

TENTH DAY

Thursday, January 30, 1992

The Senate of the Sixteenth Legislature of the State of Hawaii, Regular Session of 1992, convened at 11:38 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by the Reverend David Y. Ota, Good Samaritan Episcopal Church, after which the Roll was called showing all Senators present with the exception of Senators Holt, Mizuguchi and Reed who were excused.

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

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 110 to 113) were read by the Clerk and were placed on file:

Gov. Msg. No. 110, dated January 27, 1992, transmitting "A Special Report to the Legislature on the Gang Response System," coordinated by the Department of the Attorney General and the Gang Response Committee, in response to Act 189, SLH 1990.

Gov. Msg. No. 111, dated January 23, 1992, transmitting the Final Compensation Plan regarding the compensation plans for blue and white collar classes, in response to Sections 77-4 and 77-5, HRS.

Gov. Msg. No. 112, dated January 21, 1992, transmitting reports prepared by the Department of Health: "Status of New Positions in the Department of Health FY 1991 - 1992," in response to Section 49, Act 296, SLH 1991; and "Preventing Domestic Violence," in response to Section 50, Act 296, SLH 1991.

Gov. Msg. No. 113, dated January 24, 1992, transmitting a report prepared by the Department of Health in response to Section 342D-54, HRS, on the status of the Water Pollution Control Revolving Fund.

STANDING COMMITTEE REPORT

Senator Crozier for the Committee on Housing and Hawaiian Programs, presented a report (Stand. Com. Rep. No. 1603) recommending that S.C.R. No. 24, as amended in S.D. 1, be adopted.

Senator Crozier then moved that the report of the Committee be adopted and S.C.R. No. 24, S.D. 1, be adopted, seconded by Senator Fernandes Salling.

Senator Solomon then rose to speak in support of the resolution as follows:

"Mr. President, I would like to include as part of my support of the resolution, the remarks that were made by Mrs. Hoaliku Drake, chairman of the Hawaiian Homes Commission. As you know, we did have a hearing yesterday and I feel that her remarks are befitting in support of the resolution. I will not go into detail as to her remarks, being that we will be holding a press conference shortly after the session, but I would like to submit Mrs. Drake's testimony as my own for the record.

"Mrs. Drake's remarks to the Senate Committee on Housing and Hawaiian Programs, public hearing of January 29, 1992, are as follows:

'The purpose of the resolution is to urge the President and the Congress of the United States to honor and fulfill the Federal trust obligations to native Hawaiians, the beneficiaries of the Hawaiian Homes Commission Act, 1920, as amended ("HHCA").

'From the beginning of its enactment until Hawaii was admitted into the Union, the HHCA was a Federal law. The Governor of the Territory of Hawaii was an appointee of the President of the United States; and the Territory itself was under the administration of the U. S. Department of the Interior. Title to Hawaiian home lands vested in the United States.

'Upon statehood, the State of Hawaii entered into a compact with the U. S. and assumed the duties of management and disposition of Hawaiian home lands. The State of Hawaii further agreed to adopt the HHCA as a provision of the State Constitution. The applicable law states in part:

"As a compact with the United States relating to the management and disposition of Hawaiian home lands, the Hawaiian Homes Commission Act, 1920, as amended, shall be adopted as a provision of the Constitution... [Section 4, Admission Act of March 18, 1959, Pub. L. No. 86-3, 73 Stat. 4]"

'The State and its people reaffirmed this compact by adding another provision to the Hawaii State Constitution whereby they accepted specific trust obligations relating to the management of Hawaiian home lands imposed by the federal government:

"The State and its people do hereby accept, as a compact with the United States, or as conditions or trust provisions imposed by the United States, relating to the management and disposition of the Hawaiian home lands, ... the State and its people do further agree and declare that the spirit of the Hawaiian Homes Commission Act looking to the continuance of the Hawaiian home projects for the further rehabilitation of the Hawaiian race shall be faithfully carried out. [Hawaii Const., Art. XI, Sec. 2 (1959), renumbered Art. XII, Sec. 2, (1978). (Emphasis Added.)]"

'The trust responsibilities assumed by the State of Hawaii are clear and have been reaffirmed in court decisions. The Hawaii Supreme Court in Ahuna v. DHHL, 64 Haw. 327 (1982), concluded that the State of Hawaii assumed a fiduciary obligation upon being admitted into the Union as a state.

'The Supreme Court of Hawaii also said that in the years preceding Hawaii statehood, the United States Government served as trustee with respect to Hawaiian home lands and the native Hawaiian beneficiaries of those lands.

'The Federal-State Task Force on the HHCA in 1983 reported many instances in which breaches occurred during the Territorial period. Hawaiian home lands were made available for public use by Federal and Territorial agencies through executive actions that were not authorized by the HHCA. Hawaiian home lands under the management of the Territorial Commissioner of Public Lands were even sold to private parties, without legal authorization and without compensation to the Hawaii Home Lands Trust.

'A prime example of Hawaiian home lands illegally set aside by executive order is that of the Lualualei

lands. A total of 1,356 acres of prime land were taken from the Trust. A legal determination by the Federal District Court has prevented the Department of Hawaiian Home Lands from asserting its claim, but the moral issue remains: the obligation of the Federal government to make the Trust whole requires replacement or compensation for the lands taken.

'In addressing land controversies affecting the Hawaiian Home Lands Trust, the Land Claims Task Force formed by Governor Waihee adopted these guiding principles in recommending remedies:

(1) The federal government is responsible and should compensate the trust for illegal or improper withdrawals, transfers, dispositions and associated uses of Hawaiian Home lands that occurred after the Hawaiian Homes Commission Act was enacted in 1921 and that accrued until statehood in 1959.

(2) The state government is responsible and should compensate the trust for illegal or improper withdrawals, transfers, dispositions and associated uses of Hawaiian home lands that occurred after statehood.

(3) The state government will take responsibility for remedying post-statehood circumstances of illegal or improper withdrawals, transfers, dispositions and associated uses of Hawaiian Home Lands that were initiated before statehood.

State remedies will not include compensation owed to the trust for such illegal or improper dispositions and uses before statehood. The state may hold the federal government responsible for certain post-statehood circumstances.

(4) Compensation owed to the trust from the state government for illegal or improper withdrawals, transfers, dispositions and associated uses of Hawaiian Home Lands may be, for example, in the form of cash, land, services, capital improvement projects, or combinations thereof.

'The land claims were discussed in testimony provided to the Interim Joint Committee on the Governor's Action Plan on November 19, 1991. In particular I invite your attention to the testimony given by the third panel, which discussed Federal issues.

'On a more timely basis, concern has been expressed as to the Bush Administration's intent to freeze or cut back on domestic programs as implied in the President's State of the Union speech last night. There is the concern that the target of such cuts could well be programs that benefit native Hawaiians and funding of infrastructure for Hawaiian home lands.

'A well-documented case can be made to prove the absence of Federal aid and support to the Hawaiian Homes program as well as inaction and neglect in the management and disposition of trust lands during the Territorial period.'

Senator Crozier also rose to speak in support of the resolution and stated:

"Mr. President, I rise to speak in support of the resolution and my only comment is when the governor goes to Washington, D.C., I hope that this action by the Senate and, hopefully, the House will be able to touch the Congress of the United States and be a contributing factor in their supporting the Hawaiian Homes Commission. Thank you."

Senator Tungpala also supported the resolution and said:

"Mr. President, I rise to speak in favor of this resolution.

"Congress in 1921 had the right idea in passing the Hawaiian Homes Commission Act. It's too bad they set aside the wrong lands.

"Here are the facts. Only 20% of the inventoried lands were awarded because these were the ones that could be used for homes or farming. The remaining 80% are in remote areas without water, roads or utilities. Our congressional delegation has done a yeoman's job in trying to get monies for these programs but we need the help of the President and Congress.

"I surely hope that the President will follow through with his statement in his State of the Union address that, 'Whatever programs Congress creates, Congress should pay.' We are waiting for that to happen. Thank you."

The motion was put by the Chair and carried, Stand. Com. Rep. No. 1603 was adopted and S.C.R. No. 24, S.D. 1, entitled: "SENATE CONCURRENT RESOLUTION URGING THE PRESIDENT AND THE CONGRESS OF THE UNITED STATES TO HONOR AND FULFILL THE FEDERAL TRUST OBLIGATIONS TO NATIVE HAWAIIANS," was unanimously adopted, with the exception of Senators Holt, Mizuguchi and Reed who were excused.

ORDER OF THE DAY

RE-REFERRAL OF SENATE BILLS

The President re-referred the following Senate bills that were introduced:

Senate Bill	Referred to:
No. 1911	Committee on Consumer Protection and Business Regulation
No. 2059	Committee on Education, then to the Committee on Judiciary
No. 2212	Committee on Health and Human Services, then to the Committee on Ways and Means
No. 2242	Committee on Tourism and Recreation, then to the Committee on Ways and Means
No. 2291	Committee on Consumer Protection and Business Regulation
No. 2407	Jointly to the Committee on Culture, Arts and Historic Preservation and the Committee on Housing and Hawaiian Programs, then to the Committee on Ways and Means
No. 2972	Committee on Employment and Public Institutions, then to the Committee on Ways and Means
No. 3015	Committee on Transportation and Intergovernmental Relations, then to the Committee on Ways and Means
No. 3070	Jointly to the Committee on Education and the Committee on Housing and Hawaiian Programs, then to the Committee on Ways and Means
No. 3156	Committee on Judiciary

No. 3210 Committee on Planning, Land and Water Use Management, then to the Committee on Ways and Means

No. 3330 Committee on Employment and Public Institutions, then to the Committee on Ways and Means

No. 3378 Committee on Employment and Public Institutions, then to the Committee on Ways and Means

No. 3457 Committee on Employment and Public Institutions, then to the Committee on Ways and Means

The Chair then made the following observation:

"Members of the Senate, with reference to our drive-in bill pick up service which was provided to the public these last two days, there were four requests made. All four requests were met. We will be sending out a flyer to all of the lobby groups via our boxes in the Senate Print Shop. Those caring to utilize our services will have two opportunities to pick up bills. An announcement will be made and flyers will be distributed informing the general public of the procedure - where and how they are to use it. The garage area on the Hemmeter property is being used for this purpose. It has worked out very well and I think once people get used to the system there will be more use of the service."

ADJOURNMENT

At 11:49 o'clock a.m., on motion by Senator Solomon, seconded by Senator George and carried, the Senate adjourned until 11:30 o'clock a.m., Friday, January 31, 1992.