.B. No. 2891, H.D. 2, S.D. 2, C.D. 1):

Senator Yamasaki moved that Conf. Com. Rep. No. 206 be adopted and H.B. No. 2891, H.D. 2, S.D. 2, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator A. Kobayashi.

Senator Blair rose to speak against the bill as follows:

"Mr. President, I'll be voting 'no' on this measure. As I read it, it allows a person to purchase state retirement credits for periods of time for which they would also be receiving their military pension and it's just too blatant an example of what is, I guess, commonly referred to as 'double dipping' for me to be comfortable voting in favor of it. Thank you."

The motion was put by the Chair and carried, Conf. Com. Rep. No. 206 was adopted and H.B. No. 2891, H.D. 2, S.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Blair).

At this time, Senator Holt introduced his father Charley Holt, who was seated in the gallery, to the members of the Senate.

RECONSIDERATION OF ACTION TAKEN

S.B. No. 1985, S.D. 1, H.D. 1:

Senator Yamasaki moved that the Senate reconsider its action taken on April 12, 1990 in disagreeing to the amendments proposed by the House to S.B. No. 1985, S.D. 1, seconded by Senator A. Kobayashi and carried.

On motion by Senator Yamasaki, seconded by Senator A. Kobayashi and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 1985, S.D. 1, and S.B. No. 1985, S.D. 1, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII

BISHOP RESEARCH INSTITUTE," was placed on the calendar for Final Reading on Wednesday, May 2, 1990.

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

"Mr. President, I'd like to rise briefly on personal privilege. In deference to the Chair's ruling about a motion to recommit not being debatable, I acceded to that, and therefore ask for the privilege of speaking on personal privilege.

"I am personally aggrieved that this bill was recommitted even though I recognize it was part of a package deal in favor of mass transit. The reason I'm aggrieved is that we have only provided a \$1 rebate to the taxpayers of Hawaii, at the same time that we now have on track and moving a massive tax increase in order to finance a fixed guideway system. And this bill, which would have provided \$40 million in tax relief, in tax reform has in effect been killed for this session. I don't think that's the right way to approach it.

"And the reason that I say that is that I think our taxpayers have suffered more than enough, not only in past years but certainly during the course of the legislation that we passed this session. And I'm hopeful that we can either redress this now or in the session to come because, otherwise, the taxpayer will have ended up forfeiting what little tax reform was offered, only to pay for a train, and the first down payment is going to be made this year but the real payment will begin in approximately two years when the excise tax kicks in. Thank you."

At 12:26 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:35 o'clock a.m.

The Chair then made the following observation:

"Members of the Senate, the Chair would like to take this opportunity to thank the workers in the Senate for putting on the dinner this evening and I think we ought to give them a round of applause.

"Secondly, as I usually do every year, I want to apologize for the extension and also to express appreciation for the patience of the Senators who have been sitting around here since 9:00 o'clock while things were being hammered out."

ADJOURNMENT

At 12:37 o'clock a.m., on motion by Senator Blair, seconded by Senator Reed and carried, the Senate adjourned until 10:00 o'clock p.m., Wednesday, May 2, 1990.