

EIGHTEENTH DAY

Tuesday, February 16, 1999

The Senate of the Twentieth Legislature of the State of Hawaii, Regular Session of 1999, convened at 11:39 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by the Reverend Charles Carpenter, District Superintendent of the Missionary Churches of Hawaii, after which the Roll was called showing all Senators present.

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

MESSAGE FROM THE GOVERNOR

Gov. Msg. No. 202, advising the Senate that a term of expiration of a nomination to the Board of Directors, Hawai'i Tourism Authority, under Gov. Msg. No. 188, dated February 8, 1999, has been amended as follows: SHARI W. CHANG, MARK ROLFING, KEITH VIEIRA and RON WRIGHT, terms to expire June 30, 2000; and W. DAVID P. CAREY III, GARY J. BALDWIN, GILBERT M. KIMURA, DIANE S. QUITQUIT, JOHN LINN REED and ROY TOKUJO, terms to expire June 30, 2002, was read by the Clerk and was referred to the Committee on Economic Development.

STANDING COMMITTEE REPORTS

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 88) recommending that S.B. No. 484 pass Second Reading and be referred to the Committee on Judiciary.

On motion by Senator Chun, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 484, entitled: "A BILL FOR AN ACT RELATING TO PERSONAL PROPERTY," passed Second Reading and was referred to the Committee on Judiciary.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 89) recommending that S.B. No. 860 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Chun, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 860, entitled: "A BILL FOR AN ACT RELATING TO MENTAL HEALTH," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 90) recommending that S.B. No. 949 pass Second Reading and be referred to the Committee on Judiciary.

On motion by Senator Chun, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 949, entitled: "A BILL FOR AN ACT RELATING TO THE UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION," passed Second Reading and was referred to the Committee on Judiciary.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 91) recommending that S.B. No. 1139, as amended in S.D. 1, pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Chun, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 1139, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO

LIMITED LIABILITY COMPANIES," passed Second Reading and was placed on the calendar for Third Reading on Thursday, February 18, 1999.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 92) recommending that S.B. No. 1140, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Chun, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 1140, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO BUSINESS REGISTRATION," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 93) recommending that S.B. No. 1141, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Chun, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 1141, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE CONVERSION OF BUSINESS ENTITIES," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 94) recommending that S.B. No. 1142, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Judiciary.

On motion by Senator Chun, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 1142, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE NAMES OF CORPORATIONS, PARTNERSHIPS, AND LIMITED LIABILITY COMPANIES," passed Second Reading and was referred to the Committee on Judiciary.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 95) recommending that S.B. No. 1143 pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Chun, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 1143, entitled: "A BILL FOR AN ACT RELATING TO CORPORATIONS," passed Second Reading and was placed on the calendar for Third Reading on Thursday, February 18, 1999.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 96) recommending that S.B. No. 1178, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Chun, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 1178, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE GENERAL EXCISE TAXATION OF RELATED ENTITIES," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 97) recommending that S.B. No. 1512, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Chun, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 1512, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE UNIFORM PARTNERSHIP ACT," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Tam, for the Committee on Government Operations and Housing, presented a report (Stand. Com. Rep. No. 98) recommending that S.B. No. 883, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Chun, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 883, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HOUSING," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Tam, for the Committee on Government Operations and Housing, presented a report (Stand. Com. Rep. No. 99) recommending that S.B. No. 884 pass Second Reading and be referred to the Committee on Commerce and Consumer Protection.

On motion by Senator Chun, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 884, entitled: "A BILL FOR AN ACT RELATING TO FINANCING OF AFFORDABLE HOUSING," passed Second Reading and was referred to the Committee on Commerce and Consumer Protection.

Senator Inouye, for the Committee on Economic Development, presented a report (Stand. Com. Rep. No. 100) recommending that S.B. No. 488 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Chun, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 488, entitled: "A BILL FOR AN ACT RELATING TO AGRICULTURE," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Inouye, for the Committee on Economic Development, presented a report (Stand. Com. Rep. No. 101) recommending that S.B. No. 719 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Chun, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 719, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR PINEAPPLE RESEARCH," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Inouye, for the Committee on Economic Development, presented a report (Stand. Com. Rep. No. 102) recommending that S.B. No. 944, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Chun, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 944, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INVESTMENT ATTRACTION," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Inouye, for the Committee on Economic Development, presented a report (Stand. Com. Rep. No. 103) recommending that S.B. No. 1431, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Chun, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No.

1431, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE ESTABLISHMENT OF AN AGRICULTURAL WATER SYSTEM FOR UPCOUNTRY MAUI," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Inouye, for the majority of the Committee on Economic Development, presented a report (Stand. Com. Rep. No. 104) recommending that S.B. No. 1614 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Chun, seconded by Senator Slom and carried, the report of the majority of the Committee was adopted and S.B. No. 1614, entitled: "A BILL FOR AN ACT RELATING TO AGRICULTURE," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Inouye, for the majority of the Committee on Economic Development, presented a report (Stand. Com. Rep. No. 105) recommending that S.B. No. 1629 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Chun, seconded by Senator Slom and carried, the report of the majority of the Committee was adopted and S.B. No. 1629, entitled: "A BILL FOR AN ACT MAKING AN INTERIM APPROPRIATION FOR THE DEPARTMENT OF AGRICULTURE, AGRICULTURAL RESOURCE MANAGEMENT DIVISION," passed Second Reading and was referred to the Committee on Ways and Means.

At 11:43 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:47 o'clock a.m.

ORDER OF THE DAY

MATTERS DEFERRED FROM FRIDAY, FEBRUARY 12, 1999

STANDING COMMITTEE REPORTS

Stand. Com. Rep. No. 86 (S.C.R. No. 31, S.D. 1):

Senator Chumbley moved that Stand. Com. Rep. No. 86 and S.C.R. No. 31, S.D. 1, be adopted, seconded by Senator Matsunaga.

Senator Hanabusa rose in support of the measure and said:

"Mr. President, I rise to speak in support of these resolutions.

"These resolutions represent what the people of this State want from their Legislators. They will evidence, first, the leadership -- the ability of the President of this body to respond to the cry of the people and to bring together a bi-partisan resolution. Second, these resolutions evidence my colleagues' unflinching conviction to restore the public trust -- putting the public good above their own; setting aside their personal concerns. In particular, Senators from the Wahiawa, Kahaluu and Downtown districts are very noteworthy. They had very close races, and I am in awe of them. Third, these resolutions show the ability of this Senate to act as one to craft a solution under the auspices of our co-chairs of the Judiciary Committee.

"Finally, I would be remiss if I did not say that not only should the people's faith and trust be restored, but this freshman Senator's, as well, for we have shown that we are an issue-driven body, here to serve the people of this State.

"My colleagues, I ask that you continue your support of these resolutions. Let us pass these resolutions to show the people that this body is ready to take on the people's business, to put them above all, no matter how difficult, no matter who criticizes us, and no matter the personal cost.

"Thank you, Mr. President."

Senator Iwase rose in support of the measure and said:

"Mr. President, I'm rising to speak in support of the resolutions.

"Mr. President, the Attorney General's opinion which is cited in the committee report accompanying the resolution, both resolutions -- concurrent and resolution -- states that only the Supreme Court can order a re-count in contested elections. I believe that is a correct statement of the law. It is also clear, under the law, that only the Supreme Court can invalidate an election, or decide which candidate was elected when there has been a challenge to that election.

"I think it is also clear that the Legislature cannot order a re-count of an election and I think it would be difficult for us to be in a position, given the inherent conflict that we are all elected officials, to order re-counts of an election. It is the province of the Supreme Court.

"However, this resolution appears to be a prudent compromise, given all that has occurred. And given the controversy, it would be appropriate and prudent for the Chief Election Officer to comply with this resolution, particularly, if it is passed by both Houses of the Legislature. It may become more problematic if just the Senate enacts that resolution; it does not have the force and effect of law.

"The question that remains is, and that's the reason I rise to speak, Mr. President, What do we do hereafter? The Legislature is a policy-making body. We are not an adjudicatory body. We enact laws, including laws governing the election. If reforms are needed, then we must act. The focus must not be on just this election, but others to follow.

"The concurrent resolution points out problems that occurred with this election -- fiscal constraints, lack of staff, the technology was not updated. And so we must ask, How much more money is needed to upgrade the system, to hire staff, and to educate the public on the new election system? Who should conduct the election? In the 1995 Special Session, Act 27, I believe, we, the Legislature, temporarily moved jurisdiction of the conduct of elections away from the Lt. Governor to a Chief Election Officer with the intent that there be accountability, and that the elections be conducted efficiently, and that the public have faith and confidence in the election process.

"Should we re-visit this question, given what has transpired, so that we can assure accountability in the conduct of an election? And let me point out that in that act we left sole responsibility for conducting an election with one individual -- not a committee, not a commission -- because we felt that one individual, leaving it with one individual would insure accountability. Questions are now raised. Are there deficiencies in the laws regulating challenges to election results so that the Supreme Court cannot have jurisdiction? If so, what are they, and what corrective action should be taken?

"Now, Mr. President, with respect to the first question -- the money for the election in purchasing equipment and training staff and educating the public -- that's for the money committees. Hopefully, that will be closely reviewed.

"Second, with respect to the other questions, I believe they can be and should be revisited by the Judiciary Committee, perhaps commencing tomorrow when hearings are conducted on S.B. 1462, which seeks to make permanent the Office of the Election. If we are to restore voter confidence in the elections, then it is not sufficient that we pass just a resolution, because questions will remain. And if results show that others were elected who are not sitting here, we cannot change that election result, will that engender voter confidence? Suppose a race

where an individual won by 80 percent of the votes, it is determined that he lost . . . a whole lot of questions will arise.

"Therefore, I think what we should do is to dispassionately review this election and determine, dispassionately, if grievous errors or fraud was committed; enact responsible reforms which address any findings of substantial error or fraud; and seriously revisit the question of who should conduct this election, any election conducted in the State of Hawaii -- the Chief Elections Officer, the Lt. Governor, a commission -- because, again, just four years ago -- just four years ago -- we made a change. We made a change with the intent to improve the election process. We made the change to insure voter confidence in the election process. And in 1999 we are confronted with the question, a controversy as to whether or not an election was conducted appropriately with sufficient staff, voter confidence was engendered or deteriorated? And hopefully, those questions will be revisited because this resolution alone is not enough.

"Thank you."

Senator Chumbley rose to support the resolutions as follows:

"Mr. President, I rise to speak in support of the two resolutions.

"Mr. President and colleagues, I wholeheartedly agree with the previous speaker that the action taken on these resolutions today, in and of itself, by itself, is not enough to restore voter confidence; that we must go much further than just the adoption of these resolutions.

"In 1995, as a member of this body, I voted in support of Act 27 to move the Office of Elections out of the oversight of the Lt. Governor's Office, and I think that was the right direction. And I believe that was a correct vote that this body made. And in addition, I agree with the previous speaker that we must go further.

"Mr. President and colleagues, tomorrow on the Judiciary's agenda, in Room 229 starting at nine o'clock, there's a whole series of bills that not only deal with the oversight of the Office of Elections but deal with the issue of, Should we have a manual re-count when there's an election determined within a certain percentage? And should we have a commission that has direct responsibility over the Chief Elections Officer? Constitutionally and statutorily, the Chief Elections Officer is directly empowered. And I think that we need to restore that confidence that we have always had in our Elections Officer in this State.

"I want to say also, Mr. President and colleagues, that we need to applaud and acknowledge the countless hours the volunteers and the election observers put into this effort. They have committed themselves to do voluntary work throughout our State and it is not the integrity or the honesty that is in question of those individuals. It is the mechanical aspects and the malfunctions of the machines under the OMR technology that is in question. Those individuals have contributed to democracy in our society and those individuals should be recognized for the honesty and integrity that they have committed to the process.

"Mr. President and colleagues, I believe all of us in the Senate are committed to restoring voter confidence, and I want to move forward with the OMR technology because it is the technology of the future. Let's not step back to the punch system. Let's continue with OMR, but let's create an oversight and let's create a process that all voters in this State can believe in and that everyone can be assured that their vote does count.

"I urge all of my colleagues to support these resolutions.

"Thank you."

Senator Anderson rose in support of the measure and said:

"Mr. President, I'm in favor of the resolutions, however, normally when I speak I don't like to read something and because I don't want to try to go over the same avenues of the rest of the Senators, I'd like to just point out that in adopting these resolutions we should also be equal opportunity critics.

"Let's recognize that the elections division is not alone in encountering problems with new technology and that there is enough blame to go around for everybody. When it comes to high technology and computer systems, our government landscape is littered with problems. Our own Legislature system has failed and we have not been able to correct that, so we're going to limp through this coming session.

"Also, let's look at the Governor, who significantly reduced the appropriation for the elections division and the Legislature who followed suit; the Legislature, who repealed that section of the election laws that applies to the existing problems we now face and who failed in 1997 and 1998 the elections division bill that would have restored that section of law, the bill that was reintroduced this session and we should pass that particular legislation this year. The elections division is accused of not promulgating the required rules and regs and we should follow up on that.

"The most basic right, Mr. President, of the citizens is the right to vote. We were penny-wise and pound-foolish to try and hold an election with a cheap part of a system that we could not afford to do it right and it was our fault, not the Elections Office. (I have a hard time when I have to read something, Mr. President. I would rather talk from the heart, but I was told by different people that they have a hard time following me at times.) (Laughter.)

"Mr. Yoshina was faced with an emergency situation caused by the administration denying him significant personnel to conduct an election in the old and investigation should have been included, but we failed. We failed, not the department, Mr. President. And I would like to say that the Advertiser on January 16 has the Governor saying, 'The State law is silent on what happened, and a recount determined would not change anything.' Yet, on the same day, Mr. Welsh said that the company officials knew of the Waianae Precinct problem, but the State law prohibited them from doing anything. If there was such a problem and we knew it, they should have come to us and asked us to correct it. I think the citizens deserve that.

"I sit in committees day after day where there's problems. We all know it, and we continually deny to put bills forward that are going to correct these problems. We continually make laws that you could drive a Mack truck through. We have to change that procedure. We don't make laws for every attorney to say, this person has to have their day in court. We should be making the laws for the people, making them very stringent. The courts could say this is the problem, and then if there is a flaw within the law or if there's a loophole, that very wise attorney would find it. But to make a law so bad that it really doesn't apply to the needs of the constituency and for the reasons that we are here, is absolutely wrong.

"Thank you very much, Mr. President."

The motion was then put by the Chair and carried, the report of the Committee was adopted and S.C.R. No. 31, S.D. 1, entitled: "SENATE CONCURRENT RESOLUTION URGING A FULL, COMPLETE, AND DULY SUPERVISED AUDIT OF THE 1998 GENERAL ELECTION RESULTS," was adopted.

Stand. Com. Rep. No. 87 (S.R. No. 11, S.D. 1):

On motion by Senator Chumbley, seconded by Senator Matsunaga and carried, the report of the Committee was adopted and S.R. No. 11, S.D. 1, entitled: "SENATE RESOLUTION URGING A FULL, COMPLETE, AND DULY

SUPERVISED AUDIT OF THE 1998 GENERAL ELECTION RESULTS," was adopted.

Senator Kawamoto, for the Committee on Transportation and Intergovernmental Affairs, requested a waiver of the 72-hour Notice of a Public Hearing, pursuant to Senate Rule 20, on S.B. No. 1359, and the Chair granted the waiver.

Senator Taniguchi, for the Committee on Commerce and Consumer Protection, requested a waiver of the 72-hour Notice of a Public Hearing on S.B. No. 1452, and the Chair granted the waiver.

ADJOURNMENT

At 12:09 o'clock p.m., on motion by Senator Chun, seconded by Senator Slom and carried, the Senate adjourned until 11:30 o'clock a.m., Wednesday, February 17, 1999.