

## THIRTY-FOURTH DAY

Tuesday, March 18, 2008

The Senate of the Twenty-Fourth Legislature of the State of Hawai'i, Regular Session of 2008, convened at 11:38 a.m. with the President in the Chair.

The Divine Blessing was invoked by the Reverend Falelua Lafitaga, Kanana Fou Congregational Christian Church, after which the Roll was called showing all Senators present with the exception of Senator Chun Oakland who was excused.

The President announced that she had read and approved the Journal of the Thirty-Third Day.

At this time, Senator Hemmings honored and recognized the following individuals of AccesSurf Hawaii for outstanding achievement in reaching out to the disabled people in the State of Hawaii: Mark Marble, Richard Julian, Tommy Chorman, Dara Fukuhara, Janee Fuselire and Kayla Adams.

At 11:48 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:54 a.m.

## MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 505 to 547) were read by the Clerk and were disposed of as follows:

Gov. Msg. No. 505, advising the Senate of the withdrawal of the nomination of DENISE L. COHEN to the Health Planning Council, Tri-Isle Subarea, under Gov. Msg. No. 378, dated February 5, 2008, was placed on file.

In compliance with Gov. Msg. No. 505, the nomination listed under Gov. Msg. No. 378 was returned.

Gov. Msg. No. 506, submitting for consideration and confirmation to the State Board of Public Accountancy, the nomination of KEITH ALLEN REGAN, term to expire June 30, 2011, was referred to the Committee on Commerce, Consumer Protection and Affordable Housing.

Gov. Msg. No. 507, submitting for consideration and confirmation to the State Board of Public Accountancy, the nomination of EMERITO C. SANIATAN, term to expire June 30, 2012, was referred to the Committee on Commerce, Consumer Protection and Affordable Housing.

Gov. Msg. No. 508, submitting for consideration and confirmation to the Cable Advisory Committee, the nomination of JENNY J. FUJITA, term to expire June 30, 2012, was referred to the Committee on Commerce, Consumer Protection and Affordable Housing.

Gov. Msg. No. 509, submitting for consideration and confirmation to the Cable Advisory Committee, the nomination of KEITH R. ROLLMAN, term to expire June 30, 2012, was referred to the Committee on Commerce, Consumer Protection and Affordable Housing.

Gov. Msg. No. 510, submitting for consideration and confirmation to the Civil Defense Advisory Council, the nomination of MYRON N. DOBASHI, term to expire June 30, 2012, was referred to the Committee on Intergovernmental and Military Affairs.

Gov. Msg. No. 511, submitting for consideration and confirmation to the Contractors License Board, the nomination of GUY M. AKASAKI, term to expire June 30, 2012, was referred to the Committee on Commerce, Consumer Protection and Affordable Housing.

Gov. Msg. No. 512, submitting for consideration and confirmation to the Correctional Industries Advisory Committee, the nomination of THEODORE G. M. JUNG, term to expire June 30, 2011, was referred to the Committee on Public Safety.

Gov. Msg. No. 513, submitting for consideration and confirmation to the Credit Union Advisory Board, the nomination of GWEN S. LAU, term to expire June 30, 2011, was referred to the Committee on Commerce, Consumer Protection and Affordable Housing.

Gov. Msg. No. 514, submitting for consideration and confirmation to the State Council on Developmental Disabilities, the nomination of SHERYL A. NELSON, term to expire June 30, 2012, was referred to the Committee on Health.

Gov. Msg. No. 515, submitting for consideration and confirmation to the Disability and Communication Access Board, the nomination of ED CHEVY, term to expire June 30, 2011, was referred to the Committee on Health.

Gov. Msg. No. 516, submitting for consideration and confirmation to the Disability and Communication Access Board, the nomination of PETER L. FRITZ, term to expire June 30, 2009, was referred to the Committee on Health.

Gov. Msg. No. 517, submitting for consideration and confirmation to the Disability and Communication Access Board, the nomination of ANN CHINEN ITO, term to expire June 30, 2010, was referred to the Committee on Health.

Gov. Msg. No. 518, submitting for consideration and confirmation to the Disability and Communication Access Board, the nomination of LANCE KANESHIRO, term to expire June 30, 2011, was referred to the Committee on Health.

Gov. Msg. No. 519, submitting for consideration and confirmation to the Board of Health, the nomination of KEVIN D. CASSEL, term to expire June 30, 2010, was referred to the Committee on Health.

Gov. Msg. No. 520, submitting for consideration and confirmation to the Board of Health, the nomination of CLARYSSE KAMI NUNOKAWA, term to expire June 30, 2012, was referred to the Committee on Health.

Gov. Msg. No. 521, submitting for consideration and confirmation to the Board of Health, the nomination of DRAKE W. WILL MD, term to expire June 30, 2012, was referred to the Committee on Health.

Gov. Msg. No. 522, submitting for consideration and confirmation to the Statewide Health Coordinating Council, the nomination of S. PETER KIM MD, PHD, MBA, term to expire June 30, 2012, was referred to the Committee on Health.

Gov. Msg. No. 523, submitting for consideration and confirmation to the Statewide Health Coordinating Council, the nomination of KEN M. SHIMONISHI, term to expire June 30, 2012, was referred to the Committee on Health.

Gov. Msg. No. 524, submitting for consideration and confirmation to the Health Planning Council, Honolulu Subarea, the nomination of JONAGUSTINE LIM, term to expire June 30, 2012, was referred to the Committee on Health.

Gov. Msg. No. 525, submitting for consideration and confirmation to the Health Planning Council, Kaua'i Subarea, the nomination of BETTY J. MOORE, term to expire June 30, 2012, was referred to the Committee on Health.

Gov. Msg. No. 526, submitting for consideration and confirmation to the Health Planning Council, Kaua'i Subarea, the nomination of KEN M. SHIMONISHI, term to expire June 30, 2012, was referred to the Committee on Health.

Gov. Msg. No. 527, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Housing Finance and Development Corporation (HFD), the nomination of DAVID A. LAWRENCE, term to expire June 30, 2012, was referred to the Committee on Commerce, Consumer Protection and Affordable Housing.

Gov. Msg. No. 528, submitting for consideration and confirmation to the Island Burial Council, Island of Hawai'i, the nomination of GENE KALEOLANI LESLIE, term to expire June 30, 2012, was referred to the Committee on Agriculture and Hawaiian Affairs.

Gov. Msg. No. 529, submitting for consideration and confirmation to the Island Burial Council, Island of Oahu, the nomination of SHAD S. KANE, term to expire June 30, 2012, was referred to the Committee on Agriculture and Hawaiian Affairs.

Gov. Msg. No. 530, submitting for consideration and confirmation to the Hawai'i Medical Education Council, the nomination of GARY K. KAJIWARA, term to expire June 30, 2011, was referred to the Committee on Education.

Gov. Msg. No. 531, submitting for consideration and confirmation to the Motor Vehicle Repair Industry Board, the nomination of JAMES K. HIRAKAWA, term to expire June 30, 2012, was referred to the Committee on Commerce, Consumer Protection and Affordable Housing.

Gov. Msg. No. 532, submitting for consideration and confirmation to the Natural Area Reserve System Commission, the nomination of TRAE MENARD, term to expire June 30, 2012, was referred to the Committee on Water and Land.

Gov. Msg. No. 533, submitting for consideration and confirmation to the State Board of Nursing, the nomination of MATTHEW J. BISHOP, term to expire June 30, 2010, was referred to the Committee on Commerce, Consumer Protection and Affordable Housing.

Gov. Msg. No. 534, submitting for consideration and confirmation to the State Board of Nursing, the nomination of AMY STONE MURAI, term to expire June 30, 2011, was referred to the Committee on Commerce, Consumer Protection and Affordable Housing.

Gov. Msg. No. 535, submitting for consideration and confirmation to the Advisory Committee on Pesticides, the nomination of DARREN J. STRAND, term to expire June 30, 2012, was referred to the Committee on Agriculture and Hawaiian Affairs.

Gov. Msg. No. 536, submitting for consideration and confirmation to the Board of Private Detectives and Guards, the nomination of LAWRENCE K. MAHUNA, term to expire June 30, 2012, was referred to the Committee on Commerce, Consumer Protection and Affordable Housing.

Gov. Msg. No. 537, submitting for consideration and confirmation to the State Rehabilitation Council, the nomination of GWEN L. KELIHOOMALU, term to expire June 30, 2010, was referred to the Committee on Human Services and Public Housing.

Gov. Msg. No. 538, submitting for consideration and confirmation to the Board of Speech Pathology and Audiology, the nomination of ANNE MARIE HORNER, term to expire June 30, 2011, was referred to the Committee on Commerce, Consumer Protection and Affordable Housing.

Gov. Msg. No. 539, submitting for consideration and confirmation to the Board of Speech Pathology and Audiology, the nomination of EMI ISAKI PHD, term to expire June 30, 2011, was referred to the Committee on Commerce, Consumer Protection and Affordable Housing.

Gov. Msg. No. 540, submitting for consideration and confirmation to the Board of Taxation Review, 2nd Taxation District (Maui), the nomination of RANDAL TANIGUCHI, term to expire June 30, 2011, was referred to the Committee on Economic Development and Taxation.

Gov. Msg. No. 541, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Tourism Authority, the nomination of SHARON R. WEINER, term to expire June 30, 2012, was referred to the Committee on Tourism and Government Operations.

Gov. Msg. No. 542, submitting for consideration and confirmation to the Commission on Transportation, the nomination of RICHARD R. HOUCK, term to expire June 30, 2012, was referred to the Committee on Transportation and International Affairs.

Gov. Msg. No. 543, submitting for consideration and confirmation to the Commission on Water Resource Management, the nomination of LAWRENCE H. MIIKE MD, JD, term to expire June 30, 2012, was referred to the Committee on Water and Land.

Gov. Msg. No. 544, submitting for consideration and confirmation to the Board of Certification of Public Water System Operators, the nomination of ROBERT S. SPETICH PE, term to expire June 30, 2012, was referred to the Committee on Commerce, Consumer Protection and Affordable Housing.

Gov. Msg. No. 545, submitting for consideration and confirmation to the Board of Certification of Public Water System Operators, the nomination of JODI M. YAMAMI, term to expire June 30, 2012, was referred to the Committee on Commerce, Consumer Protection and Affordable Housing.

Gov. Msg. No. 546, submitting for consideration and confirmation to the Board of Certification of Public Water System Operators, the nomination of LAN REISO YONEDA, term to expire June 30, 2011, was referred to the Committee on Commerce, Consumer Protection and Affordable Housing.

Gov. Msg. No. 547, submitting for consideration and confirmation to the Hawai'i Workforce Development Council, the nomination of STEVETTE K. SANTIAGO, term to expire June 30, 2012, was referred to the Committee on Judiciary and Labor.

#### HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 381 and 382) were read by the Clerk and were placed on file:

Hse. Com. No. 381, returning S.B. No. 2292, which passed Third Reading in the House of Representatives on March 17, 2008.

Hse. Com. No. 382, returning S.C.R. No. 57, which was adopted by the House of Representatives on March 17, 2008.

#### STANDING COMMITTEE REPORTS

Senator Sakamoto, for the majority of the Committee on Education, presented a report (Stand. Com. Rep. No. 2972) recommending that H.B. No. 602, 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 Ige, seconded by Senator Whalen and carried, the report of the majority of the Committee was adopted and H.B. No. 602, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Sakamoto, for the Committee on Education, presented a report (Stand. Com. Rep. No. 2973) recommending that H.B. No. 2971, 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 Ige, seconded by Senator Whalen and carried, the report of the Committee was adopted and H.B. No. 2971, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Sakamoto, for the Committee on Education, presented a report (Stand. Com. Rep. No. 2974) recommending that H.B. No. 2972, 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 Ige, seconded by Senator Whalen and carried, the report of the Committee was adopted and H.B. No. 2972, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Tokuda, for the Committee on Agriculture and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 2975) recommending that H.B. No. 3126, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Ige, seconded by Senator Whalen and carried, the report of the Committee was adopted and H.B. No. 3126, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAIIAN HOMES COMMISSION ACT," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Tokuda, for the Committee on Agriculture and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 2976) recommending that H.B. No. 2593, 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 Ige, seconded by Senator Whalen and carried, the report of the Committee was adopted and H.B. No. 2593, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO DROUGHT MITIGATION," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Tokuda, for the Committee on Agriculture and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 2977) recommending that H.B. No. 2373, H.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Ige, seconded by Senator Whalen and carried, the report of the Committee was adopted and H.B. No. 2373, H.D. 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR MOOKINI HEIAU," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Fukunaga and Nishihara, for the Committee on Economic Development and Taxation and the Committee on Tourism and Government Operations, presented a joint report (Stand. Com. Rep. No. 2978) recommending that H.B. No. 2259, 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 Ige, seconded by Senator Whalen and carried, the joint report of the Committees was adopted and H.B. No. 2259, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO AEROSPACE DEVELOPMENT," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Baker, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 2979) recommending that H.B. No. 3037 pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 2979 and H.B. No. 3037, entitled: "A BILL FOR AN ACT MAKING AN EMERGENCY APPROPRIATION FOR ELECTRICITY, SEWER, REFUSE, AND INSURANCE PREMIUM PAYMENTS," was deferred until Wednesday, March 19, 2008.

Senator Baker, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 2980) recommending that H.B. No. 3038 pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Ige, seconded by Senator Whalen and carried, the report of the Committee was adopted and H.B. No. 3038, entitled: "A BILL FOR AN ACT MAKING AN EMERGENCY APPROPRIATION FOR ELECTRICITY PAYMENTS STATEWIDE," passed Second Reading and was placed on the calendar for Third Reading on Wednesday, March 19, 2008.

Senator Baker, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 2981) recommending that H.B. No. 2908, as amended in S.D. 1, pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Ige, seconded by Senator Whalen and carried, the report of the Committee was adopted and H.B. No. 2908, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO AUDIT RECOMMENDATIONS," passed Second Reading and was placed on the calendar for Third Reading on Thursday, March 20, 2008.

Senator Baker, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 2982) recommending that H.B. No. 118, as amended in S.D. 1, pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Ige, seconded by Senator Whalen and carried, the report of the Committee was adopted and H.B. No. 118, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO STATE BONDS," passed Second Reading and was placed on the calendar for Third Reading on Thursday, March 20, 2008.

Senators Fukunaga and Kokubun, for the Committee on Economic Development and Taxation and the Committee on Commerce, Consumer Protection and Affordable Housing, presented a joint report (Stand. Com. Rep. No. 2983) recommending that H.B. No. 2712, 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 Ige, seconded by Senator Whalen and carried, the joint report of the Committees was adopted and H.B. No. 2712, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION TO THE CITY AND COUNTY OF HONOLULU," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Fukunaga and Tokuda, for the Committee on Economic Development and Taxation and the Committee on Agriculture and Hawaiian Affairs, presented a joint report (Stand. Com. Rep. No. 2984) recommending that H.B. No. 2955, 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 Ige, seconded by Senator Whalen and carried, the joint report of the Committees was adopted and H.B. No. 2955, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ARCHAEOLOGICAL DATA," passed Second Reading and was referred to the Committee on Ways and Means.

### ORDER OF THE DAY

#### RECONSIDERATION OF ACTION TAKEN

Stand. Com. Rep. No. 2954 (H.B. No. 3161, S.D. 2):

Pursuant to Senate Rule 66(1), Senator Baker moved that the Senate reconsider its action taken on March 17, 2008, in adopting Stand. Com. Rep. No. 2954 and passing H.B. No. 3161, S.D. 2, on Third Reading, seconded by Senator Tsutsui.

Senator Baker noted:

"Madam President, colleagues, unfortunately there was an error, a drafting error, in the S.D. 2 that we passed yesterday, and it created doubt as to the effectuation of the emergency appropriation. And therefore we needed to correct it. I apologize that we did not catch it sooner."

Senator Baker then offered the following amendment (Floor Amendment No. 3) to H.B. No. 3161, S.D. 2:

**SECTION 1. House Bill No. 3161, S.D. 2, is amended by amending the fiscal year reference contained in section 4 from "2008-2009" to "2007-2008" and to read as follows:**

"SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$11,000,000 or so much thereof as may be necessary for fiscal year 2007-2008 for Maui memorial medical center; provided that the sum appropriated under this section shall only be expended if the operating loan that is being negotiated by Maui memorial medical center does not close prior to April 4, 2008."

Senator Baker noted:

"Madam President, the amendment will correct the drafting error, which is the fiscal year of the appropriation. It's an emergency appropriation. It comes out of this fiscal year and not the next one."

The motion to adopt Floor Amendment No. 3 was put by the Chair and carried.

Senator Baker then moved that Stand. Com. Rep. No. 2954 be received and placed on file, seconded by Senator Tsutsui and carried.

The motion was put by the Chair and carried, H.B. No. 3161, S.D. 3, entitled: "A BILL FOR AN ACT MAKING AN EMERGENCY APPROPRIATION TO THE HAWAII HEALTH SYSTEMS CORPORATION," was placed on the calendar for Third Reading on Thursday, March 20, 2008.

Senator Slom rose on a point of information as follows:

"Madam President, I rise on a point of information, please."

"I just had a discussion with the Senate Clerk a few minutes ago about this past floor amendment that we just passed. And I wanted to make sure that we had a clarification because there still seems to be some miscommunication. It was always my understanding that a floor amendment had to be presented to the Clerk by 9 a.m. prior to an 11:30 a.m. hearing. And we always went under that assumption. And this floor amendment just arrived approximately an hour ago.

"The Senate Clerk informs me now that in fact there is no requirement for a time and that a floor amendment can be presented right up until the time that we're in session. I

checked with our Minority Office, and our Minority Research Office had not been informed of that change. And so I want to get for information purposes that I am listening to this correctly and from now on any floor amendment could be brought directly to the floor of the Senate at the time of the session. Can I get a clarification on that, please?"

The President responded:

"Senator Slom, we'll take it under advisement and we'll give you a written opinion on that."

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

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

"Madam President, this morning someone handed me this article that appeared in the Houston Chronicle. It's interesting—March 14, 2008; 'Hawai'i looking at hydrogen contract bid.' Apparently the Houston Chronicle thought that what we're doing here was newsworthy. And hopefully our local media would take a page out of that and cover our hearings. Thank you."

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

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

"I would like to offer some comments with regard to this morning's editorial entitled 'Lawmakers should not delay ceded lands deal.' As some of us have had a discussion from yesterday, I think the editorial is accurate in the sense that, in arguing that the proposal before us is premature; it doesn't hold water. I agree with that. I think it's always good if policymakers can take the matter before the public or the beneficiaries. However, I believe it's also reasonable that to do so is a Herculean effort.

"I would like to, however, offer comments that have troubled me with regard to this matter before us. And that is the magic number of 200 million. To be sure that I had not missed more than my share of information from the advocates of the settlement—namely, the Attorney General and the Office of Hawaiian Affairs—I checked with some of my colleagues to see if they understood the magic of 200 million. I am satisfied that they share similar concerns as I do—and that is, what is the magic in 200 million? For example, if going forward this proposal, which offers 15.1 million into time immemorial, is somehow representative of a 20 percent pro rata share, then what will the pro rata share be from 1978 to 2008? And if one were to divide 30 years into 200 million, I suppose the pro rata share might be argued that way.

"But then what is the magic curtain between 2008 and 2009—which dramatically increases the pro rata share to the extent that there are those who would believe the 15.1 in fact is equal to 20 percent? No one knows. No one knows what 20 percent of the pro rata share was in 1978, '79, '80, '81, '82, '83.

"But we do know that if the Attorney General and the Office believe that \$15.1 is fair—f-a-i-r—then we do know that in 30 years that OHA and the Attorney General would have agreed—or have agreed—that \$450.3 million is fair.

"So the question becomes, 'If \$450 million is fair for the next 30 years, why would it not be fair for the past 30 years?' Because there are those who would argue that in 1978, the pro rata share could not be near \$15.1 million—just as there are those who would argue that in 30 years, 2038, the pro rata will not be \$15.1 but significantly more as time moves forward.

"So the question of whether the Office should be entitled to one penny, let alone billions of dollars in the future, is a question for those who advocate or argue against the Native Hawaiian entitlement. There are those who would say that 200

million is too low—just as there are those who would say 200 million is too high.

“I’ll speak for myself; I don’t know the answer to that. And the reason is that the disclosure of 200 million has not been made to any Legislative Committee, as far as I’m aware. This much I’m certain—that disclosure has not been made to Legislators by written communication. And it would appear to me that above all else—forget the argument of an entitlement; forget the argument of a waiver of future claims—the justification of 200 million is a reasonable one, if in fact we are the ones who would approve or disapprove such an action.

“There is a huge vacuum of information not being provided. And the reasonableness of the expectation of the amount is not an unfair question to ask. I agree with my colleague two seats to my left from Manoa—it’s not over. But unless such justification is forthcoming, I would suggest that my colleague to my immediate right is more accurate than inaccurate in her comments made last night. Thank you, Madam President.”

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

“Madam President, I rise on a point of personal privilege.

“I, too, would like to reflect on the editorial in this morning’s paper that clearly pointed out the wisdom in settling a longstanding obligation on the part of the State of Hawai‘i to the people of Hawaiian ancestry. There is magic in this decision and the settlement. The magic is, after 30 years, something finally is being done—30 long years.

“There’s something magic and who it benefits. With wise use of the money and wise use of some of the best land for commercial activities, such as Kewalo Basin, this indeed can be a generous settlement. Poised next to nothing for 30 years, it sounds really good. The magic is that it benefits Hawaiians who are wise enough to see it, and all the people of Hawai‘i who have this longstanding obligation as designated by their 1978 Constitutional Convention.

“There have been several polls on this. Questions are asked: Well, who represented us? It appears that a large percentage of the people of Hawai‘i, through most of the polls I’ve seen, favor this settlement, realizing it’s in everybody’s best interest. We cannot once again afford to succumb to the loudest and most contentious proposition rather than doing what is best in our duty for the greatest number of people of our state.

“I would like to suggest that in its wisdom the Senate work constructively with OHA—the designated representatives, as elected, of the Hawaiian people on this issue—in trying to find and craft a way to have this settlement done this year so that we can proudly go home to our constituents, both Hawaiian and otherwise, and say that we did do some magic. We got something done after 30 years of nothing. Thank you, Madam President.”

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

“I asked this question of the Senator from the Big Island. He didn’t know the answer, but I know that you know . . .”

The Chair interjected:

“For what purpose do you rise?”

Senator Hee continued:

“I rise in agreement with the previous speaker.”

The Chair inquired:

“So it’s still a point of personal privilege?”

Senator Hee responded:

“Yes.

“He’s absolutely right. And that’s the problem with this bill. He said there is magic. That’s all this is—is magic. That’s the point. This is magic. There’s no basis for the magic.

“He said that Hawaiians have waited 30 long years. I would argue that Hawaiians have waited since 1893. He said the money can be used for many things. I agree. But that’s magical.

“It’s not about magic. It’s about providing the data that supports the magic. That’s what it’s about. I said this last night. In 1993 under John Waihee, there was a first settlement. And every penny could be justified. And if someone asked how did you reach this number, it was justified.

“There’s no justification in this magical formula. There’s only the trust of Mark Bennett and the OHA trustees.

“The suggestion that anyone should be somehow satisfied with a magical formula is patronizing—not only to Hawaiians, but everyone else. The expectation, by Hawaiians and everyone else, that such magic should be broken down to the penny is reasonable. And if the answer is ‘This is a settlement that is confidential,’ then the lid needs to be lifted of confidentiality so that each of us can explain to our constituency the reasons upon which we voted. Thank you, Madam President.”

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

“Madam President, point of personal privilege. I cannot let this debate continue without weighing in on it.

“Members, I can tell you that in my particular district, which is predominantly Hawaiian—Moloka‘i, Lana‘i, East and Upcountry Maui—I’ve had a lot of people come and approach me about this. But one in particular on Moloka‘i was very interesting. When we were up there for hearings, talking story with the crowd, one of the people came up to me and said, ‘You know, \$15 million; that’s not too much money.’ And I said, ‘Well, yes, I agree with you.’ And then he says, ‘Well, how come OHA gets it?’ I said, ‘Well, they’re the ones who negotiated it.’ ‘Yeah, but you know, I’ve been applying for grants from them for how many years, and I never got that money. So why are they getting the money when I need it for my projects?’

“I had somebody else recently say, ‘How come we’re taking it in U.S. dollars?’ Can you imagine this. He said, ‘Why are we taking this settlement in dollars? Why don’t we take it in euros? Or gold?’ I was utterly stunned that they would say this. But, you know, they were on point because the value of the dollar lost one-fourth of its value recently? So, they get the point—that a static number doesn’t mean buying power in the future. And that’s part of the flaw of this particular agreement—is that we don’t have anything in it that pegs it to cost of living, that pegs it to inflation, that allows for the buying power of that whatever x-amount is to remain static. In fact, what it does is it diminishes the buying power.

“I think that the Committees made the right move yesterday. I was there for the opening of the Committees and I had to return to Maui for community meetings last night. But during our meetings a call came in and they said that the Committee just voted it down. And there was a small cheer that went through the crowd. So I can tell you that the people in my district are not happy with the settlement, that they didn’t like the terms of it, that they wanted more disclosure, more transparency, more dialogue, some real germane issues. How does that money actually benefit my people? How does it actually do that? How does this land actually do it?

“And by the way, let’s talk about OHA, Inc.—all of the subsidiary LLCs that have been created, the limited liability companies that OHA’s going to move these assets into. How will that be governed? Has that been talked about? Who owns these LLCs? How will they manage it? How does it protect the Trust?”

“All of these questions are there. So I want to congratulate the Chairs for making, I think, the right move. Yes, we’ve waited way too long. But to get it right, to get a better deal for my people, I’m willing to wait another year. Thank you.”

#### **ADJOURNMENT**

At 12:15 p.m., on motion by Senator Ige, seconded by Senator Whalen and carried, the Senate adjourned until 11:30 a.m., Wednesday, March 19, 2008.