

## FORTIETH DAY

Tuesday, March 25, 2003

The Senate of the Twenty-Second Legislature of the State of Hawaii, Regular Session of 2003, convened at 11:42 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by Father William Kunisch, Associate Pastor, St. Anthony's Church, Kailua, after which the Roll was called showing all Senators present with the exception of Senators Kokubun, Trimble and Whalen who were excused.

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

At this time, the following introductions were made to the members of the Senate:

Senator Sakamoto introduced and congratulated the following individuals on becoming National Board Certified Teachers: Dewey Gottlieb II, Leslie Hamasaki, Kalen Kitagawa, Patricia Miyahira, Jami Muranaka, Kathleen Nagaji, Rena Arakawa, Loraine Hotoke, Carolyn Kirio, Julie Tomomitsu and Lisa Yanase.

Senator Aduja recognized the Polynesian Cultural Center on the occasion of its 40<sup>th</sup> anniversary and introduced the following individuals: Von Orgill, president; Delsa Moe, director of cultural presentations; and Cy Bridges, director of theater productions.

At 12:14 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:21 o'clock p.m.

**MESSAGE FROM THE GOVERNOR**

Gov. Msg. No. 249, letter dated March 17, 2003, pursuant to Act 259, Section 158, SLH 2001, authorizing the transfer of \$500,000 from the Department of Health's Environmental Response Revolving Fund to the Department of Land and Natural Resources for *Salvinia molesta* removal from Lake Wilson, was read by the Clerk and was placed on file.

**HOUSE COMMUNICATION**

Hse. Com. No. 299, transmitting H.C.R. No. 64, which was adopted by the House of Representatives on March 24, 2003, was read by the Clerk and was placed on file.

By unanimous consent, action on H.C.R. No. 64, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING HAWAII'S HOTELS TO PROVIDE FACILITIES FOR EMAIL AND INTERNET ACCESS FOR THEIR GUESTS," was deferred until Thursday, March 27, 2003.

**STANDING COMMITTEE REPORTS**

Senators Kim and Fukunaga, for the Committee on Tourism and the Committee on Economic Development, presented a joint report (Stand. Com. Rep. No. 1210) recommending that S.C.R. No. 38 be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 1210 and S.C.R. No. 38, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE HAWAII TOURISM AUTHORITY TO PROMOTE HAWAII FILMMAKERS AND

LOCALLY MADE FILMS AS A MEANS OF PROMOTING TOURISM," was deferred until Thursday, March 27, 2003.

Senators Kim and Fukunaga, for the Committee on Tourism and the Committee on Economic Development, presented a joint report (Stand. Com. Rep. No. 1211) recommending that S.R. No. 24 be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 1211 and S.R. No. 24, entitled: "SENATE RESOLUTION REQUESTING THE HAWAII TOURISM AUTHORITY TO PROMOTE HAWAII FILMMAKERS AND LOCALLY MADE FILMS AS A MEANS OF PROMOTING TOURISM," was deferred until Thursday, March 27, 2003.

**RE-REFERRAL OF  
SENATE CONCURRENT RESOLUTION**

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

Senate  
Concurrent  
Resolution

Referred to:

No. 130 Jointly to the Committee on Human Services and the Committee on Labor

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

"Mr. President, I rise on two points of personal privilege.

"Mr. President, the first point relates to my absence on Friday. I was recovering from a cold and I wanted to register my objection to 74 bills that were passed on second reading in abstentia. I've objected to this before and voted against the motion enabling these second readings.

"My objection is basically that the Hawaii constitution gives the Legislature the sole power to adopt laws. And our power to cast votes is given to us by the constitution and not by state law or statute. The constitution also requires three separate readings on separate days. And I believe the people, when they adopted the constitution, did not intend that second reading votes be a mere formality. Instead I believe that the voters of our state intended that when we cast second reading votes, that we be aware of what we are voting on.

"This past Friday, 74 bills were passed on second reading after the Senate recessed for the day. And before any of the members knew what those bills were, though some of the members might have known some of the bills if you are on a Committee, you pass the bills. But for most of us, most of the Senators did not know the identity or the contents of the bills that were to be voted on, which all passed second reading.

"I'm going to say something kind of strong now, Mr. President, so members, kind of brace yourself. I do have high respect for each Senator and I believe that voting on a bill without knowing the identity or contents is a misuse of our constitutional right to vote for adopting state laws.

"My second point, Mr. President, has to do with an article in this morning's paper. The heading is, 'Leasehold bill passes second reading in the House.' This is regarding S.B. No. 1468. Basically, a House Committee took a Senate bill and took out its contents in its entirety and put in completely unrelated

contents into the bill. This was without giving notice of a House draft. Sometimes, although I still object to it, at least for some committees, if you're going to do that, you post a notice saying you're going to accept testimony on a proposed Senate draft. In this case, it would have been a proposed House draft. That was not done. So the Committee took testimony on a completely different subject, did not even discuss the amendments prior to decision making and the Committee voted to insert, as I said, completely unrelated contents into the bill.

"With all due respect to the House Majority and their view that this was not unusual – I hope it is unusual and if it isn't, shame on us. And they called it an appropriate action. Mr. President, with all due respect to the House, I believe that this is a misdemeanor against democracy. It is not an unforgivable act, but it's an act, an action, legislative action, that should be avoided if at all possible. If it's used too much, I believe the danger of this gut and replace maneuver . . . it also is a stealth way to operate in the Legislature . . . the danger, I believe, is that it can lead to one of the houses having to vote on a bill that a Conference Committee may have agreed to as a result of an agreement on a completely unrelated bill.

"This kind of horse trading, as it's sometimes called, I believe is what contributes to public cynicism, and I encourage all of our Chairs to refrain from this kind of practice and hope that the House stops this type of activity as well.

"Thank you."

The President then said:

"Senator Ihara, your objection is noted on those bills moving from Second Reading to Third Reading. We have discussed it in leadership and I believe we have an argument contrary to your belief. Nevertheless, I will be discussing this matter with the Attorney General this afternoon and I will report to you the results of that meeting."

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

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

"With all due respect to the intent of the good Senator from Kaimuki, I must say that I have not misused my vote ever in this body. I take my constitutional duty very seriously, as I know my colleagues do. This Senate has complied with the constitution. There is no specific mandate in the constitution of when and how you vote on these issues. If the logic of the prior speaker was applied consistently, we would all be in serious trouble because we all vote for over a thousand bills on first reading without knowing the content at all since we have not heard them at all.

"Secondly, many of us, out of courtesy, sign bills, oftentimes, to show support with the intent, without necessarily agreeing with the content of that legislation. So I think our actions are wholly consistent with the constitution and the record should reflect that.

"The second item that the good Senator brought up, I happen to concur with. There is an abuse of power oftentimes, and it's an abuse by the Majority Party, I might note. It went on last year with the gas cap bill, which I thought was a political ploy and turned out to be just that. But that is something, Mr. President, I would suggest to the good speaker not to label us all with, here in the Legislature, because there are those of us from both sides of the aisle that object to this procedure. In fact, I do recall the good Senator from God's promised land objecting last year when the gas cap bill was passed in such a last minute and

somewhat deceptive manner. But I would suggest to the good Senator that he handle these problems within his own caucus.

"Thank you, Mr. President."

**ADJOURNMENT**

At 12:31 o'clock p.m., on motion by Senator Kawamoto, seconded by Senator Hogue and carried, the Senate adjourned until 11:30 o'clock a.m., Thursday, March 27, 2003.

Respectfully submitted,

Clerk of the Senate

Approved:

President of the Senate