

FIFTEENTH DAY

Wednesday, February 10, 1993

The Senate of the Seventeenth Legislature of the State of Hawaii, Regular Session of 1993, convened at 11:37 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by the Reverend Alison M. Dingley, Institute for Human Services, after which the Roll was called showing all Senators present with the exception of Senators Fukunaga and Nakasato who were excused.

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

Senator Chang then introduced to the members of the Senate, on behalf of the Senate Women's Caucus, a group of women from the Hawaii State Commission on the Status of Women who were seated in the gallery.

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 156 to 158) were read by the Clerk and were placed on file:

Gov. Msg. No. 156, dated January 22, 1993, transmitting the "Report to the Legislature Relating to Condominium Property Regime Summary of Programs and Financial Information on the Condominium Management Education Fund," December 31, 1992, prepared by the Hawaii Real Estate Commission, Department of Commerce and Consumer Affairs, pursuant to Act 283, SLH 1990.

Gov. Msg. No. 157, dated January 25, 1993, transmitting a report on the activities of the Hawaiian Home Lands Trust Individual Claims Review Panel, pursuant to Act 323, SLH 1991.

Gov. Msg. No. 158, dated January 25, 1993, transmitting the 1992 Annual Report of the Medical Claims Conciliation Panel and the Design Professional Conciliation Panel, Department of Commerce and Consumer Affairs, pursuant to Sections 672-12 and 671-20, HRS.

SENATE CONCURRENT RESOLUTION

The following concurrent resolution (S.C.R. No. 36) was read by the Clerk and was referred to committee:

Senate Concurrent Resolution

No. 36 "SENATE CONCURRENT RESOLUTION REQUESTING A STUDY ON THE PROVISION OF HIGH OCCUPANCY VEHICLE THROUGHWAYS ALONG CONGESTED CORRIDORS TO INCREASE HOV LANE UTILIZATION."

Offered by: Senator Aki, by request.

Referred to: Committee on Tourism, Recreation and Transportation

SENATE RESOLUTION

The following resolution (S.R. No. 29) was read by the Clerk and was referred to committee:

Senate Resolution

No. 29 "SENATE RESOLUTION REQUESTING A STUDY ON THE PROVISION OF HIGH OCCUPANCY VEHICLE THROUGHWAYS ALONG CONGESTED CORRIDORS TO INCREASE HOV LANE UTILIZATION."

Offered by: Senator Aki, by request.

Referred to: Committee on Tourism, Recreation and Transportation

ORDER OF THE DAY

RE-REFERRAL OF SENATE BILLS

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

Senate Bill Referred to:

No. 1425 Committee on Education, Labor and Employment, then to the Committee on Judiciary

No. 1696 Jointly to the Committee on Planning, Land and Water Use Management and the Committee on Government Operations, Environmental Protection and Hawaiian Programs, then to the Committee on Ways and Means

No. 1713 Committee on Human Services, then to the Committee on Ways and Means

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

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

"About a dozen years ago, the people of Hawaii were informed that a new, clean source of energy was about to bless our state. Geothermal energy had proven itself around the world and we were now going to tap our resource under the Puna District and meet the electricity needs of Puna, the whole Big Island, the whole state. We would not have to depend on foreign oil. Our electric rates would surely go down. The power source was pollution-free. And probably we would be able to find an article or two that claimed that it would cure cancer and prevent warts. That last item is meant to be something of a joke, but actually there are claims that there are medicinal powers from the steam vents and hot springs and there was talk at one time about creating a health spa.

"At any rate, now it is 1993 and the people of my district are hurting. One developer after another has proven that it cannot control the resource. My constituents are being driven out of their homes by noise and by fumes, and when they object they are somehow deemed to be the bad guys.

"Seven people were arrested in the last couple of days trying to get their government to pay attention to their plight. Ironically, according to this morning's paper, it took one of those protestors to notify the government personnel who were supposed to be monitoring the well that the operation had started up, and he had to climb a barbed wire fence in order to do so. Those who lived through the '60s will know what I mean when I say that we may need to put out a new bumper sticker 'Free the Puna-7.'

"The reason I'm taking your time today and the time of all the members of the Senate is to ask you to please be

open to the pleas of the people affected. The notion of a cable serving Oahu's needs has long since been put on hold. The promise that electric rates would drop was never true. The notion that geothermal was pollution free was strictly a pipe dream. Pacific Resources tells us that we won't even be able to reduce the need for imported oil. And yet still we continue to allow drilling within a few yards of the nearest residence. I ask you, what is the great prize that makes all this sacrifice worthwhile?

"Our geothermal resource is different. Saying that geothermal works elsewhere in the world is not relevant. Our resource is hotter; it's more toxic and it's under more pressure. Most importantly, and this comes from the scientists, there is only one other geothermal development that is geologically comparable to ours and that is in Krafla in Iceland, and it too is having terrible problems.

"Our developers obviously cannot handle our problems. Either they are incompetent or the resource is too difficult to handle with modern technology. In either case, the conclusion has to be the same. We have got to protect our people.

"I don't know that we have to stop geothermal altogether. Maybe we need to wait for the development of better technology. But at the very least, we must say 'no' to development that has no buffer zone protecting residents. The reason we're reluctant to admit that is that it would be a multi-million dollar proposition to create the buffer and eliminate the problem, and nobody wants to spend that money.

"PGV's permit allows it to release hydrogen sulfide up to 25 parts per billion over an hour average. On Monday, two days ago, after saying that there would be no release of hydrogen sulfide, they hit a peak of 672 parts per billion, an average of 150 per hour. That's 672 peak, 150 average -- the permit says 25. And the response from PGV was, and I quote: 'It's not a major technical problem,' according to Steve Morris, PGV vice president. And those numbers are the numbers that have been publicly printed in the paper. I am told by reliable sources that PGV's monitors picked up not 672 but 250,000 parts per billion on site. This is where one of their workers was felled and had to be treated with oxygen.

"Now, this all occurs when the company knows it is under the greatest scrutiny. Can you imagine what it's going to be like when people aren't paying close attention? It cannot go on. Government must not let this go on. It isn't fair. It isn't decent. Even the Department of Health seems to be at the end of its rope. But the Department of Health does not run government. The governor and this Legislature do.

"Our Civil Defense Director Harry Kim says that this is another in a series of examples of how government has failed to insure and protect the health and welfare of the residents of the area. It is totally unacceptable and totally irresponsible. I agree with him.

"I ask you to understand the magnitude of what has happened. We have police officers who had to evacuate their positions on Monday because they could not stand the fumes, and they're saying they will not respond to future incidents. We have Civil Defense saying that it cannot assure the health and safety of the community. And we have Civil Defense telling us that Monday was the worst situation, ever, respecting hazards to the people that they have ever encountered.

"I've asked the chair of our Science Technology Committee to call for a briefing by the state Department of Health, Department of Land and Natural Resources,

and Hawaii County Civil Defense. I'm also going to ask for a meeting on the Big Island in which all the various county and state agencies can get together to evaluate and review what has happened. In the meantime, I ask you to understand what people are going through. I ask that you be open to their pleas, and I ask you to help in finding a solution.

"Thank you, Mr. President."

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

"Mr. President, in response to the concerns expressed by my colleague from Puna, let me say, as chairman of the Senate Committee on Environmental Protection, I have travelled to the district on behalf of the committee and solicited facts and information about the situation that our colleague's constituents face; I will again direct the committee to do so, the specifics of which will be announced within the coming week. Thank you."

Senator Matsunaga also on a point of personal privilege stated:

"Mr. President, also in response to my Senate colleague from the Big Island on Puna's concerns, I would be happy to arrange for such an informational briefing as requested. I do think that would serve the public's interest. I will also make every effort to visit the Puna site and go there with an open mind."

Senator Levin then rose to state:

"Mr. President, I would like to thank both chairmen who have indicated their support. I did not intend to leave out the Environmental Protection Committee. I look forward to their actions."

At 11:51 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:01 o'clock p.m.

Senator Fernandes Salling then rose on a point of personal privilege as follows:

"Mr. President, would the chair of the Judiciary Committee yield to a question, please, regarding Hurricane Iniki?"

The President posed the question to the Judiciary Committee chair, and the chair having responded in the affirmative, Senator Fernandes Salling stated and asked:

"Senator Levin, it was brought to my attention about two days ago that on Kauai what we are now seeing is people who are trying to purchase automobile insurance having to wait six to seven months just to get an appointment to see these carriers to see if they can even purchase the insurance. In the meantime, if they are stopped by a police officer and are taken to court, the courts are saying that they have no choice -- no alternative but to enforce the law, which is the mandatory \$1,000 fine for not carrying insurance.

"My question to the chair is, what, if anything, has the chair done or is proposing to do to help resolve this problem, which is not just going to affect Kauai but I think is happening also here on Oahu? I think what people are saying is some may have to wait as long as a month. But we're looking at six to seven months on Kauai, just to get an appointment now, to see if one can purchase automobile insurance."

Senator Levin responded:

"Mr. President, the good Senator from Kauai raised this issue with me a couple of days ago and I've asked my staff to look for a vehicle (no pun intended) that we could use to try to resolve the problem by perhaps giving the courts discretion with respect to those who have made genuine effort to get insurance and have not been able to. I think it is not only a problem on Kauai. I think it is at least a problem on the Big Island and, perhaps, statewide, where insurance carriers are putting people off and telling them that appointments to simply apply for insurance cannot be scheduled for a substantial period of time. So we will be looking into it. Nothing has been resolved as yet but we are going to try to deal with the issue."

Senator Fernandes Salling continued:

"Mr. President, along the same line, a question regarding Hurricane Iniki. Would the chairman of the Health Committee answer a question?"

The President posed the question to the chair of the Health Committee, and the chair having replied in the affirmative, Senator Fernandes Salling asked:

"Mr. President, it came to my attention about a week ago that the Office of Emergency Permitting on Kauai was running into problems and that we had a 4- to 6-week delay in getting out those permits, although we had been assured that these permits were to be expedited immediately so that people could get on with the repair of their homes. It was brought to my attention then that the problem was not on the county level but with the Department of Health in that they only had one state worker assigned to that job of essentially rubberstamping those permits. Is the chair aware of this problem, and if so what will the chair be doing to resolve this problem?"

Senator B. Kobayashi, chair of the Health Committee, answered:

"Mr. President, I am aware of the problem. We took action asking the Department of Health to temporarily reassign some of their people to emergency duty for Department of Health permits regarding ventilation and air-conditioning. That has already been done, I believe, as of this week, if not late last week. These individuals are on temporary assignment only and the department is now looking for a more permanent solution."

Senator Fernandes Salling then said:

"Okay, thank you. Mr. Chairman, also a second question.

"Yesterday, in Ways and Means, Dr. Lewin was before us and a question was posed to him about another problem that is occurring on Kauai because of Hurricane Iniki. One pediatrician, at least, has said that he has seen an increase by 30 percent of children at his office. Our emergency doctors are saying that they are seeing things in the emergency room that they've never ever seen before due to stress and related injuries on the job, drug, alcohol abuse type problems. At any rate, the doctors that are seeing these patients (whose parents, or the patients themselves, are on unemployment insurance) are not getting paid. The question was asked whether or not the state has anything in the Department of Health to help with the medical payments because this is a problem that is not going to get better. It's on an increase. We're seeing it happening with the children, with people in general and, I'm sure, with the elderly, and we're trying to track this down too and get you more figures, but, have you had a chance to look into this to see what kind of solution that the state can provide for these people who

are on unemployment and do not qualify for medical benefits?"

Senator B. Kobayashi responded:

"We did investigate the issue of the SHIP, the State Health Insurance Program, increase. Those monies have been requested by the governor to the tune of approximately 4.5 million dollars per year for the next two years. Some of that money will be possibly used in a, how would you say, retroactive sense because that program, as you know, has been using roll-over money from previous years. So they are spending more than their appropriation of \$10 million during the current fiscal year, and probably will be spending approximately, at least \$12 million. Those extra funds are available to enroll people on Kauai and other areas because of lack of prepaid health care insurance."

Senator Fernandes Salling continued:

"And what would that cost the individual or the families, Mr. Chair?"

Senator B. Kobayashi answered:

"That's on a sliding fee schedule. I don't know quite what the schedule is. There is differential between adult and children."

Senator Fernandes Salling continued:

"The question as to affordability has not been determined yet, then?"

Senator B. Kobayashi answered:

"No. There is a fee schedule. I don't know what it is."

Senator Fernandes Salling then said:

"Because one that was quoted to me was as high as \$220 a month, and as low as \$60 a month, for your information.

"Mr. President, I bring these points to the members' attention because it illustrates to you and others how inefficient this method is by trying to take care of the problems that are occurring on Kauai. As you know, I had suggested to you as the President of the Senate to exercise your leadership by appointing a special committee on Hurricane Iniki so that I can gather this kind of information and pass it on to the committees that have jurisdiction to take care of the problem, either through legislation as is being done in the Judiciary Committee or to take care of the problem by simply contacting various people in the agencies or also to take care of the problem by submitting it to the coordinator who is now on board and operating out of the Office of State Planning. We have already started a survey on Kauai under the guise of the Office of State Planning to get a handle and grip on what are some of the major problems ranging from problems with contractors charging outrageous and unconscionable prices just to repair roofs, the primary major damage on that island, all the way to the insurance problems which by the way I've been getting conflicting reports from people back home as to what our Insurance Commissioner had announced with regard to the payment schedule and what in fact is really happening. And that has to be looked into.

"These problems are going to grow and so we have already on board a survey that is going to be conducted by phone and also in the newspaper which will give us some idea along those lines. There is a hot line that the

governor is setting up in his office and his liaison office on Kauai to accept all complaints. These complaints are to be logged down and what the governor's liaison is able to take care of, he will handle. What he cannot handle he is to pass on up to the coordinator in the Office of State Planning. Along with that plan, Mr. President, I had proposed that we on the legislative branch would establish a special committee on Hurricane Iniki whose purpose is simply to gather this kind of information, to flush out the problems that are impeding and delaying the restoration efforts and the recovery of the Island of Kauai. But it appears that this is a matter that you and the leadership may want to discuss further. I think that if you have to handle it this way on the floor every day by my bringing it to the members' attention so that it will get the kind of focus that it needs that it will be very inefficient, but if that is the will of the leadership and of your leadership of how to deal with this very serious problem on Kauai, then so be it, Mr. President. Thank you."

The Chair then remarked:

"Senator, your concerns are very commendable and expected as Senator from Kauai. I want to assure you and the people of Kauai that the concerns and the problems that you have brought forward will be addressed by the appropriate committees and public hearings are being scheduled in the various committees. Also, the Chair will appoint a Senator to coordinate all of these hearings and bills. I will be announcing the appointment of a standing committee chairman to coordinate all Kauai Iniki bills and resolutions."

Senator Fernandes Salling continued on a point of personal privilege and said:

"Mr. President, on a point of personal privilege. I find that totally unacceptable. As one of the Senators from Kauai who has been dealing with this problem now for well over two months, to have your leadership appoint another Senator not familiar with the problems of the district on the island from which we will be seeing more work needing to be done, is not an acceptable solution. I think the people of Kauai are going to be watching all of us this session, and that they expect a lot more from the Democrats. And I urge you to reconsider what you just stated to this body and to look at the benefits of forming a special committee and having it chaired by myself and whoever else you may want to appoint that can contribute because of not being burdened by, for example, chairing dual committees or in a leadership position. Thank you."

Senator Solomon then rose to state:

"Mr. President, also on a point of personal privilege. Just to clear the record, Mr. President, I want to assure the Senator from Kauai that I, as part of the leadership, was never consulted on this issue. I would like to reassure the Senator that this decision was made by the President in consultation with whom I do not know. I feel that a situation of this magnitude should have been brought to the leadership of the Senate for consideration and I think that we should have been consulted as to how we felt the Senator's request from Kauai should have been handled. There is no doubt in my mind that the fact-finding mission as to the traumatic devastation on the Island of Kauai could be no better served than by the Senator from Kauai."

"Mr. President, as a follow-up and in support of the previous speaker's remarks as to what issue this body should take into consideration and deliberation, I'd like to ask the chair of Consumer Protection if she would yield to a question?"

The President posed the question to the committee chair of Consumer Protection and the committee chair responded:

"No, I will not, Mr. President."

Senator Solomon continued:

"Thank you very much, Mr. President. That is the chair's prerogative. However, Mr. President, I would like to remind the Consumer Protection chair that we have a devastating insurance problem triggered by HIG's inability to pay claims for damages caused by Iniki. Now in accordance to an article which appeared in today's Honolulu Advertiser, Standard & Poor has lowered credit ratings of Hawaiian Electric Co. and its parent company, Hawaiian Electric Industries, citing such factors as HECO's massive planned construction program, reliance on outside power producers, and fallout from the Hawaiian Insurance Group problem."

"All of these negatives will be used as an excuse for rate hikes which must be approved by state regulators."

"I'm hoping that as hearings progress, the Consumer Protection Committee chair would solicit the information from the Insurance Commissioner and monitor this problem. Our situation on the Big Island has always been a negative one, in terms of HELCO being unable to deliver the proper services required by Big Island consumers. I think that these and other issues need our immediate attention and I'm hoping that the chair would see her way clear as to making sure that we here in the Senate will be provided sufficient information so we will know how to deal with the situation realistically."

"Again, Mr. President, I think that it is imperative that the public realizes, as well as my fellow colleagues, and the Senator from Kauai, that we in the leadership were not advised or given the prerogative to address this concern and I think perhaps the President should look to his own rules on openness and fairness and how we are dealing with the issues which were also the promises that were made in your speech on opening day."

"Thank you very much."

Senator Reed then rose to state:

"Mr. President, I would like to also follow on a point of personal privilege. As one of the Senators who represents a portion of Kauai, I'd like to speak on behalf of the other Senator from Kauai who spoke earlier."

"One of the problems with Hurricane Iniki is that it did not affect most of us. It did not affect 85-90 percent of the state and certainly it did not affect most people who are sitting in this room who are dealing with the myriad of problems that come before the Legislature. As a result, it is easy to get caught up with concerns about Mala wharf or health care or education or whatever the issue might be. And the reality is that while life is normal for us and we go home to a home with a roof on it and four walls up, if you go to Kauai you'll see what appears to be a war zone."

"I've run into people at the airport on Kauai who are desperately trying to get off the island to go to try to find some normalcy for a few days, to go find hot water and a comfortable bed and to get away from the cold -- it's wintertime. And just day in and day out having to live with a house that's in shambles and dealing with the bureaucrats and the layers of government attempting to respond is frustrating. There is an increase in the crime rate on Kauai. These are frustrations that are normal, given the disaster. But it's natural for most people in this

Legislature to forget about it because we have other concerns and we are not reminded of it on a daily basis. And with all due respect for the chairmen of Judiciary and of Health who are dealing conscientiously with a wide range of problems, there's no way that the problems on Kauai could be dealt with in a sophisticated, efficient way unless that is the only problem being dealt with.

"I think it is short-sighted and irresponsible of this body not to have created an emergency committee to deal with the devastation wrought by Hurricane Iniki, and surely there could not be a better person to place in charge of that committee than Senator Fernandes Salling from Kauai. She knows the problems, she's been dealing with people on a daily basis on Kauai. I believe it is time in the face of a disaster such as Hurricane Iniki to set aside not only partisanship but also factionalism and immediately create a committee that deals with nothing but helping the people of Kauai and others who have been hurt by Hurricane Iniki, and appoint the Senator from Kauai to chair that committee. Thank you, Mr. President."

Senator Ikeda then rose to remark:

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

"Mr. President, I think all of us feel for the people of Kauai and we certainly are reminded everyday of the devastation of Iniki. We are all concerned about the hurricane's impact on the future of that island as well as on the rest of the state. However, Mr. President, we do have a process we follow, which is reflected in the rules of this body and I believe that these procedures are adequate. To deviate from that process in order to accommodate one situation seems to be a rather peculiar request. We have a number of committees chaired by competent people who obviously have a great deal to do. But everything has to fall in its place and certainly the concerns of Kauai have been given priority and will continue to be given priority and will continue to be given priority when these committees meet and deliberate on the issues."

"To set up a special committee, Mr. President, for one concern means that we are again setting a precedent to set up special committees for all future or current concerns. If we are going to deviate to that degree, then we should just do away with the committee system. I think to infer that people who chair committees cannot have concern and feel for the needs of others because they do not happen to represent a particular island or place is totally ridiculous. If that were true, Mr. President, none of us would be here as elected officials. Our concerns have to take into consideration the needs of the entire state and all of its people. Granted there are times when certain areas will need more help which means that we will have to focus even more closely on those needs and, perhaps give a greater share of our resources in order to solve their problems. We do do that."

"Mr. President, I think your earlier commendation of your committee chairs was most appropriate. I think that we are proceeding as best we can. I believe that the concerns of Kauai and its people will be brought to the attention of the Ways and Means Committee of which the Senator from Kauai is a member. And at that time those concerns can be voiced by that Senator. It's part of the process and is the orderly way to proceed. May I suggest that we get on with the business of the people of this state. Thank you."

Senator Blair then said:

"Mr. President, on a point of inquiry. I believe I'm a member of a special committee on procurement.

Although I'm not actually sure when it was formed or why procurement is a matter which requires a special committee if Hurricane Iniki does not. From your perspective, can you enlighten me as to why the procurement committee is appropriate or even if, in fact, it exists? Although, if I am a member, it must exist. Also, if procurement is important, why is it more important than responding to Iniki? What is the framework within which special committees will be created? When are they appropriate or inappropriate? Frankly, I'd also like to see a special committee on the Puna geothermal problems. Thank you."

The President then said:

"Senator Blair, that committee was formed prior to this session. It was formed a year and a half ago during the last legislative session because of the serious problems concerning state purchase of services in various areas."

Senator Blair then continued:

"Thank you. Perhaps I'm reading too much into your response. If the procurement committee was formed in the 16th Legislature, then I assume it no longer exists. We create new committees with each new Legislature. I appreciate your clarification that I'm not, in fact, a member of such a special committee on procurement.

"However, when it was created by the 16th Legislature, you indicated that it was created because the issue was important. That's a subjective assessment and I would urge that the Senate leadership determine whether or not the Hurricane Iniki situation this year is as serious as the procurement issue was last year. I personally think that it is. Thank you."

Senator Fernandes Salling, on a point of personal privilege, then said:

"Mr. President, I would just like to set the record straight on this request for a special committee. I brought this to your attention exactly a week and a half ago. And about a week ago the indication that I got from you was that you had no problem with setting up a special committee. So what I am hearing today, and by the way it was pointed out and we did discuss it, that the rules allow for you, Mr. President, on your own, to appoint such a special committee when you see fit and with a minimum of three members. And so it's really news to me today that you changed your mind and I ask that you reconsider this in light of what others have been saying to you today and may say in the future."

Senator Chang, also on a point of personal privilege, said:

"Mr. President, in response to the concerns expressed by the Majority Floor Leader and the Minority Floor Leader and my colleague from Kauai, let me just say that your Committee on Government Operations, Environmental Protection and Hawaiian Programs will take some specific steps to address and respond to those concerns. We may not adequately address all of the concerns that our colleague from Kauai expresses but there will be a response. And with respect to the matter of procurement, your committee will likewise have some specifics that will be announced in the coming week. Thank you."

Senator Iwase then remarked:

"Mr. President, I would like to announce that on the 16th of February, which is next week, your Committee on Planning, Land and Water Use Management will be holding a hearing on numerous Iniki bills which have

been introduced in the Senate. It is the intent, subject of course to presentation of testimony at the hearing, to pass those bills over to the Ways and Means Committee, particularly the money bills.

"I understand, perhaps, the Senator from Kauai's concern that I do not live on the Island of Kauai. But I want to assure the Senator from Kauai that the fact that I do not live on that island does not mean that I or other members in this body do not care about the plight of the people of Kauai; do not understand the damage which was wrecked by Hurricane Iniki; that we do not understand that help is needed and that we do not understand that help must be forthcoming. We will proceed with the hearing with those kinds of issues and with the understanding that Kauai is hurting; that it must be helped; that the people must be helped. Thank you, Mr. President."

ADJOURNMENT

At 12:27 o'clock p.m., on motion by Senator Ikeda, seconded by Senator Reed and carried, the Senate adjourned until 11:30 o'clock a.m., Thursday, February 11, 1993.