

THIRTY-SECOND DAY

Thursday, March 13, 1997

The Senate of the Nineteenth Legislature of the State of Hawaii, Regular Session of 1997, convened at 11:36 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by the Reverend Sandra Hiramatsu, Honpa Hongwanji, after which the Roll was called showing all Senators present.

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

Senator McCartney introduced Satoshi Migita, President of the United States Gateball Federation, and several of the officials from the Hawaii Gateball Association and World Gateball Union.

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

The Senate reconvened at 11:56 o'clock a.m.

MESSAGE FROM THE GOVERNOR

Gov. Msg. No. 206, dated March 7, 1997, transmitting the State Foundation on Culture and the Arts Report on Federal Funds Received, Budget Proviso Act 218, Section 192, SLH 1995, was read by the Clerk and was placed on file.

SENATE CONCURRENT RESOLUTIONS

The following concurrent resolutions (S.C.R. Nos. 174 to 204) were read by the Clerk and were referred to committees or were deferred:

Senate Concurrent Resolution

No. 174 "SENATE CONCURRENT RESOLUTION REQUESTING THE AUDITOR TO STUDY WHETHER ALL REAL ESTATE APPRAISERS SHOULD BE LICENSED OR CERTIFIED, AND WHETHER ALL APPRAISALS SHOULD BE CONDUCTED IN CONFORMANCE WITH THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISALS PRACTICE."

Offered by: Senators Baker, Ige, D.

Referred to: Committee on Commerce, Consumer Protection, and Information Technology, then to the Committee on Ways and Means

No. 175 "SENATE CONCURRENT RESOLUTION REQUESTING A STUDY OF PROVIDING INSURANCE FOR MENTAL ILLNESS AND SUBSTANCE ABUSE."

Offered by: Senators Baker, Ige, D.

Referred to: Committee on Commerce, Consumer Protection, and Information Technology, then to the Committee on Ways and Means

No. 176 "SENATE CONCURRENT RESOLUTION REQUESTING THE AUDITOR TO REVIEW AND INTERPRET CERTAIN FEDERAL REQUIREMENTS REGARDING REAL ESTATE APPRAISALS."

Offered by: Senator Mizuguchi, by request.

Referred to: Committee on Commerce, Consumer Protection, and Information Technology, then to the Committee on Ways and Means

No. 177 "SENATE CONCURRENT RESOLUTION REQUESTING THE AUDITOR TO REPORT ON H.B. NO. 567 (S.B. NO. 1077) RELATING TO REAL PROPERTY LEASES."

Offered by: Senator Mizuguchi, by request.

Referred to: Jointly to the Committee on Water, Land, and Hawaiian Affairs and the Committee on Commerce, Consumer Protection, and Information Technology, then to the Committee on Ways and Means

No. 178 "SENATE CONCURRENT RESOLUTION REQUESTING THE UNITED STATES DEPARTMENT OF TRANSPORTATION TO PURSUE 'OPEN SKIES' AVIATION NEGOTIATIONS WITH JAPAN, AND TO CONSIDER ALLOWING 'TRIANGLE FLIGHT' ARRANGEMENTS."

Offered by: Senator Mizuguchi.

Referred to: Committee on Transportation and Intergovernmental Affairs

No. 179 "SENATE CONCURRENT RESOLUTION REQUESTING THE UNIVERSITY OF HAWAII ETHNIC STUDIES DEPARTMENT TO DOCUMENT THE ROLE OF FIREWORKS IN HAWAII IN RELIGIOUS AND CULTURAL PRACTICES AND LOCAL CUSTOMS."

Offered by: Senator Tam.

No. 180 "SENATE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF EDUCATION TO ESTABLISH CLEAR AND CONSISTENT OBJECTIVES FOR SPECIAL NEEDS SCHOOLS TO GUIDE PROGRAMMING AND BUDGETING DECISIONS."

Offered by: Senator Tam.

No. 181 "SENATE CONCURRENT RESOLUTION URGING THE LEGISLATURE TO AFFIRM ITS DEVOTION TO THE CREATION OF AN INCLUSIVE SOCIETY IN WHICH HAWAIIAN AND AMERICAN CITIZENS ARE PROVIDED EQUAL OPPORTUNITIES."

Offered by: Senators Aki, Anderson, Tam.

No. 182 "SENATE CONCURRENT RESOLUTION URGING THE BOARD OF EDUCATION TO ADOPT A POLICY RELATING TO AN EDUCATIONAL BILL OF RIGHTS FOR HAWAII'S DEAF, HARD-OF-HEARING, AND DEAF-BLIND CHILDREN."

Offered by: Senators Fernandes Salling, Fukunaga.

No. 183 "SENATE CONCURRENT RESOLUTION SUPPORTING AND URGING IMPLEMENTATION OF THE HAZARD MITIGATION PLAN DEVELOPED IN RESPONSE TO THE WAIANAEE DISTRICT FLOODING."

Offered by: Senator Aki.

No. 184 "SENATE CONCURRENT RESOLUTION ESTABLISHING A COMMISSION ON THE TWENTY-FIRST CENTURY."

Offered by: Senator Mizuguchi.

No. 185 "SENATE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF HEALTH TO RETAIN THE KALIHI-PALAMA FAMILY GUIDANCE CENTER IN KALIHI."

- Offered by: Senators Chun Oakland, Metcalf, Tam, Levin, Sakamoto, Mizuguchi.
- No. 186 "SENATE CONCURRENT RESOLUTION ENDORSING THE RECOMMENDATIONS OF THE AD HOC COMMITTEE ON DOMESTIC AND SEXUAL VIOLENCE AND REQUESTING ANNUAL PROGRESS REPORTS ON THE DEVELOPMENT AND IMPLEMENTATION OF A COMPREHENSIVE CONTINUUM OF CARE FOR VICTIMS OF DOMESTIC AND SEXUAL VIOLENCE."
- Offered by: Senators Chun Oakland, by request, Baker, Chumbley, Fernandes Salling, Fukunaga, Matsunaga.
- No. 187 "SENATE CONCURRENT RESOLUTION REQUESTING VARIOUS AGENCIES OF THE STATE TO SPONSOR A JOB FAIR AT THE STATE CAPITOL."
- Offered by: Senators Chun Oakland, Kanno, Taniguchi, Tanaka.
- No. 188 "SENATE CONCURRENT RESOLUTION ENCOURAGING THE DEPARTMENT OF HUMAN SERVICES TO BEGIN DEVELOPMENT OF A MEDICAID LONG-TERM CARE DEMONSTRATION PROJECT."
- Offered by: Senators Chun Oakland, Kanno, Levin, Metcalf.
- No. 189 "SENATE CONCURRENT RESOLUTION REQUESTING THE AUDITOR TO INCORPORATE A REVIEW OF PAPERWORK REDUCTION IN STATE GOVERNMENT WHEN CONDUCTING ALL PROGRAM AUDITS OF STATE DEPARTMENTS."
- Offered by: Senator Sakamoto.
- No. 190 "SENATE CONCURRENT RESOLUTION URGING THE UNIVERSITY OF HAWAII AT MANOA TO TERMINATE EXCLUSIVE FOOD SERVICE PRACTICES ON CAMPUS."
- Offered by: Senator Sakamoto.
- No. 191 "SENATE CONCURRENT RESOLUTION REQUESTING THE HOUSING FINANCE AND DEVELOPMENT CORPORATION, WITH THE ASSISTANCE OF THE ATTORNEY GENERAL, TO STUDY THE IMPACT OF INCREASING THE MINIMUM PARCEL SIZE FOR PURPOSES OF THE LAND REFORM ACT."
- Offered by: Senator Anderson.
- No. 192 "SENATE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO ENTERTAIN OFFERS OF PURCHASE FOR CERTAIN PARCELS OF STATE LAND."
- Offered by: Senator Anderson.
- No. 193 "SENATE CONCURRENT RESOLUTION REQUESTING THE BOARD OF LAND AND NATURAL RESOURCES TO FACILITATE THE GROWTH OF SMALL BUSINESSES AND THE COMMERCIAL HIGH TECHNOLOGY INDUSTRY IN HAWAII."
- Offered by: Senator Anderson.
- No. 194 "SENATE CONCURRENT RESOLUTION REQUESTING THE COUNTIES TO USE TAX INCREMENT FINANCING FOR INFRASTRUCTURE IMPROVEMENTS FOR NEW DEVELOPMENT."
- Offered by: Senator Anderson.
- No. 195 "SENATE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM TO CONSIDER EXPANDING ITS CAPITAL LOAN PROGRAM UNDER CHAPTER 210, HAWAII REVISED STATUTES."
- Offered by: Senator Anderson.
- No. 196 "SENATE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO OFFER LONG-TERM LEASES WITH SPECIAL TERMS FOR COMMERCIAL ENTERPRISES."
- Offered by: Senator Anderson.
- No. 197 "SENATE CONCURRENT RESOLUTION REQUESTING THE AUDITOR TO CONDUCT A SUNRISE REVIEW OF MANDATORY HEALTH INSURANCE COVERAGE FOR EARLY INTERVENTION SERVICES."
- Offered by: Senator Levin.
- No. 198 "SENATE CONCURRENT RESOLUTION REQUESTING A REPORT ON PROVIDING IMMUNITY FROM LIABILITY FOR VOLUNTEERS WORKING WITH GOVERNMENT AND NONPROFIT ORGANIZATIONS."
- Offered by: Senators Chumbley, Matsunaga.
- No. 199 "SENATE CONCURRENT RESOLUTION REQUESTING THE ESTABLISHMENT OF A TASK FORCE TO REVIEW THE VIABILITY OF DOMESTIC VIOLENCE BATTERER TREATMENT PROGRAMS FOR PERSONS CONVICTED OF OFFENSES INVOLVING THE ABUSE OF A FAMILY OR HOUSEHOLD MEMBER."
- Offered by: Senators Matsunaga, Chumbley.
- No. 200 "SENATE CONCURRENT RESOLUTION REQUESTING A STUDY ON THE IMPACT OF PROVIDING BEACH LIABILITY IMMUNITY TO THE COUNTY GOVERNMENTS."
- Offered by: Senators Chumbley, Matsunaga.
- No. 201 "SENATE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF PUBLIC SAFETY AND THE DEPARTMENT OF EDUCATION TO FORM A PARTNERSHIP TO PROVIDE MORE SPECIALIZED IN-SERVICE TRAINING OPPORTUNITIES FOR SCHOOL SECURITY ATTENDANTS."
- Offered by: Senators Chumbley, Matsunaga, Tam, Bunda, Sakamoto, McCartney, Ige, D., Ihara, Iwase, Aki, Levin, Metcalf, Mizuguchi, Chun Oakland, Baker, Tanaka, Taniguchi, Solomon, Slom, Kanno, Kawamoto, Fukunaga.
- No. 202 "SENATE CONCURRENT RESOLUTION REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO UPDATE ITS SURVEY OF GOVERNMENT PROGRAMS IN THE STATE THAT ARE MANDATED BY THE FEDERAL GOVERNMENT."
- Offered by: Senator Taniguchi.
- No. 203 "SENATE CONCURRENT RESOLUTION REQUESTING A STUDY OF THE HOMELESS AT THE HONOLULU INTERNATIONAL AIRPORT."
- Offered by: Senators Kawamoto, Aki, Chumbley, Kanno, Sakamoto.

No. 204 "SENATE CONCURRENT RESOLUTION URGING THE DEPARTMENT OF TRANSPORTATION TO CONSTRUCT CROSSING GATES AND FLASHING SIGNALS AT RAILROAD CROSSINGS."

Offered by: Senators Kawamoto, Aki, Chumbley, Kanno.

SENATE RESOLUTIONS

The following resolutions (S.R. Nos. 90 to 98) were read by the Clerk and were deferred:

Senate Resolution

No. 90 "SENATE RESOLUTION REQUESTING THE COMMITTEE ON EDUCATION TO CONVENE A TASK FORCE TO DEFINE THE ROLES OF TEACHERS, UNIONS, PRINCIPALS, SCHOOL/COMMUNITY-BASED MANAGEMENT SYSTEM COUNCILS, PARENTS, THE BOARD OF EDUCATION, STUDENTS, THE LEGISLATURE, THE UNIVERSITY OF HAWAII, AND THE BUSINESS COMMUNITY IN PUBLIC EDUCATION."

Offered by: Senator Tam.

No. 91 "SENATE RESOLUTION URGING THE LEGISLATURE TO AFFIRM ITS DEVOTION TO THE CREATION OF AN INCLUSIVE SOCIETY IN WHICH HAWAIIAN AND AMERICAN CITIZENS ARE PROVIDED EQUAL OPPORTUNITIES."

Offered by: Senators Aki, Anderson, Tam.

No. 92 "SENATE RESOLUTION URGING THE BOARD OF EDUCATION TO ADOPT A POLICY RELATING TO AN EDUCATIONAL BILL OF RIGHTS FOR HAWAII'S DEAF, HARD-OF-HEARING, AND DEAF-BLIND CHILDREN."

Offered by: Senators Fernandes Salling, Fukunaga.

No. 93 "SENATE RESOLUTION SUPPORTING AND URGING IMPLEMENTATION OF THE HAZARD MITIGATION PLAN DEVELOPED IN RESPONSE TO THE WAIANAE DISTRICT FLOODING."

Offered by: Senator Aki.

No. 94 "SENATE RESOLUTION URGING THE UNIVERSITY OF HAWAII AT MANOA TO TERMINATE EXCLUSIVE FOOD SERVICE PRACTICES ON CAMPUS."

Offered by: Senator Sakamoto.

No. 95 "SENATE RESOLUTION REQUESTING THE DEPARTMENT OF PUBLIC SAFETY AND THE DEPARTMENT OF EDUCATION TO FORM A PARTNERSHIP TO PROVIDE MORE SPECIALIZED IN-SERVICE TRAINING OPPORTUNITIES FOR SCHOOL SECURITY ATTENDANTS."

Offered by: Senators Chumbley, Matsunaga, Tam, Bunda, Sakamoto, McCartney, Ige, D., Ihara, Iwase, Aki, Levin, Metcalf, Kawamoto, Mizuguchi, Chun Oakland, Baker, Tanaka, Taniguchi, Solomon, Slom, Kanno, Fukunaga.

No. 96 "SENATE RESOLUTION REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO UPDATE ITS SURVEY OF GOVERNMENT PROGRAMS IN THE STATE THAT ARE MANDATED BY THE FEDERAL GOVERNMENT."

Offered by: Senator Taniguchi.

No. 97 "SENATE RESOLUTION REQUESTING A STUDY OF THE HOMELESS AT THE HONOLULU INTERNATIONAL AIRPORT."

Offered by: Senators Kawamoto, Aki, Chumbley, Kanno.

No. 98 "SENATE RESOLUTION URGING THE DEPARTMENT OF TRANSPORTATION TO CONSTRUCT CROSSING GATES AND FLASHING SIGNALS AT RAILROAD CROSSINGS."

Offered by: Senators Kawamoto, Aki, Chumbley, Kanno.

STANDING COMMITTEE REPORT

Senators Chun Oakland and Kanno, for the Committee on Human Resources, presented a report (Stand. Com. Rep. No. 933) recommending that H.B. No. 816, H.D. 2 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Kanno, seconded by Senator Chun Oakland and carried, the report of the Committee was adopted and H.B. No. 816, H.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM," passed Second Reading and was referred to the Committee on Ways and Means.

ORDER OF THE DAY

DISAGREE AND APPOINTMENT OF CONFEREES

MATTER DEFERRED FROM TUESDAY, MARCH 11, 1997

S.B. No. 175 (H.D. 1):

On motion by Senator Levin, seconded by Senator Metcalf and carried, the Senate disagreed to the amendments proposed by the House to S.B. No. 175, and requested a conference on the subject matter thereof.

In accordance therewith, the President appointed Senators Levin, Metcalf, co-chairmen, Chun Oakland, Slom as managers on the part of the Senate at such conference.

REFERRAL OF SENATE CONCURRENT RESOLUTIONS

The President made the following committee assignments of concurrent resolutions that were offered on Tuesday, March 11, 1997, and Wednesday, March 12, 1997:

Senate Concurrent Resolution	Referred to:
No. 158	Committee on Government Operations and Housing, then to the Committee on Ways and Means
No. 159	Committee on Education, then to the Committee on Ways and Means
No. 160	Committee on Education, then to the Committee on Ways and Means
No. 161	Committee on Human Resources, then to the Committee on Ways and Means
No. 162	Committee on Education, then to the Committee on Ways and Means

No. 163 Committee on Transportation and Intergovernmental Affairs

No. 164 Committee on Transportation and Intergovernmental Affairs, then to the Committee on Ways and Means

No. 165 Committee on Transportation and Intergovernmental Affairs, then to the Committee on Ways and Means

No. 166 Committee on Commerce, Consumer Protection, and Information Technology, then to the Committee on Ways and Means

No. 167 Committee on Commerce, Consumer Protection, and Information Technology, then to the Committee on Ways and Means

No. 168 Committee on Commerce, Consumer Protection, and Information Technology, then to the Committee on Ways and Means

No. 169 Committee on Education, then to the Committee on Ways and Means

No. 170 Committee on Transportation and Intergovernmental Affairs, then to the Committee on Ways and Means

No. 171 Committee on Education, then to the Committee on Ways and Means

No. 172 Committee on Human Resources, then to the Committee on Ways and Means

No. 173 Committee on Education, then to the Committee on Ways and Means

REFERRAL OF SENATE RESOLUTIONS

The President made the following committee assignments of resolutions that were offered on Tuesday, March 11, 1997, and Wednesday, March 12, 1997:

Senate Resolution Referred to:

No. 81 Committee on Government Operations and Housing, then to the Committee on Ways and Means

No. 82 Committee on Education, then to the Committee on Ways and Means

No. 83 Committee on Transportation and Intergovernmental Affairs

No. 84 Committee on Transportation and Intergovernmental Affairs, then to the Committee on Ways and Means

No. 85 Committee on Transportation and Intergovernmental Affairs, then to the Committee on Ways and Means

No. 86 Jointly to the Committee on Human Resources and the Committee on Health and Environment, then to the Committee on Ways and Means

No. 87 Committee on Economic Development, then to the Committee on Judiciary

No. 88 Committee on Education, then to the Committee on Ways and Means

No. 89 Committee on Transportation and Intergovernmental Affairs, then to the Committee on Ways and Means

Senator Solomon rose on a point of personal privilege as follows:

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

"Mr. President, I'm rising in response to an article that was in both newspapers yesterday, the *Star-Bulletin* and *Advertiser* -- 'Cayetano mulls Senate snag on Pai appointment to PUC.' Just for the record, Mr. President, I was informed by your leadership that you will be putting some kind of resolution together to address this situation.

"As you know, Mr. President, you've served with me for many, many years and you know my track record. I normally don't get involved unless I see my name, and being that my name was mentioned several times throughout this article, I feel compelled to stand and speak on the issue.

"Our constitution prohibits certain interim appointments. It is not relevant to inquire why a particular appointment failed to receive the consent of the Senate. Once a particular person has been named by the governor for appointment, the only remaining determination pursuant to Article V, Section 6, is whether the Senate did, in fact, consent and if it did not, the constitution prohibits the governor from appointing that person on an interim basis. In not only that, the governor is likewise without power to interfere with the confirmation process after he nominates a person for appointment. Had the governor power to withdraw or cancel an appointment once made, it would render the separation of powers provision, set out in Article V, Section 6, of the State Constitution, meaningless.

"I refer this body to the minutes of the 1982 legislative session. Those of us who were here may well remember the ringing words of Senate President Richard Wong in regard to facts identical to those before us today. The governor in 1981 appointed certain individuals, then he withdrew their appointments, and after the Senate adjourned appointed them on an interim basis.

"I'm quoting, Mr. President, primarily from the 1982 legislative session and some of my colleagues here serving with me today were then there, and I'm sure that these will bring back and jog your memory. And I'm quoting directly from Senate President Wong who spoke at the time from the Senate floor.

"President Wong stated and I quote: 'the authority of the governor to make interim appointments is conditioned by two explicit restraints in the Constitution: First, he can make interim appointments only when the Senate is not in session and a vacancy occurs; and second, he cannot make an interim appointment of a person who has previously been nominated but who has failed to receive the consent of the Senate. These are the two major points to keep in mind.'

"Furthermore, President Wong noted the governor is without power to grant interim appointments to nominees whose appointments he had withdrawn. He stated the governor, and I quote: 'took an "end run" around the Constitution and the Senate's power of confirmation.'

"He reviewed the history of the 1968 constitutional convention where I quote, 'a formidable assault was attempted to strip the Senate of its confirmation powers.' One of the strongest voices resisting the assault was that of then Senator George Ariyoshi who as governor in 1981 took that end run around the constitution and made those interim appointments.

"President Wong concludes his remarks and I quote: 'So what we have before us, members of the Senate, is an issue that runs much deeper than merely passing judgment on the

individual nominees. It is an issue that runs to the heart of the American system of government, after which our own state government is patterned. It runs to the heart of our system of separation of powers and checks-and-balances, of which the Senate -- through its confirmation powers -- is such an important part.'

"Approve these nominees, and we are saying, in effect, we are only a rubber stamp, that the Senate's powers of advise and consent are meaningless and that the Senate's constitutional power of confirmation may be circumvented by the Governor at will.'

"As the minutes show, President Wong was strongly supported by then Senator Abercrombie (now congressman) and Senator Cayetano (now governor) in his defense of the constitutional separation of powers between the legislative and executive branches.

"Mr. President, this is deja vu all over again. The more things change, the more they stay the same. Yesterday, the governor is quoted saying, 'It was never my intent to usurp the Senate's role in advise and consent of gubernatorial appointees by making Pai an interim member of the board.' Well, Mr. President, he sure wasn't singing that song in 1982.

"Thank you."

ADJOURNMENT

At 12:06 o'clock p.m., on motion by Senator Ihara, seconded by Senator Slom and carried, the Senate adjourned until 11:00 o'clock a.m., Friday, March 14, 1997.