

SIXTEENTH DAY

Thursday, February 11, 1993

The Senate of the Seventeenth Legislature of the State of Hawaii, Regular Session of 1993, convened at 11:43 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by the Reverend Julia McKenna-Dubin, Founder of the Ministry for Divine Harmony, after which the Roll was called showing all Senators present.

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

SENATE CONCURRENT RESOLUTIONS

The following concurrent resolutions (S.C.R. Nos. 37 to 41) were read by the Clerk and were referred to committees:

Senate Concurrent Resolution

No. 37 "SENATE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES (DAGS) WITH THE COOPERATION AND ASSISTANCE OF OTHER APPROPRIATE ENTITIES OF STATE OR COUNTY GOVERNMENT TO RELOCATE THE EXISTING QUEEN LILUOKALANI STATUE TO A MORE APPROPRIATE LOCATION AND TO RELOCATE OTHER MEMORIALS ON, NEAR, OR PLANNED FOR INSTALLATION ON THE HAWAII STATE CAPITOL GROUNDS."

Offered by: Senator Aki, by request.

Referred to: Committee on Higher Education, Culture, Arts and Historic Preservation

No. 38 "SENATE CONCURRENT RESOLUTION REQUESTING A STUDY TO IDENTIFY THE INFORMATION AND DATA NECESSARY TO EVALUATE HAWAII'S CIVIL JUSTICE SYSTEM AND DEVELOP IMPROVEMENTS TO TORT AND PRODUCT LIABILITY LAW."

Offered by: Senator Aki, by request.

Referred to: Committee on Judiciary

No. 39 "SENATE CONCURRENT RESOLUTION AUTHORIZING THE BOARD OF LAND AND NATURAL RESOURCES TO ISSUE A LEASE FOR THE PRIVATE DEVELOPMENT OF CERTAIN FAST AND SUBMERGED LANDS AT KAWAIIHAE, HAWAII, FOR MARINA PURPOSES."

Offered by: Senator Aki, by request.

Referred to: Committee on Planning, Land and Water Use Management

No. 40 "SENATE CONCURRENT RESOLUTION URGING THE LEGISLATURE TO PREPARE FISCAL IMPACT STATEMENTS FOR ALL BILLS WHICH MAY AFFECT A TERM OF IMPRISONMENT."

Offered by: Senator Aki, by request.

Referred to: Jointly to the Committee on Judiciary and the Committee on Public Safety and Corrections

No. 41 "SENATE CONCURRENT RESOLUTION REQUESTING THAT HAWAII'S DELEGATION TO CONGRESS OPPOSE THE NORTH AMERICAN FREE TRADE AGREEMENT IN ORDER TO PROTECT HAWAII'S SUGAR INDUSTRY."

Offered by: Senators Holt, Kanno, Kobayashi, A.

Referred to: Committee on Science, Technology and Economic Development

SENATE RESOLUTIONS

The following resolutions (S.R. Nos. 30 to 33) were read by the Clerk and were referred to committees:

Senate Resolution

No. 30 "SENATE RESOLUTION ESTABLISHING A SENATE INVESTIGATING COMMITTEE TO INVESTIGATE THE INSOLVENCIES OF INSURANCE COMPANIES AFTER HURRICANE INIKI."

Offered by: Senators Fernandes Salling, Solomon.

Referred to: Jointly to the Committee on Planning, Land and Water Use Management and the Committee on Consumer Protection, then to the Committee on Legislative Management

No. 31 "SENATE RESOLUTION REQUESTING THE DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES (DAGS) WITH THE COOPERATION AND ASSISTANCE OF OTHER APPROPRIATE ENTITIES OF STATE OR COUNTY GOVERNMENT TO RELOCATE THE EXISTING QUEEN LILUOKALANI STATUE TO A MORE APPROPRIATE LOCATION AND TO RELOCATE OTHER MEMORIALS ON, NEAR, OR PLANNED FOR INSTALLATION ON THE HAWAII STATE CAPITOL GROUNDS."

Offered by: Senator Aki, by request.

Referred to: Committee on Higher Education, Culture, Arts and Historic Preservation

No. 32 "SENATE RESOLUTION REQUESTING A STUDY TO IDENTIFY THE INFORMATION AND DATA NECESSARY TO EVALUATE HAWAII'S CIVIL JUSTICE SYSTEM AND DEVELOP IMPROVEMENTS TO TORT AND PRODUCT LIABILITY LAW."

Offered by: Senator Aki, by request.

Referred to: Committee on Judiciary

No. 33 "SENATE RESOLUTION REQUESTING THAT HAWAII'S DELEGATION TO CONGRESS OPPOSE THE NORTH AMERICAN FREE TRADE AGREEMENT IN ORDER TO PROTECT HAWAII'S SUGAR INDUSTRY."

Offered by: Senators Holt, Kanno, Kobayashi, A.

Referred to: Committee on Science, Technology and Economic Development

STANDING COMMITTEE REPORTS

Senator Nakasato, for the Committee on Tourism, Recreation and Transportation, presented a report (Stand. Com. Rep. No. 2) recommending that S.B. No. 111, as

amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Nakasato, seconded by Senator George and carried, the report of the Committee was adopted and S.B. No. 111, S.D. 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR THE PLANNING AND CONSTRUCTION OF LIGHTS FOR A PLAYING FIELD AT THE KAILUA RECREATION CENTER," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Nakasato, for the Committee on Tourism, Recreation and Transportation, presented a report (Stand. Com. Rep. No. 3) recommending that S.B. No. 178 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Nakasato, seconded by Senator George and carried, the report of the Committee was adopted and S.B. No. 178, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION TO ASSIST DESTINATION HILO IN ITS EFFORTS TO STIMULATE TOURISM ACTIVITY IN EAST HAWAII," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Nakasato, for the Committee on Tourism, Recreation and Transportation, presented a report (Stand. Com. Rep. No. 4) recommending that S.B. No. 204 pass Second Reading and be referred to the Committee on Judiciary.

On motion by Senator Nakasato, seconded by Senator George and carried, the report of the Committee was adopted and S.B. No. 204, entitled: "A BILL FOR AN ACT RELATING TO THE TRAFFIC CODE," passed Second Reading and was referred to the Committee on Judiciary.

Senator Nakasato, for the Committee on Tourism, Recreation and Transportation, presented a report (Stand. Com. Rep. No. 5) recommending that S.B. No. 297 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Nakasato, seconded by Senator George and carried, the report of the Committee was adopted and S.B. No. 297, entitled: "A BILL FOR AN ACT AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS AND MAKING AN APPROPRIATION FOR KAHEKILI HIGHWAY," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Nakasato, for the Committee on Tourism, Recreation and Transportation, presented a report (Stand. Com. Rep. No. 6) recommending that S.B. No. 1224 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Nakasato, seconded by Senator George and carried, the report of the Committee was adopted and S.B. No. 1224, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR THE CONTINUATION OF THE ALOHA STATE GAMES," passed Second Reading and was referred to the Committee on Ways and Means.

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. 367	Committee on Ways and Means
No. 518	Committee on Ways and Means
No. 1337	Committee on Ways and Means

At 11:49 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:53 o'clock a.m.

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

Senator Ikeda introduced Mr. Glenn Minami, Hawaii's Teacher of the Year for 1992-1993, as follows:

"Mr. President, we are very privileged to have with us Hawaii's Teacher of the Year for 1992-1993, Mr. Glenn Minami. Mr. Minami has a very long and distinguished career. He is an industrial arts teacher at Kaiser High School and he was awarded the Superior Teaching Award by the faculty and students of Kaiser High School in recognition of his students always winning the State Plymouth Triple AAA Trouble Shooting contest. In fact, I think Kaiser has consistently dominated in this area, thanks to Mr. Minami.

"In 1986, he was named the outstanding teacher of industrial arts from the Institute of Technical Education Association and in 1987 he was awarded a letter of commendation for teaching excellence from the Massachusetts Institute of Technology. His students took top honors at both the State and National Science Fairs. Derek Dunn-Rankin was the national winner in 1975 and in 1978, Natalie Ching won the State Science Fair Award.

"Glenn Minami has definitely been a positive role model for his students and is one of the most dedicated teachers. He is the type of professional that we really need in the field of education.

"It gives me great honor, Mr. President, to introduce Hawaii's Teacher of the Year, Mr. Glenn Minami."

Mr. Minami rose to be recognized and was presented the Senate certificate of recognition by Senator McCartney and lei by Senator Tungpalan. Mr. Minami was accompanied by his wife Kathy, Mrs. Kay Zukeran, communications, art and technology teacher at Kaiser High School, and students, Andy Wang and Kim Park.

Senator Chang then introduced Representative Les Ihara Jr. who was seated in the gallery.

At 11:56 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:03 o'clock p.m.

Senator Koki then rose to speak on a point of personal privilege and said:

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

"I'm very concerned about a bill introduced by the Lieutenant Governor's Office. This bill will empower the chief elections officer and clerk of any county to require any precinct, district or county to vote absentee. There are possibilities of abuse of mandatory absentee voting. I can just see families being sent absentee ballots and one person would instruct everyone who to vote for and then mail it in. This could be expanded to a group of people, say, churches or clubs, or ethnic groups.

"Suppose an elected office becomes a target of the director of elections for whatever reason. Several of his weakest precincts could be declared absentee voter precincts and a major push by the opposition could yield votes against the official who is out of favor with the director of elections.

"A much more sinister scenario comes to my mind when I combine mandatory absentee voting and a bounty program. A bounty program to register voters is being initiated by the Lieutenant Governor's Office.

"The Lieutenant Governor's Office could easily target certain areas for voter registration. In this age of political correctness he could target low income areas or minority areas or whatever, and get away with targeting. Groups can be influenced by a common entity, say racial groups, church groups, employment groups, etc., and vote as a block. They can be visited by representatives of these groups and be instructed about who to vote for.

"The idea of giving bounty for registering voters is a novel idea. But non-profit groups for whatever reason -- be it their own agenda or given incentives or instructions by the Lieutenant Governor's Office -- can target certain geographic areas or groups of people and, consequently, skew the election in favor of the one directing the targeting.

"With the lieutenant governor obviously running for governor in 1994, I'm very concerned about these two ideas generating from his office. Thank you."

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

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

"I speak on behalf of one of my colleagues, Senator Bert Kobayashi, who is too much of a 'samurai' to complain. He's apparently being overworked as the vice chairman of the Ways and Means Committee, chair of the Legislative Management Committee and the Health Committee in addition to his responsibilities as a member of the Senate Leadership and several committees.

"I know he is overworked because, last month, I requested that he hold hearings on two bills involving legislators' allowances. My oral request was reinforced by a written request. As yet I've had no response, other than that he's not had an opportunity to speak with the many people that apparently are involved in scheduling a hearing of the Legislative Management Committee. So my request, Mr. President, is that you consider reducing the burden on Senator Kobayashi, so that the Legislative Management Committee can go forward with hearings on the bills that are referred to it. Thank you."

The Chair responded:

"For your information, Senator Blair, Senator Kobayashi did bring this matter up to the leadership and the Chair. He was told that a hearing on bills be scheduled. Senator Kobayashi is in the process of scheduling a hearing on all bills before his committee."

Senator Blair then said:

"Mr. President, on the same point, I appreciate your clarification. When I spoke with Senator Kobayashi, just prior to the session today, he was not able to give me a hearing date. The two bills, SB 198 and SB 199, are double referred. I hope that the scheduling is handled on a timely basis and not merely with promises of future

action. Sometimes bills have a way of getting lost in the shuffle. Thank you."

Senator Matsuura rose to speak on a point of personal privilege and stated:

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

"When my colleague, the Senator from the Puna District, mentioned about the plight of his constituents in Puna yesterday, I must confess that I was very upset with the developers. I went back to my office and I called Steve Morris and Dr. Bruce Anderson.

"As was stated, I am a strong supporter of geothermal development. The only personal interest I have in this development is that someday we are going to have electric cars on the Big Island; we are going to move the water, the 15 billion gallons of rainfall that we will get daily around the island; we're going to have electric trains, etc.

"However, we are at a critical point. If the \$120 million power plant and the well field cannot be made to perform as we have been promised, it will be shut down and I will be the first to call for this.

"I'm here today, after talking to both Steve Morris and Bruce Anderson to reassure this body and the Senator from Puna and his constituents, that what happened at PGV in Pohiki on Monday will not be tolerated over the long term. I'm not here to defend PGV. There were spikes far beyond the 25 PPB level of the hydrogen sulfide for a period of about 10 minutes. PGV has violated the permits and did cause several families, several policemen, and two workers to experience alarm and temporary discomfort. It did happen!

"What we need to understand is that in the development of the geothermal resource one must understand that there are risks. I'm not here to say that there will not be any nuisance or mishaps because there will be. The reason why nuisances occur is that in the development of the geothermal well one must vent. That's one of the bad aspects of developing the geothermal wells. You've got to vent the well to take the loose particles out. You've got to vent to get the water out and clean out the well. Even if you have a well that is operational and is closed down for maintenance, the well has to be vented. There are going to be nuisances associated with geothermal development. The good news is that once the geothermal wells are drilled and operational, the nuisance level is minimal.

"When I compare geothermal development and the plight of people in the Hawaiian people that live right next to the Hilo airport in Keaukaha, and the city sewage plant, there is no comparison. I live about four miles from the airport and I am awakened in the night by airplanes taking off and landing. The Hawaiians in Keaukaha must tolerate the planes taking off and landing right next to them for a long time. The noise level from an airplane is ten times more than from a drilling rig. The hydrogen sulfide from the sewage plant in Keaukaha is a major nuisance. The Hawaiian people of Keaukaha have very good reasons to raise a big ruckus.

"There are risks in developing the geothermal resource but I'm asking that we give these developers a chance. Communication may not have been good, but, a lot of the people knew PGV was going to vent. Instead of getting away from the area, many people from other areas come to the PGV fence line, and that's crazy! Because of the fence line, the policemen had to be there. We must give the developers a chance to develop this resource in the most safest way possible. Once the drillings are done and

the wells are connected up to the power plant, you're going to be surprised. You'll go over there and you're going to wonder what was all this big fuss about.

"Developing this geothermal resource has great economic advantages to the Big Island. It will provide the energy self-sufficiency and independence. There will be nuisance, but let's try to understand the resource and give these developers a helping hand and let them finish the job because they do have a fairly large investment in their project. Once the geothermal resource is harnessed, a lot of good things will happen and the nuisance objections will cease. Thank you very much."

Senator Solomon rose on a point of personal privilege and said:

"Mr. President, in all due respect to my colleague from the Big Island and on his position on geothermal energy, I'd like to reiterate for the record that I think the Big Island as a whole has agreed that geothermal energy would bring economic benefits to the community. I think that the 'pilikia' is, is it at the risk of peoples' personal health as well as the environment?

"Mr. President, this kind of leads into my point of personal privilege today in which I wish to make some comments on what was discussed yesterday by our Majority Floor Leader. I think that this problem became serious when in 1982 we created single-member districts for the Senate. And as you know, my other colleague from the Big Island represents a large constituency that does in fact have to put up with the noise, the smell, blow-outs, and everything else related to geothermal energy activities. So for the Senator from Puna to take that position, I think, is what we should expect here in this body.

"As a follow-up, Mr. President, I feel that the Majority Floor Leader should be reminded that the reapportionment plan of 1982 is a political reality that each and everyone of us must live with. For me, I have been able to remain pretty neutral on the geothermal issue. But unfortunately we have two of the other senatorial districts on the Big Island that have been, literally, debating the issue for the past ten years.

"So, I think that maybe it would behoove this body to have the leadership reconsider its position on the establishment of special committees, such as an investigative committee on geothermal energy, so this body can be apprised on the facts of what we're looking at when it comes to the whole development of geothermal energy on the Big Island. And maybe this would give some kind of relief to the Senators of those senatorial districts that represent a different ideology on how that development should proceed.

"And, Mr. President, this leads me into my concern about the article that appeared in the newspaper this morning, 'Democrats stalled by Iniki aftermath; Latest division arises over review committee for victims.' I have to agree with the title of the article but I have to disagree in that I do not consider myself a 'dissident' in this body. I'm not just disagreeing to disagree because I am with the faction of nine.

"The situation that the Senator from Kauai is in is real. The Senator represents a single-member district and that Senator is going to be accountable for whatever happens and whatever this body may deliberate on concerning that district. I think that we can all appreciate that as we all sit here today. I don't think it's a matter of whether a Senator from Oahu can feel for the victim, or whether a Senator from Maui can identify with the problem. I think the bottom line is accountability. And this is what this

state expects from each and everyone of us. In a single-member situation you are accountable to your constituency, you have to provide these answers. Those people vote for you, they put you in office, they expect you to have some kind of hand on the issues. Whether we're in a factional fight or whatever it may be, that's irrelevant at this point in time. We should seriously look at where we're at in the State of Hawaii and in terms of our own organization here. We should look at our Constitution and think of the constituencies we're representing. And I think that the aforementioned requests are legitimate and, I'm hoping, Mr. President, that the leadership reconsider its positions, not only on the Kauai matter, but on the geothermal energy situation where we have Senators from the Big Island that are divided on the issue, simply because we cannot come to an agreement on the facts. I think that the situation is the same with Kauai. There is no doubt in my mind, each of us sitting here want to assist that island. In all good conscience how could we not do otherwise. What we're here for and why we're here is because we have a constituency that we have to take care of and this is what the Senator from Kauai has requested to be able to do.

"The Senator did not request for an overview in terms of decision-making; she simply wanted to put a committee together that could review the facts that would cut right-across-the-board.

"Interestingly enough, Mr. President, that did come up when I was a member of the Ways and Means Committee when we did discuss the geothermal energy situation. And this is why the quality of the clean air ended up in the courts. The community felt that this body could not make an unbiased, objective decision. They no longer trusted the legislative process and they decided to go to the court for some kind of relief on the geothermal energy situation. Why are we in that situation, Mr. President? Simply because we have Senators from the Big Island that do not agree on the development of geothermal energy.

"Mr. President, I re-read the Senate Rules last night and the rules say that the leadership can make the decision. I'm appealing for reconsideration, on behalf of my colleague from Kauai, to form a special committee for Kauai Iniki disaster. We should also take into consideration a special investigative committee on geothermal energy so that opposing Senators from the Big Island can come to a solution that both can agree on. Perhaps we can resolve that issue this session and maybe, Mr. President, we should also form a special investigative committee into HEI. I think these are the three critical issues facing us and perhaps under the present committee structure we cannot accommodate those concerns. Thank you very much."

Senator Fernandes Salling then stated:

"Mr. President, I too rise on a point of personal privilege and I want to thank my colleague from Kohala for the remarks that she has made today because I believe that, perhaps, one of the things that was missing from yesterday's discussion was essentially what the Senator said that the notion that as long as I have been in the Senate we've always listened to those Senators from the district when it came to specific problems confronting our constituents. You've heard me speak on this and you've heard other Senators speak on this besides Senator Solomon. This has been part of the custom and courtesy which are inherent in the position to which we have been elected, and which I believe are now in jeopardy.

"So what really prompts me to rise again is to speak on the issue of a special committee to address the recovery efforts of Hurricane Iniki, Mr. President, and the

memorandums that I received from you yesterday relating to certain privileges that are accredited me now with being a Senator. These memos tell me that as a result of representing the people of Kauai in the Senate I now have golfing privileges at the Waialae Country Club and the Honolulu Country Club.

"Perhaps, Mr. President, this is your way of treating us all equally by securing us these privileges. But for myself, I would like to be treated in a way that would allow me to represent my constituents to the fullest, and what I expect out of our Senate president is to provide me and other Senators the opportunity to do so.

"Instead of working to secure us these privileges, I would rather have our Senate president show me the leadership, conviction and vision which will help me and the people of Kauai, whom you once represented, Mr. President, to be able to rebuild and restore their lives.

"To that end, I feel that it's necessary for me to ask your permission to insert into the Journal a six-page outline of what the special committee was about to do -- the kinds of groups, agencies, problems that we have prioritized that need to have immediate attention in order to expedite the recovery efforts on Kauai."

Senator Fernandes Salling then requested leave to insert additional remarks into the Journal, which request was denied by the Chair.

Senator Fernandes Salling then requested a recess for the purpose of having the Chair review the proffered remarks.

The request for a recess was denied for the reason that the Chair chose to defer his review of the documents to a later time.

Senator Matsuura then said:

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

"The subject of a special committee on procurement has been mentioned yesterday and today. I want to assure my colleagues why this special procurement committee is being requested by me.

"I've been working on the procurement issue for over a year. Just a few days ago, I finally got from the auditor's office, the state people who worked on the Selex contract. It took the auditors over two weeks to give me the names of those who were involved in the development of the state Selex contract. I also got the names of those who negotiated for the state. I tried to get that same information for months. I've asked B&F to give me working documents of the sole source \$9 million Selex contract. Can you imagine B&F telling me that they had none! The administrative assistant of B&F told me that he has no documentation of the development of that contract. I can't imagine any contract of that magnitude having no working papers! If you read the Selex contract you're going to be shocked as to how anyone in the state would let a contract like that get finalized!

"We have indications that vendors were included in the preparation of the bid specifications in other contracts. There are many abuses! We need the special investigating committee to examine some of the contracts and to get the documentation. Unlike the request from the Senator from Kauai, there is enough evidence to justify an investigating committee on state procurement. If this body doesn't want an investigating committee on procurement, then I will say to cover it all up -- let it all go -- let 'em amend all the contracts -- a \$150,000

contract; sole source going up to \$53 million -- that's okay. Unfortunately, we will never, ever find out what went on within the past few years. We've talked about certain vendors. How is it that all of a sudden all the sole source contracts dealing with computers are going to one company? We also looked at the public relations contracts. All of a sudden it also goes to one company. Why sole source, non-bid? Why? We'll never find out about these contracts unless we can at least look at the documents, ask these people why is it that they got all of these sole source contracts? I have cited some of the reasons why we requested for the special committee. There is a need for that investigating committee on state procurement.

"I sympathize with the Senator from Kauai, but, there is a committee structure to address her concerns. I have confidence in the committee chairmen to get the information that is requested.

"I don't want special committees covering every area of concern because I don't think there is a need for it. Thank you, Mr. President."

Senator Solomon then rose on a point of information, then subsequently appealed the ruling of the Chair's prior denial of Senator Fernandes Salling's request for a recess.

Senator Chang then rose to state and inquire:

"Mr. President, with due respect to my colleagues, I have to say that in my many years of teaching parliamentary procedure to teenagers in the youth and government program at the YMCA, I find the present dilemma somewhat puzzling. Given the vagueness of the situation, I'm dwelling in the area of a point of parliamentary inquiry as to whether there is a motion that has been denied which then can be appealed. I'm not entirely sure that there is an appealable action that has taken place, so that is my inquiry. Perhaps my colleague to my right can enlighten me."

Clarification on the question before the body having been requested, Senator Blair responded as follows:

"Paragraph 9 of Rule 3 of the Rules of the Senate provides that the Senate President shall determine questions of order and that his ruling is subject to an appeal to the full Senate. I think we are presented with a question of order. The way I understand it, you have ruled that a recess is not in order. Your ruling that we continue without a recess is subject to a vote of the full Senate. The vote however would not be on whether or not the practice in the Senate will be to recess whenever a member requests, but whether the specific ruling not to have a recess at this time will be sustained. We are not voting as to what any future rulings will be in the Senate, but merely the present question of whether or not the Senate should now recess. Thank you."

Senator Tungpalan then requested a recess.

The Chair declared a short recess.

At 12:44 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:53 o'clock p.m.

Senator Solomon then said:

"Mr. President, thank you for the short recess. I think that it was necessary since it gave us an opportunity to at least be able to discuss the dilemma. I consider this as a dilemma that we're presently in. And I think the motion I did make is a valid one. I think it is something that we

definitely need clarification on and, in conjunction with that, Mr. President, I think we have to also make a ruling on what can be inserted into the Journal and what cannot be inserted into the Journal. Up to now we've never had problems with that. Also, I think the request to have something inserted into the Journal and the request for a recess which was denied are interrelated, and I'm hoping that we can work that out within a reasonable time.

"Since we had a recess, Mr. President, I think the motion is now moot. I now move that the motion be withdrawn at this time."

Senator Grauly seconded the withdrawal of the motion; the motion was put by the Chair and carried by voice vote.

Senator Fernandes Salling again requested leave to insert written remarks into the Journal, which request was again denied.

Senator Fernandes Salling then again requested a recess, which was also denied by the Chair.

Senator Fernandes Salling then said:

"I then make a motion appealing that ruling of the Chair."

Senator Blair seconded the motion.

The motion was clarified by Senator Blair, as follows:

"Mr. President, the motion appeals the ruling of the Chair, that ruling being a denial of a request by a member that the Senate recess briefly. An 'aye' vote would not sustain the Chair, and that a 'nay' vote would sustain the Chair on the voting. If there's any disagreement with my understanding in that regard, it needs to be clarified before the vote is taken. Thank you."

The Chair then said:

"At this point, the Chair would like to call for the vote. An 'aye' vote would be to overrule the ruling of the Chair; a 'nay' vote would be sustaining the ruling of the Chair."

The motion was then put by the Chair and, by voice vote, denied.

Senator Iwase, after his announcement of scheduled committee hearings, added:

"Mr. President, I inadvertently failed to mention this yesterday. Despite the fact that there has been no discussion of the damage caused by Iniki on this island, in your district, Mr. President, Maile, Nanakuli and Waiānae, your Committee on Planning will be sensitive to the plight of those people as well."

Senator Blair then rose to state:

"The Senator from Hilo expressed a justification for a committee on procurement. I want to clarify the difference between a special committee and an investigative committee. The Senator from Hilo wants an investigative committee on procurement, apparently, because of difficulty in getting information from the administration. The investigative committee is required in order, apparently, to have subpoena powers and otherwise coerce information out of an apparently reluctant administration. That's a matter which will be addressed in a resolution, which may not yet have been introduced.

"We have to keep in mind that there is distinction between that resolution and a request for a special committee. The investigative committee must be established by a resolution. A special committee can be established by the presiding officer of the Senate. A special committee has no subpoena power. The reason for the special committee is, thus, entirely different. Its justification has to do with the fact that the matters affecting Kauai, and to a lesser degree the far leeward portions of Oahu, cut across many subject matter committees' jurisdictions. In order to deal efficiently with concerns that cut across many committees' jurisdictions and in order that all proceedings can be harmonized and that there can be continuity and follow-up, a special committee has been requested. I hope that you will give serious consideration to that. Thank you."

Senator Fernandes Salling then said:

"Mr. President, yes, perhaps to further illustrate the differences that have been brought up by the Senator from Maui, Molokai and Lanai.

"The purpose of this special committee on Hurricane Iniki is a narrow one and that is to provide the vitally necessary focus to surface problems resulting from the vast devastation wrought by Hurricane Iniki to the Island of Kauai. Specifically, those which are impeding its recovery efforts. The committee will target general and specific problems that can be rectified this session through legislation, legislative appropriations or other appropriate legislative action."

The President interjected:

"Senator Fernandes Salling, may I interrupt?"

Senator Fernandes Salling continued:

"Mr. President, I have the floor I believe and I would just like to conclude by highlighting four different points"

The President interjected:

"Senator Fernandes Salling, I must interrupt. You are reading from the paper that you had asked me to insert into the journal and I made an earlier decision that I would like to see that paper before I"

Senator Fernandes Salling asserted:

"Mr. President, I will not read from the paper then. I will just simply paraphrase what is down here as to what are the differences between a special committee and an investigative committee.

"The special committee that we were discussing previously with respect to Hurricane Iniki was, (1) to simply go out and collect the different kinds of data and information from private, county, state and federal agencies and private groups that may be impeding in the recovery of the restoration of Kauai. It was to identify areas that where, maybe, we needed interagency coordination; it was to suggest or propose some kinds of solutions that would help in the recovery effort and hear some of the concerns of the constituents

Senator Ikeda interjected:

"Mr. President, I request a recess."

Senator Fernandes Salling continued:

"Mr. President, I have the floor and I intend to finish my statement and"

Senator Ikeda interjected:

"Point of order, Mr. President."

The Chair recognized Senator Ikeda.

At 1:02 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 1:11 o'clock p.m.

The Chair then having recognized Senator Fernandes Salling, the Senator continued as follows:

"Mr. President, I would like to conclude these remarks which I want to remind everyone here are stated merely to illustrate the differences between a special committee and an investigatory committee and the discussions that we heard here today brought up by the Senator from Hilo and the Senator from the three canoe districts.

"My concluding remarks would be, with I hope your keeping in mind what I said previously, that a special committee as I see it would gather the information and facts that would assist government agencies, legislative committees and the Legislature in their efforts to aid in and expedite the restoration of Kauai. Thank you."

Senator Blair then rose to state:

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

"I would like to make clear, for the record, my understanding of what transpired, and comment on it.

"The Senator from Kauai requested that certain remarks be inserted into the Journal and her request was denied. Apparently, the denial was to allow the Senate President's office to review the remarks and make a determination as to whether or not the remarks would be allowed to be inserted into the Journal.

"I find the denial of her request very troubling. Whether we insert the remarks in the Journal in written form or whether we speak them on the floor of the Senate is a matter of slight consequence. In both cases, we are expressing ourselves on a point of personal privilege. To say that we must have the remarks reviewed by the Senate President's office prior to inserting them into the Journal is tantamount to saying that our free speech on the floor of the Senate, not in the First Amendment sense but in contrast to the practice which up to now has allowed us to speak freely on a point of personal privilege, is now subject to a review of the Senate President's office. If that in fact is the intent, Mr. President, it would be better for us to review the rule of personal privilege which allows people to speak on matters not pending before the Senate. Such a review is something I've been advocating since my first arrival in the Senate. That is better than embarking on the path of subjective restraint of speech.

"Today has been a classic example of how the broad rule of personal privilege is a snake waiting to strike. I hope that we will do that. But, if we are free to speak on the floor of the Senate under the rule of personal privilege, we should also be allowed to express ourselves by submitting our words in written form. To treat verbalized speech differently than written speech is not logical. I'm terribly concerned when the Senate President's office appears to desire ... I'm not sure that I'm using the precisely correct word ... but would appear to want to review our speech before we are permitted to express ourselves on the floor. Thank you."

ADJOURNMENT

At 1:15 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., Friday, February 12, 1993.