

## TENTH DAY

Thursday, February 1, 1996

The Senate of the Eighteenth Legislature of the State of Hawaii, Regular Session of 1996, convened at 11:39 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by Lieutenant Noelle Nelson, Salvation Army, Kaneohe Corps, after which the Roll was called showing all Senators present with the exception of Senator Anderson who was excused.

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

At 11:41 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:05 o'clock p.m.

## MESSAGE FROM THE GOVERNOR

Gov. Msg. No. 118, dated January 9, 1996, transmitting the "1995 Report of the Commission to Promote Uniform Legislation," prepared by the Department of the Attorney General, was read by the Clerk and was placed on file.

## HOUSE COMMUNICATION

Hse. Com. No. 3, transmitting H.B. No. 2408, which passed Third Reading in the House of Representatives on January 31, 1996, was read by the Clerk and was placed on file.

On motion by Senator Ihara, seconded by Senator Liu and carried, H.B. No. 2408, entitled: "A BILL FOR AN ACT RELATING TO MOTOR VEHICLES," passed First Reading by title and was referred to the Committee on Transportation and Government Affairs.

## SENATE CONCURRENT RESOLUTION

The following concurrent resolution (S.C.R. No. 14) was read by the Clerk and was referred to committees:

Senate Concurrent Resolution

No. 14 "SENATE CONCURRENT RESOLUTION REQUESTING THE DIRECTOR OF TRANSPORTATION TO IMPLEMENT A STATEWIDE PROGRAM TO EDUCATE THE PUBLIC CONCERNING THE DANGERS TO ALL PERSONS WHO RIDE IN THE CARGO AREAS OF PICKUP TRUCKS."

Offered by: Senator McCartney.

Referred to: Committee on Transportation and Government Affairs, then to the Committee on Ways and Means

## SENATE RESOLUTION

The following resolution (S.R. No. 8) was read by the Clerk and was referred to committees:

Senate Resolution

No. 8 "SENATE RESOLUTION REQUESTING THE DIRECTOR OF TRANSPORTATION TO IMPLEMENT A STATEWIDE PROGRAM TO EDUCATE THE PUBLIC CONCERNING THE DANGERS TO ALL PERSONS WHO RIDE IN THE CARGO AREAS OF PICKUP TRUCKS."

Offered by: Senator McCartney.

Referred to: Committee on Transportation and Government Affairs, then to the Committee on Ways and Means

## ORDER OF THE DAY

## THIRD READING

Stand. Com. Rep. No. 1607 (S.B. No. 2001, S.D. 2):

By unanimous consent, action on Stand. Com. Rep. No. 1607 and S.B. No. 2001, S.D. 2, was deferred to the end of the calendar.

S.B. No. 1810, S.D. 1:

Senator Kanno moved that S.B. No. 1810, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Ikeda.

Senator Kanno rose to speak in support of the measure as follows:

"Mr. President, S.B. No. 1810 is a measure that reforms the way that legislative pensions are calculated. It is an important bill that is going to look at providing fairness and equity to the system. I would like to ask my colleagues to vote 'aye' on this measure.

"Thank you."

Senator Ikeda rose to speak in support of the measure as follows:

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

"Mr. President, many have asserted that the potential to obtain a 'high-three' position places an undue influence on elective officials to cater to the executive branch in order to pad one's retirement. While we should strive to remove appearances of impropriety, it is the intent of this measure to create equity in retirement compensation for public employees and that the conferment of retirement benefits would be blind in application.

"The justification for utilizing the bifurcated process set forth in the bill in calculating retirement benefits for elective officials or judges is to ensure that a member with such service is compensated on the basis of the member's years of service in each capacity.

"Mr. President, I would like to call your attention to the position that the Governor took on this bill reported in yesterday's Honolulu Advertiser and Star Bulletin, and his subsequent recanting of his position in today's Advertiser. And I do this because I believe that this clarification is extremely important.

"The Governor has gone on record saying that he opposes the bill because, 'The bill should be fair and applied prospectively,' and, 'You have people in the retirement system. They've been collecting their retirement. You can't go back and divest them of their retirement rights.'

"Mr. President, I would like to point out that the bill does not affect the rights of any person collecting retirement benefits from the Employees' Retirement System, nor does it affect the vested rights of any active member of the Employees' Retirement System. What this

bill does is affect the retirement benefits of those active members of the Employees' Retirement System who have credited service as an elective official or as a judge.

"I would also like to point out, Mr. President, that the amended bill that was passed unanimously by your Committees on Agriculture, Labor and Employment and Ways and Means, shares many similarities with the Administration's bill with respect to the calculation of retirement benefits. Given this, I have many doubts as to the charges of the bill's unconstitutionality.

"I also believe that the Governor has done a disservice to former elective officials who have assumed positions in the executive and judicial branches through the appointment process. By stating that he and the Lt. Governor 'earned their high-three' because they were elected into office casts a shadow of cronyism over these officials and fails to take into account any of those persons' contributions to our State in those subsequent capacities. There should be no difference whether public service is rendered in an elected or appointed capacity. The popular vote should not be construed as a mandate for increased benefits.

"Mr. President, the public has demanded fairness and equity in the State's retirement system. With this bill, we have answered their call.

"Thank you, Mr. President."

Senator Holt rose to speak in favor of the measure as follows:

"Mr. President, I rise to speak in support of this bill. Before proceeding, Mr. President, I would like to commend both chairs, Senator Ikeda and Senator Kanno, for their hard work and perseverance in bringing this important public issue out of committee and to this floor for action by this body. Also, I would like to commend leadership and in particular you, Mr. President, for your sensitivity and support on this delicate matter of public interest.

"Mr. President, this bill is consistent with your opening day remarks when you stated, 'We must lead by example.' This bill is the third Senate policy recommendation where we act responsibly and 'lead by example.' Earlier this session, in recognition of the budget shortfall, we agreed not to increase salaries, and also agreed to cut our own Senate budget by 5 percent. In essence, we used the budget axe on our own house first. And now, Mr. President, this bill before us is yet another means by which this body is standing up and saying to the people we represent, 'The Senate will lead by example.'

"Mr. President, passing this high-three bill today, on only the tenth day of the session and at least four weeks before first crossover, is a clear statement that this body is able and willing to bite the bullet ... no matter how small, no matter how large.

"I urge all my colleagues to vote 'aye' in support of this very, very important matter of statewide concern. Thank you."

Senator Liu rose to speak in support of the bill and stated:

"Mr. President, I rise also to speak in favor of this bill and I do so with pleasure to be able to agree, finally perhaps after over a year with the two chairs of this committee which dealt with this measure. I'd also like to say that notwithstanding whatever the Governor said or did not say or may have said, that if an attorney

general's opinion comes down which does indicate that there is some constitutional flaw -- one, that we recognize it would be only an opinion -- and secondly, if there is real substance to it, that we also have the courage, because we have the time if the opinion comes down soon enough, to work on a constitutional proposal to change the Constitution, if need be. Thank you very much, Mr. President."

The motion was put by the Chair and carried, S.B. No. 1810, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE PUBLIC EMPLOYEES RETIREMENT SYSTEM," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Anderson).

#### RE-REFERRAL OF SENATE BILLS

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

Senate Bills Referred to:

No. 2542 Committee on Planning, Land and Water Use Management

No. 2703 Jointly to the Committee on Communications and Public Utilities and the Committee on Consumer Protection, then to the Committee on Ways and Means

No. 2775 Jointly to the Committee on Communications and Public Utilities and the Committee on Consumer Protection, then to the Committee on Ways and Means

No. 3041 Jointly to the Committee on Communications and Public Utilities and the Committee on Consumer Protection, then to the Committee on Ways and Means

No. 3051 Committee on Consumer Protection, then to the Committee on Ways and Means

No. 3177 Committee on Tourism and Recreation

#### MATTER DEFERRED FROM EARLIER ON THE CALENDAR

#### THIRD READING

Stand. Com. Rep. No. 1607 (S.B. No. 2001, S.D. 2):

Senator Ikeda moved that Stand. Com. Rep. No. 1607 be adopted and S.B. No. 2001, S.D. 2, having been read throughout, pass Third Reading, seconded by Senator Baker.

Senator Matsuura rose to speak on the measure as follows:

"Mr. President, I will be voting 'yes', but with some reservation.

"If this bill was the final bill before sending it over to the Governor, my vote would be 'no.' Permit me to explain my reservation -- in all my years in the State Legislature, my contention and rule has been that we pass good bills to the other house. I have always been opposed to sending bills that were defective, even if there was some strategy which may be used as a leverage to counter-leverage the House position. I've always objected to those unknown strategies. Whenever we send good

bills to the other house, we will not have that bill coming back and haunting us later.

"There is enough time right now to change the bill to address the concerns about some of the items in this bill. The Senate body appears to favor a few changes because that's the position we as a body will have to defend when we go to conference on this bill. It will be difficult to defend a position that is not right. So I'll be voting 'aye' but with reservations.

"Thank you."

Senator Tam rose in support of the measure as follows:

"Mr. President, I vote with reservations in favor of this bill. The legislative process is just beginning on this bill. Furthermore, unfortunately, the 60-day legislative session makes it very difficult to really pass a conclusive bill in the Senate. I know that this bill will have amendments in conference.

"Thank you."

Senator Ige rose in support of the measure and said:

"Mr. President, I just would like to rise in support of the bill with some reservations. My concern really, again, leads to language that would much better protect the interests of the consumer and insure that any benefits to the law and any savings that the insurance companies may get, really be passed on to the consumer.

"Thank you."

Senator Grauly then rose to speak against the measure and stated:

"Mr. President, I rise to speak against this bill.

"Mr. President, this bill is fundamentally unfair. We have all been taught that those who carelessly or recklessly damage property or injure others should be held responsible for the consequences of their conduct. We learned when we were children that if we spilled something, then we should clean it up. If we broke a neighbor's window, we should be responsible for repairing it. If we hurt someone through our carelessness, we should be responsible for the consequences of our carelessness -- that the wrongdoer should pay for the damage that results, not the innocent victim.

"Our laws have always reflected this fundamental value. Our criminal laws punish the thief, not the victim; the murderer, not the murdered. Our business law holds the person who breaks a contract responsible for the resulting loss, not the innocent party to the broken contract. Our civil law holds the manufacturer of a defective car responsible, not the unfortunate person hurt by the defect.

"Yet this bill turns that fundamental principal of fairness upside down, and lets the reckless driver off the hook by depriving the victim of the right to hold reckless drivers responsible for injuries caused by their reckless driving. In essence, we punish the injured victim for the conduct of the reckless driver. We remove accountability from the privilege of driving; we remove responsibility from the obligation to drive safely. We remove fairness -- by placing the consequences of reckless driving on the innocent victims, rather than the reckless driver.

"Under this bill, if a retired grandmother was struck in a crosswalk by a reckless driver, had less than \$250,000 in medical bills, but broke her hip and had to spend the rest of her life in a wheelchair, she would not be able to

recover a single penny for her crippling injury. The reckless driver could not be held accountable to her.

"Under this bill, if a housewife suffered permanent brain damage because of a careless driver, did not exhaust her no-fault benefits because she had no wage loss, and her medical bills were less than \$250,000, she could not recover a single penny for the permanent brain damage. The careless driver would not be responsible to her.

"Under this bill, if a child is crippled by a reckless driver and could never run and play with other children again, the child would have no rights against the reckless driver -- not even if the child could never play basketball again, could never play football, never play soccer, never go on a hike. The reckless driver would never be held responsible; never taught to drive carefully, never be concerned that he could be held accountable to those he hurt.

"This bill takes rights away from responsible citizens and protects the irresponsible; punishes careful drivers and rewards reckless drivers; makes good drivers pay for bad drivers.

"I urge my colleagues to vote 'no.' Thank you."

The motion was put by the Chair and carried. Stand. Com. Rep. No. 1607 was adopted and S.B. No. 2001, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO MOTOR VEHICLE INSURANCE," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 20. Noes, 4 (Fernandes Salling, Grauly, Matsunaga, Taniguchi). Excused, 1 (Anderson).

Senator Levin rose on a point of personal privilege and stated:

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

"Mr. President, today marks a sad day in Hawaii's history, and it seems to me that it should not pass without being noted by the Senate. I do not suggest that it is 'a day that will live in infamy,' and it would be frivolous to ask that we adjourn with a moment of silence as we do to mark a death, but in a sense something is dying today, not dramatically, but rather a death by a thousand cuts. Today marks the beginning of the shredding of Hawaii's safety net for the poor.

"Simply put, February 1, 1996 is the day that the State of Hawaii no longer will provide coverage for adult dental care under Quest, what we used to call Medicaid. Medicaid is part of the safety net we, as a community; we, as 'The Health State'; we as believers in the Democratic ideal that government can be a positive force in the lives of our people, helping those who need a safety net; established to help the less fortunate, and is a guarantee that all Americans will receive some minimum amount of health care, no matter how poor they may be. Exactly what should be included in that minimum is subject to debate, but Hawaii has always taken the position that we should cover a broad range of services, and we traditionally have taken advantage of most of the optional coverages available to our people under Medicaid, including adult dental care.

"Today, in the shadow of budget deficits, we begin to shred the safety net. I cannot fault those who have made this choice; in fact I praise them because I know that their motives are good and they are trying to make the best of the bad cards they have been dealt. I also thank

my colleagues, including Senator Ikeda, Senator Baker, Senator Matsuura, and others, who have struggled to find other solutions and who are still trying to find a better way. But so far we have not succeeded, the rule stands, people will be hurt, short-term savings take precedence over long-term costs, and our economy takes an immediate loss of \$6-million in reduced federal funding.

"Do I have a better solution? I suppose not. But at least we need to be aware of what we are doing. Historic moments should not pass unnoticed even if they are noticed with regret and sadness."

#### HOUSE COMMUNICATION

On motion by Senator Ihara, seconded by Senator Liu and carried unanimously, the Clerk was authorized to receive a House communication transmitting H.B. No. 1, H.D. 1, relating to the authorization of funds for the expenses of the Legislature. In consequence thereof and subsequent to its recessing at 12:24 o'clock p.m., the Senate took the following action:

Hse. Com. No. 4, transmitting H.B. No. 1, H.D. 1, which passed Third Reading in the House of Representatives on February 1, 1996, was placed on file.

On motion by Senator Ihara, seconded by Senator Liu and carried, H.B. No. 1, H.D. 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS TO PROVIDE FOR THE EXPENSES OF THE LEGISLATURE, THE LEGISLATIVE AUDITOR, THE LEGISLATIVE REFERENCE BUREAU, AND THE OMBUDSMAN," passed First Reading by title and was referred to the Committee on Ways and Means.

#### ADJOURNMENT

At 1:03 o'clock p.m., the Senate adjourned until 11:30 o'clock a.m., Friday, February 2, 1996.