

## THIRTY-SIXTH DAY

Thursday, March 23, 1995

The Senate of the Eighteenth Legislature of the State of Hawaii, Regular Session of 1995, convened at 11:33 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by the Reverend James Rosseler, Christ Lutheran Church, after which the Roll was called showing all Senators present with the exception of Senators Aki and Fernandes Salling who were excused.

The President announced that he had read and approved the Journal of the Thirty-Fifth Day.

## STANDING COMMITTEE REPORTS

Senator Fernandes Salling, for the Committee on Transportation and Government Affairs, presented a report (Stand. Com. Rep. No. 843) recommending that H.B. No. 26, H.D. 2, pass Second Reading and be referred to the Committee on Consumer Protection.

On motion by Senator Ihara, seconded by Senator Liu and carried, the report of the Committee was adopted and H.B. No. 26, H.D. 2, entitled: "A BILL FOR AN ACT RELATING TO MOTOR VEHICLES," passed Second Reading and was referred to the Committee on Consumer Protection.

Senator Fernandes Salling, for the Committee on Transportation and Government Affairs, presented a report (Stand. Com. Rep. No. 844) recommending that H.B. No. 39, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Ihara, seconded by Senator Liu and carried, the report of the Committee was adopted and H.B. No. 39, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO LANDING AND DOCKAGE FEES," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Fernandes Salling and Fukunaga, for the Committee on Transportation and Government Affairs and the Committee on Communications and Public Utilities, presented a joint report (Stand. Com. Rep. No. 845) recommending that H.B. No. 187, H.D. 1, pass Second Reading and be referred to the Committee on Judiciary.

On motion by Senator Ihara, seconded by Senator Liu and carried, the joint report of the Committees was adopted and H.B. No. 187, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MOTOR CARRIERS," passed Second Reading and was referred to the Committee on Judiciary.

Senator Fernandes Salling, for the Committee on Transportation and Government Affairs, presented a report (Stand. Com. Rep. No. 846) recommending that H.B. No. 360 pass Second Reading and be referred to the Committee on Judiciary.

On motion by Senator Ihara, seconded by Senator Liu and carried, the report of the Committee was adopted and H.B. No. 360, entitled: "A BILL FOR AN ACT RELATING TO TRANSPORTATION," passed Second Reading and was referred to the Committee on Judiciary.

Senator Fernandes Salling, for the Committee on Transportation and Government Affairs, presented a report (Stand. Com. Rep. No. 847) recommending that

H.B. No. 599 pass Second Reading and be referred to the Committee on Judiciary.

On motion by Senator Ihara, seconded by Senator Liu and carried, the report of the Committee was adopted and H.B. No. 599, entitled: "A BILL FOR AN ACT RELATING TO ADMINISTRATIVE REVOCATION OF DRIVER'S LICENSE," passed Second Reading and was referred to the Committee on Judiciary.

Senator Aki, for the Committee on Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 848) recommending that H.B. No. 552 pass Second Reading and be referred to the Committee on Consumer Protection.

On motion by Senator Ihara, seconded by Senator Liu and carried, the report of the Committee was adopted and H.B. No. 552, entitled: "A BILL FOR AN ACT RELATING TO FINANCIAL SERVICES LOAN COMPANIES," passed Second Reading and was referred to the Committee on Consumer Protection.

Senator Aki, for the Committee on Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 849) recommending that H.B. No. 974, H.D. 2, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Ihara, seconded by Senator Liu and carried, the report of the Committee was adopted and H.B. No. 974, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HAWAIIANS," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Aki, for the Committee on Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 850) recommending that H.B. No. 1313, H.D. 1, pass Second Reading and be referred to the Committee on Judiciary.

On motion by Senator Ihara, seconded by Senator Liu and carried, the report of the Committee was adopted and H.B. No. 1313, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC LANDS," passed Second Reading and was referred to the Committee on Judiciary.

Senator Aki, for the Committee on Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 851) recommending that H.B. No. 2152, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Judiciary.

On motion by Senator Ihara, seconded by Senator Liu and carried, the report of the Committee was adopted and H.B. No. 2152, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS," passed Second Reading and was referred to the Committee on Judiciary.

Senator Levin, for the Committee on Health, presented a report (Stand. Com. Rep. No. 852) recommending that H.B. No. 1968, H.D. 2, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Ihara, seconded by Senator Liu and carried, the report of the Committee was adopted and H.B. No. 1968, H.D. 2, entitled: "A BILL FOR AN ACT RELATING TO RUBELLA TESTING," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Levin and Matsuura, for the Committee on Health and the Committee on Human Services, presented a joint report (Stand. Com. Rep. No. 853) recommending that S.R. No. 12, as amended in S.D. 1, be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 853 and S.R. No. 12, S.D. 1, entitled: "SENATE RESOLUTION REQUESTING THAT ALL STATE AGENCIES THAT PROVIDE SERVICES TO THE PUBLIC REVIEW THEIR SERVICE DELIVERY PROGRAMS TO ENSURE THE INCLUSION OF ALL QUALIFIED LIMITED ENGLISH AND NON-ENGLISH SPEAKING CLIENTS IN THEIR SERVICE PROGRAMS AND TO DEVELOP PLANS TO ADDRESS ANY DEFICIENCIES IDENTIFIED," was deferred until Friday, March 24, 1995.

Senator Levin, for the Committee on Health, presented a report (Stand. Com. Rep. No. 854) recommending that S.R. No. 64, as amended in S.D. 1, be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 854 and S.R. No. 64, S.D. 1, entitled: "SENATE RESOLUTION REQUESTING THE DEPARTMENT OF HEALTH TO CONSIDER LOCATING THE STATE OFFICE OF RURAL HEALTH ON A NEIGHBOR ISLAND, POSSIBLY IN A RURAL UNIVERSITY SETTING," was deferred until Friday, March 24, 1995.

Senator Levin, for the Committee on Health, presented a report (Stand. Com. Rep. No. 855) recommending that S.C.R. No. 71, as amended in S.D. 1, be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 855 and S.C.R. No. 71, S.D. 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF HEALTH TO CONSIDER LOCATING THE STATE OFFICE OF RURAL HEALTH ON A NEIGHBOR ISLAND, POSSIBLY IN A RURAL UNIVERSITY SETTING," was deferred until Friday, March 24, 1995.

### ORDER OF THE DAY

#### THIRD READING

H.B. No. 2013, H.D. 1, S.D. 1:

On motion by Senator Iwase, seconded by Senator Ige and carried, H.B. No. 2013, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE CONSERVATION DISTRICT," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Aki, Bunda, Fernandes Salling).

H.B. No. 1971, H.D. 1:

On motion by Senator Levin, seconded by Senator Kanno and carried, H.B. No. 1971, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ADULTERATION OF DRUGS AND MEDICAL DEVICES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Aki, Bunda, Fernandes Salling).

#### RE-REFERRAL OF SENATE CONCURRENT RESOLUTION

The President re-referred the following Senate concurrent resolution that was offered:

Senate  
Concurrent  
Resolution

Referred to:

No. 239 Jointly to the Committee on Agriculture, Labor, and Employment and the Committee on Planning, Land and Water Use Management, then to the Committee on Tourism and Recreation

#### RE-REFERRAL OF SENATE RESOLUTION

The President re-referred the following Senate resolution that was offered:

Senate  
Resolution

Referred to:

No. 209 Jointly to the Committee on Agriculture, Labor, and Employment and the Committee on Planning, Land and Water Use Management, then to the Committee on Tourism and Recreation

At 11:37 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:42 o'clock a.m.

Senator Levin, for the Committee on Health, requested a waiver of the required hours of notice of a public hearing on H.B. No. 1976, and the Chair granted the waiver.

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

"Mr. President, I'd like to rise on a point of personal privilege.

"Mr. President, I'm rising in regard to an article that came out in the paper, 'Self-building school plan for Aikahi is blocked.' I have nothing against the chairman or the vice chairman, but I do take exception to the Department of Education. I believe that the Department of Education telling us year after year that they have a priority system, is the most unbelievable thing that I've ever heard. As a Representative in 1978, I tried very, very hard to get Aikahi a new administration building, and I represented them at that time. It's been some thirty odd years that they've been waiting for an administration building. According to a letter that I received, they're No. 59 on the priority list. That means that the priorities are thirty-something years behind on every school? I can't believe this -- that in thirty-some odd years you can work up to be No. 59.

"I also think it's a shame that some people think that if you're from a neighborhood that might be a little more affluent than others, that you get more of the bucks from the Senate or from the House. That's not true. I think the DOE has given that perception to some people.

"I also represent Waimanalo and Waimanalo is in dire need of repairs and maintenance, and so is Pope School, so is Kailua High School and so is almost every school in this state! And I believe that when the public is so upset that they come forward to donate their time and try to find out how they can get money into the system or try to find out if they can donate or get the building contractors to donate some time or at least cut back on their cost, then we'd better start to reassess what we are doing. And I don't mean just you and me as Legislators -- I mean the Department of Education.

"I went and got the superintendent's contract that you passed and it really bothered me that we gave a contract to a superintendent, the first ever. I worked years back

with Charlie Clark as superintendent and one thing that he told me was, 'Whitney, some day, if you can, you get the Legislature to go ahead and make the superintendent an appointed position, thereby he or she has a responsibility to the people and if they do a bad job, then the Governor is in trouble because that's his appointment.' I believe that today more than ever before.

"I'm not saying that I don't think Mr. Aizawa is a good man and a qualified man, because I do. But I don't believe a contract is the way, and I don't believe that if we're dissatisfied that he's going to pay us the balance. I think it was a bad mistake we made. I've never been for the board to be appointed because nine guys can't make up their minds now and if we appointed them, we'd really be in a mess.

"So anyway, Mr. President, I wanted to get rid of those frustrations. I thank you very much. Have a nice day. And for my committee chairman, I'll try to make every meeting that I can. Mahalo."

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

"Mr. President, I'd like to respond to my friend, colleague and neighbor in the Senate.

"We were elected to look at the policies and the priorities throughout the state and try to be as fair as possible. And we have a system -- like it or not -- a system that was established and was heard by the public, bought off by the different superintendents of the different districts, and we have started this system. My concern was, to deviate from the system for one particular school at this time would really create havoc at other schools or other projects that wanted to come in for GO bonds. And we felt that at the time, out of respect to the chairman of the committee, this needed to be addressed.

"We asked those who are deeply involved with the concern of the system to use the same energy to help with Senate Bill 1156, which addresses the possible restructuring of the system, and to be involved with the Board of Education elections and the way things are prioritized. We asked them to be involved, and that is the way to do it. If the system is not working, then let us go ahead and see if we can create a system that will work for everyone.

"Thank you very much, Mr. President."

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

"Mr. President, I rise on a point of personal privilege. It may be an opportune time following the previous speaker to point out that the system is broken.

"Mr. President, I would like to take a moment to present to you a few facts about the Department of Education. I have full documentation for all of this data and invite you to review this at your convenience. Some of the facts about the Department of Education's budget:

1. The Department of Education budget contains millions of dollars for items that were not recommended by the Governor for funding;
2. The request for workers' compensation monies was overbudgeted by \$1.3 million for each year of the biennium. By that, Mr. President, I mean that the request was for \$2.7 million although the need was for \$1.3;

3. A request for resources for new facilities was overbudgeted by \$2.2 million for the second year of the biennium;
4. The A+ after-school program was overbudgeted by \$2.8 million for each year of the biennium; and
5. To balance its budget within the limits set by the Governor, the Department of Education proposed reductions in regular instruction of \$6.9 million and \$10.8 million of the respective years of the biennium.

"The Department of Education has accused me of playing politics. I put it to you, however, that it is the pot calling the kettle black. Last week, it was Dr. Aizawa who blasted the Legislature for cutting school level instruction and this was said even though it was the department that proposed cutting by almost \$18 million over the biennium. Last week, it was Dr. Aizawa that said cuts in education, if necessary, would come first to the state and district offices. Yet, yesterday the Department's budget chief acknowledged that these reductions were made to regular instruction. His response to reporters when questioned on this was that once the budget was final and I quote: 'We will spread the cuts around.' Is the Department accountable to no one?

"The Governor was not provided with any details of the education budget until after it was submitted to the Legislature. The Department of Budget and Finance has aired the same frustrations as the Ways and Means staff when it comes to obtaining any sort of accurate data concerning DOE finances. All of this was topped off when Mr. Aono stated casually that 'once the budget is final we will spread the cuts around.'

"To place cuts in the most sensitive areas in an effort to obtain more funding is politics of the most sinister sort. The Department of Education is again engaged in the practice of blackmail. By holding the education of our children for ransom, they are hoping that the Legislature will throw money blindly into the coffers of the Department. I can guarantee you that regular instruction will not suffer at the hands of the Legislature and that the Ways and Means Committee will cast a very hard eye on the finances of the Department to make sure that the people of Hawaii are receiving the most for their education dollars.

"Mr. President, I would like to tell Dr. Aizawa and the rest of the Department of Education, loudly and clearly, that you are not in office unto yourself; that you are an agency of the state and you are accountable to the people of Hawaii and to the people they have elected to represent them. You will submit a budget clear in detail and well-justified as every other department in the state does and you will be held to that budget, period.

"Thank you, Mr. President."

Senator McCartney then rose on a point of personal privilege and stated;

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

"Mr. President, taking off on the points of the Ways and Means chair, I'd like to rise to support her comments and shed a little history on what has happened in the past. I think that having been the former Education chair and working with the Ways and Means Committee in the past, we have worked hard in the Legislature to give the Department of Education tremendous flexibility and autonomy greater than any other department in the State of Hawaii, under conditions that certain things will be done and that money will be getting to the schools.

School-based budgeting has now turned into bureaucracy-based budgeting, Mr. President. We rearranged the budget and we gave them flexibility, but that flexibility and that lump-sum never really got to the schools. (And you have talked to me many, many times about trying to do what you did back in 1978.) We have members of the Board of Education and rumored in the Department of Education that say, this is not our law.

"Last year we passed the omnibus bill to mandate that 40% of the district and state employees go back to the schools and we are being met with resistance every step of the way where they're saying, this is not our law. We passed student center bills to give schools like Waiālae the ability to be what they are and to get money directly. They are still in negotiations with the Department of Education when the law says that shouldn't take place. And every step of the way, they are stopping them.

"Mr. President, what has to take place is that the department has to take personal responsibility. It's not their money. It's the people's money. We all care about the children. We all care about what has to be done. And the fact of the matter is that there has been a lot of talk, and we've heard that talk. We've trusted them on that talk, but the fact is that the results do not match the rhetoric that has taken place. They talked about coming up with a way to implement a weighted per pupil allocation system four years ago. We still do not have any proposals on the table from the department on a weighted per pupil allocation formula. Yet they said they would do it, but haven't.

"You know, Mr. President, we talk about the school being the focal point of the system. We talk about the tip of the focal point being the teacher and the student. If you look at today's system, why is it that the further you get away from the focal point, the more money you make? Why is it that the further you get away from the focal point, the greater the chances that you have air-conditioning and carpets? Why is it that the further you get away from the focal point, the more computers there are in the bureaucracy's offices? Mr. President, the focus is not in the classroom. And that is what this education reform and restructuring is all about. It's about empowering schools and trusting those at the school level to do what is right. But if you have a system in place that denies schools that opportunity, then I support the Ways and Means chair and the Education chair in taking some tough stands to re-do some of the things that we did in good faith that aren't happening. Thank you, Mr. President."

The President then remarked:

"Thank you for those comments. I'm quite sure the chairperson of the Senate Education Committee and the chairperson of the Ways and Means Committee will take this problem that we have seriously and come up with a responsible position for the Senate. But if you deeply are in need of some alternatives, please look at the Session Laws of Hawaii, 1977, and maybe what we need in this state is a return to school-by-school budgeting."

Senator Matsuura then rose on a point of personal privilege and said:

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

"The other night I was watching television and I saw the Mayor of the City and County of Honolulu and the council people addressing the problem of cost over-runs of capital improvement projects. I was intrigued by their problem because the state had the same kind of problems when I was chairing the Senate Investigating Committee.

"One of the things I learned from the investigation was that one of the major problems with all of the cost over-runs was that when the building plans were approved and construction began, there were a lot of change orders. Whenever there is a change of orders, theoretically one should get another bid to comply to the change order. However, they don't do that. They just tell the contractor, here's the change order; just do it. After the construction is finished, the contractor sends the bill. How can the state say that the bill is too high when the job is completed? So they pay.

"As I was watching the television, I thought to myself, the city should have learned from the State regarding cost over-runs. Somehow the state must limit the number of change orders. Perhaps when the final architectural plans are done, the state should hire somebody to examine the plans and have another opinion so that there will not be change orders as often as has been occurring. If we were to limit the change orders and if you were to get a price quote first as to how much it would cost before they start work on the change order, it would reduce the number of cost over-runs of the state projects. Thank you."

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

"Mr. President, I rise on a point of personal privilege. Actually it is a personal request.

"My understanding is that the Senate Ways and Means Committee acted on the workers' compensation bill this morning and hopefully we can get that across to the House early next week. The no-fault insurance bill has been in the House for the last four weeks. If you could at the appropriate time, please consult the Honorable Speaker. We have 24 days left in the session and I think that if we can get to the table as soon as possible, we could get some good negotiations going and maybe even wrap up before the budget process starts. Thank you."

#### ADJOURNMENT

At 12:01 o'clock p.m., on motion by Senator Ihara, seconded by Senator Liu and carried, the Senate adjourned until 11:30 o'clock a.m., Friday, March 24, 1995.