

FORTY-SECOND DAY

Tuesday, April 5, 1994

The Senate of the Seventeenth Legislature of the State of Hawaii, Regular Session of 1994, convened at 11:37 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by Aldous Paalani, The Church of Jesus Christ of Latter-Day Saints, after which the Roll was called showing all Senators present with the exception of Senator B. Kobayashi who was excused.

The President announced that he had read and approved the Journal of the Forty-First Day.

Senator Matsunaga, with the assistance of Senators McCartney and Holt and in conjunction with declaring the week of April 4th thru 9th, 1994, Community Center Week in Hawaii, introduced several representatives from the Association of Community Centers. All of the guests were presented leis by various Senators.

At 11:45 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:49 o'clock a.m.

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 293 to 297) were read by the Clerk and were placed on file:

Gov. Msg. No. 293, advising the Senate of the withdrawal of the nomination of MARIANNE RICE SANCHEZ to the Honolulu Subarea Health Planning Council, under Gov. Msg. No. 220, dated March 11, 1994.

In accordance with Gov. Msg. No. 293, the nomination listed under Gov. Msg. No. 220 was returned.

Gov. Msg. No. 294, dated January 28, 1994, transmitting the Cultural Landscapes Task Force Report from the Department of Land and Natural Resources, pursuant to Act 156, SLH 1993.

Gov. Msg. No. 295, dated March 7, 1994, transmitting the Annual Report, prepared by the Department of Business, Economic Development and Tourism's State Employee Ownership and Participation Advisory Committee, pursuant to Section 213E-12, HRS.

Gov. Msg. No. 296, dated March 14, 1994, transmitting the 1993 Annual Report, prepared by the Hawaii Housing Authority pursuant to Chapter 356, HRS.

Gov. Msg. No. 297, dated March 16, 1994, transmitting the report "Health Care Reform in Hawai'i," prepared by the Department of Health pursuant to Act 289, Section 51, SLH 1993.

DEPARTMENTAL COMMUNICATION

Dept. Com. No. 39, from the State Auditor dated April 4, 1994, transmitting the Auditor's 1993 Annual Report, was read by the Clerk and was placed on file.

HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 345 to 357) were read by the Clerk and were disposed of as follows:

Hse. Com. No. 345, returning S.B. No. 299, S.D. 1, which passed Third Reading in the House of Representatives on April 4, 1994, in an amended form, was placed on file.

By unanimous consent, action on S.B. No. 299, S.D. 1, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EXEMPTION OF DIRECT SELLERS FROM UNEMPLOYMENT COMPENSATION PAYMENTS AND BENEFITS," was deferred until Friday, April 8, 1994.

Hse. Com. No. 346, returning S.B. No. 1586, S.D. 2, which passed Third Reading in the House of Representatives on April 4, 1994, in an amended form, was placed on file.

By unanimous consent, action on S.B. No. 1586, S.D. 2, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS TO ASSIST INDUSTRIAL ENTERPRISES," was deferred until Friday, April 8, 1994.

Hse. Com. No. 347, returning S.B. No. 2366, which passed Third Reading in the House of Representatives on April 4, 1994, in an amended form, was placed on file.

By unanimous consent, action on S.B. No. 2366, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO USE TAX," was deferred until Friday, April 8, 1994.

Hse. Com. No. 348, returning S.B. No. 2378, which passed Third Reading in the House of Representatives on April 4, 1994, in an amended form, was placed on file.

By unanimous consent, action on S.B. No. 2378, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO STATE BONDS," was deferred until Friday, April 8, 1994.

Hse. Com. No. 349, returning S.B. No. 2591, which passed Third Reading in the House of Representatives on April 4, 1994, in an amended form, was placed on file.

By unanimous consent, action on S.B. No. 2591, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TAX CREDITS," was deferred until Friday, April 8, 1994.

Hse. Com. No. 350, returning S.B. No. 2653, S.D. 1, which passed Third Reading in the House of Representatives on April 4, 1994, in an amended form, was placed on file.

By unanimous consent, action on S.B. No. 2653, S.D. 1, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO LIQUOR TAX LAW," was deferred until Friday, April 8, 1994.

Hse. Com. No. 351, returning S.B. No. 2834, S.D. 1, which passed Third Reading in the House of Representatives on April 4, 1994, in an amended form, was placed on file.

By unanimous consent, action on S.B. No. 2834, S.D. 1, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)," was deferred until Friday, April 8, 1994.

Hse. Com. No. 352, returning S.B. No. 2913, S.D. 1, which passed Third Reading in the House of Representatives on April 4, 1994, in an amended form, was placed on file.

By unanimous consent, action on S.B. No. 2913, S.D. 1, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CLAIMS ON WARRANTS NOT PRESENTED AND PROVIDING APPROPRIATIONS THEREFOR," was deferred until Friday, April 8, 1994.

Hse. Com. No. 353, returning S.B. No. 2964, which passed Third Reading in the House of Representatives on April 4, 1994, in an amended form, was placed on file.

By unanimous consent, action on S.B. No. 2964, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE GENERAL EXCISE TAX ON MANUFACTURING AND PRODUCING," was deferred until Friday, April 8, 1994.

Hse. Com. No. 354, returning S.B. No. 2965, which passed Third Reading in the House of Representatives on April 4, 1994, in an amended form, was placed on file.

By unanimous consent, action on S.B. No. 2965, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO A STATE GENERATION-SKIPPING TRANSFER TAX," was deferred until Friday, April 8, 1994.

Hse. Com. No. 355, transmitting H.C.R. No. 5, which was adopted by the House of Representatives on April 4, 1994, was placed on file.

By unanimous consent, H.C.R. No. 5, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE UNITED STATES DEPARTMENT OF DEFENSE TO EVALUATE ITS CURRENT FACILITIES IN OKINAWA AND TO RETURN LAND NOT DIRECTLY NEEDED FOR MILITARY PURPOSE," was referred to the Committee on Government Operations, Environmental Protection and Hawaiian Programs.

Hse. Com. No. 356, transmitting H.C.R. No. 103, H.D. 1, which was adopted by the House of Representatives on April 4, 1994, was placed on file.

By unanimous consent, H.C.R. No. 103, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE CITY AND COUNTY OF HONOLULU TO PROMPTLY ENACT AND AGGRESSIVELY ENFORCE AN ORDINANCE REGULATING NON-PROFIT SIDEWALK VENDORS IN WAIKIKI," was referred jointly to the Committee on Consumer Protection and the Committee on Judiciary.

Hse. Com. No. 357, transmitting H.C.R. No. 316, which was adopted by the House of Representatives on April 4, 1994, was placed on file.

By unanimous consent, H.C.R. No. 316, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE PROCLAMATION OF AN ARCHAEOLOGY WEEK FOR THE STATE OF HAWAII," was referred to the Committee on Higher Education, Culture and Arts and Historic Preservation.

STANDING COMMITTEE REPORTS

Senators Chang and Ikeda, for the Committee on Government Operations, Environmental Protection and Hawaiian Programs and the Committee on Ways and Means, presented a joint report (Stand. Com. Rep. No. 2747) recommending that H.B. No. 2639, H.D. 1, as amended in S.D. 1, pass Second Reading and be recommitted jointly to the Committee on Government Operations, Environmental Protection and Hawaiian Programs and the Committee on Ways and Means.

On motion by Senator Chang, seconded by Senator Reed and carried, the joint report of the Committees was

adopted and H.B. No. 2639, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE ENVIRONMENT," passed Second Reading and was recommitted jointly to the Committee on Government Operations, Environmental Protection and Hawaiian Programs and the Committee on Ways and Means.

Senator Graulty, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 2748) recommending that H.B. No. 2320, H.D. 1, pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Chang, seconded by Senator Reed and carried, the report of the Committee was adopted and H.B. No. 2320, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PATERNITY," passed Second Reading and was placed on the calendar for Third Reading on Thursday, April 7, 1994.

Senator Koki rose on a point of personal privilege, as follows:

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

"Mr. President, there is no one who wants H.B. 2312 to pass more than I do. After last Wednesday's headlines that the traditional marriage bill was dead, my heart sank. However, I did not give up. I worked with the chairman to clarify that the bill was not dead, that we still needed one of the five undecided Senators to sign the bill. And we succeeded in resurrecting the bill in committee.

"I sincerely believed that movement was possible and I spent many hours trying to work toward that end.

"Then Senator Reed who had been quiet and seemingly unconcerned about the issue, made a bold and controversial move that angered many of you. So instead of having the bill move to the floor, Senator Reed has unwittingly officially killed the bill in committee and the undecided committee members have gone on record as opposing H.B. 2312.

"Quite frankly, I am upset with Senator Reed for undermining all our efforts to see this bill through. He told me no matter how this turns out he will look good in the public's eye. But the issue is bigger than Rick Reed. You may think you are punishing Rick Reed, but you are punishing yourself, the Senate, and the process much more.

"Preserving traditional marriage is paramount in our society and most of you agree with that. With the traditional family structure breaking up, we are seeing the consequences of it in our schools, youth crime, abuse, and emotional problems. We need to shore up the family structure, not confuse the issue further.

"But today, we are also faced with another issue -- the issue of separation of powers. We have been accused by many of not being an effective third branch of government. We are being accused of rolling over and playing dead to the governor and rubber stamping many of his administration's actions. And now the courts have gotten into the act. The courts have said, in effect, we will legislate too. Are we going to roll over and play dead to the courts too? No matter where you stand on the issue of same-sex marriage, we all have a responsibility of keeping the separation of powers working; otherwise the public will be left out of the process and the system of government we have will not survive.

"Mr. President, when you lost the organizational battle last session, you and your supporters used similar tactics

as Senator Reed to undermine confidence in then Senate President Aki. So let's get out of this emotional state and let's get on with doing our job.

"Mr. President, although I am a Republican, I am a member of this Senate and you are my President. The work of this body is beyond personalities and yes, even beyond partisanship.

"Mr. President, will you lead us in responding to our constituents and society in preserving traditional marriage? Will you lead us in responding to the courts to tell them to leave legislation to us; that is our business.

"We need responsive, decisive, open leadership. That was your promise to this body when you became President. We are counting on leadership. I know it can be done.

"Thank you."

Senator Reed also rose on a point of personal privilege and stated:

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

"It's amazing that even in a three-person caucus we can have divisiveness. I think the only way we'll ever have complete harmony in either caucus is when it gets down to one member in either one.

"I would simply like to respond to the comment that I allegedly said that I'll look good in the public because of this issue. I have never said such a thing to Stan Koki or anybody else. In the first place, I don't confide in him or anybody else, so if I did feel that way, I sure wouldn't say that to anybody. But more importantly, I don't feel that way about this issue, nor do I care about how I'm perceived. I think anybody who knows me or hears my remarks of yesterday, for instance, should be able to see that I don't care about the public reaction, nor do I care about the internal reaction, in terms of how people in this body think of me.

"I wanted to respond to that and also say that the previous speaker seems to misunderstand the life of H.B. 2312. My understanding is, and it's obviously clear, that the bill is not dead and won't be dead until the deadline passes. Also, having talked this morning with the Senate President, I have been given to understand there is still the possibility of movement on this bill. For that reason, as I told you, Mr. President, I will not be making the motion on the floor today to attempt again to bring the bill out of committee. As I said yesterday, I think that to do so would simply beat a dead horse. The possibility of it coming out independently is very good. If that movement does not happen, then I will bring the motion again on Friday, but hopefully, it will come out on its own before then, or if not, somebody else will bring the motion by Friday. I don't care who brings it out, just so that it comes out.

"Mr. President, I also want to talk very briefly about one of our practices here, with the thought of people who are here next year making the changes in a variety of ways. The one I want to address now is the archaic demand of seconds to motions. There's some very good language in Mason's that I'd like anybody who reviews this in the interim to consider, and I want to read just parts of it:

'Parliamentary practice in American governmental bodies does not require seconds to motions, and in Parliament itself, where the practice of seconding motions originated, they have not been required for more than a century.

'A second to a motion is not out of order, but its effect is only to disclose the fact that one or more other members may favor the motion made or proposal submitted. Unless the rules require, seconds may be ignored and the presiding officer may not refuse to put a question because it is not seconded.

'Whenever a member submits a motion which is in order, the motion should be stated by the presiding officer without waiting for a second.

'There would seem to be good cause for dropping the use of seconds to motions because of their lack of utility, convenience or necessity. Tilson says, "It would seem nothing could be more nearly useless and unnecessary than for some unidentified voice from the midst of the assembly to boom out, I second it."

'An even stronger reason for abandoning seconds is that they are not in accord with the present day view of the rights and dignity of the individual. It is contrary to the theory of equality among the members. Parliamentary action is based on majority rule where each member should have one vote of equal weight. All members should have equal, individual, independent rights to propose to the assembly what they think it should consider.

And finally,

'A motion should not be suppressed because it is not seconded; neither should one be put to vote hastily without opportunity for debate.'

"So I would hope that this body will consider, during the interim, abolishing the requirement that a motion be seconded.

"Thank you."

Senator Chang then rose on a point of personal privilege and responded:

"Mr. President, listening to the comments from the Senator from Maui about 'seconds' brings to mind the idea that many women would apply the same thoughts to spouses in today's contemporary society. I invite the members of the Women's Caucus to read that quoted section and substitute the word 'husband' for 'seconding a motion.' I think many interesting ramifications will come to mind.

"Nevertheless, ours is a traditional body, contrary to some advertisements that have been taken out in the newspaper. I'd like to commend the remarks of the Senator from Kaneohe in that respect. Yesterday, I had occasion to refer to his hard work and efforts to forge a consensus in committee and I will today confirm and second his remarks in that regard. To that end, I invite his further work in communicating with those who have taken out an unfortunate advertisement in today's paper, which more than implies that the five people who have not concurred on the most recent draft of H.B. 2312 do not support traditional marriage. I find that to be highly ironic inasmuch as most of the individuals named came from the period when traditional marriage was being questioned and, nevertheless, affirmatively chose to embrace that institution, and lovingly so. We have some Senators, or at least one Senator, who came after that tumultuous period and had opportunity to choose his lifestyle and similarly chose, and embraced lovingly, the institution of traditional marriage. I find that the remarks in today's advertisement are very unfortunate and I invite the Senator from Kaneohe to exert his best efforts in correcting that impression.

"Thank you."

Senator Koki then responded:

"I will put forth my very best efforts to make sure that we do move along in the traditional marriage route. Thank you."

APPOINTMENT OF CONFEREES

S.B. No. 1593, S.D. 1 (H.D. 2):

In accordance with the disagreement of the Senate to the amendments proposed by the House to S.B. No. 1593, S.D. 1, and the request for a conference on the subject matter thereof, the President appointed Senators Ikeda, Levin, co-chairmen, Fernandes Salling, Gaulty, Koki as managers on the part of the Senate at such conference.

ADJOURNMENT

At 12:06 o'clock p.m., on motion by Senator Chang, seconded by Senator Reed and carried, the Senate adjourned until 11:30 o'clock a.m., Wednesday, April 6, 1994.