

## FORTY-FIFTH DAY

Tuesday, April 4, 2000

The Senate of the Twentieth Legislature of the State of Hawaii, Regular Session of 2000, convened at 11:41 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by Deacon Wallace Mitsui, St. John Apostles and Evangelist Church, Mililani, after which the Roll was called showing all Senators present with the exception of Senator Bunda who was excused.

The President announced that he had read and approved the Journal of the Forty-Fourth Day.

Senator Kawamoto introduced Lieutenant General Frank Libutti, Commander of the United States Marine Corps Forces Pacific, and extended a warm aloha to the General, his wife Jeanie, and daughter Mikela. Accompanying General Libutti were Sergeant Major Holub and Major Terrell.

At this time, the President appointed Senators Kawamoto, Sakamoto and Slom to escort Lieutenant General Frank Libutti to the rostrum to address the members of the Senate.

General Libutti addressed the members of the Senate as follows:

"Ladies and gentlemen of the Hawaii State Senate, I am deeply honored to be with you this morning and thank you for your most gracious welcome. My wife Jeanie and my daughter Mikela and I are delighted to be here in this beautiful state and we look forward to experiencing the 'Aloha' that is truly what characterizes this wonderful series of islands.

"It is an exciting time for me to be leading the Marine Forces in the Pacific and here in Hawaii as we embark upon our journey into the new century. It is a time for great challenge, and I know our marines are up to the task, but we can't do it alone. I am heartened and encouraged by the great relationship we enjoy with our neighbors outside the gates of our base at Kaneohe Bay and at my headquarters at Camp Smith. I pledge to you, each and every one of you, that we will continue to be the very best neighbors that we can be. Your support as we train and carry out our mission here and abroad is vital to our success, and we thank you again for your great support.

"Thank you very, very much from the bottom of my heart for this very gracious and warm welcome. God bless you all and thank you."

At 11:50 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:54 o'clock a.m.

## MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 266 and 267) were read by the Clerk and were placed on file:

Gov. Msg. No. 266, dated March 23, 2000, transmitting the report, "An Inquiry into Youth Crime and Violence in Hawaii," prepared by the University of Hawaii Youth Gang Project.

Gov. Msg. No. 267, dated March 29, 2000, transmitting the 1999 Report on the Juvenile Justice State Advisory Council, prepared by the Office of Youth Services pursuant to Section 223 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

## HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 416 to 421) were read by the Clerk and were disposed of as follows:

Hse. Com. No. 416, transmitting H.C.R. No. 37, H.D. 1, which was adopted by the House of Representatives on April 3, 2000, was placed on file.

By unanimous consent, H.C.R. No. 37, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE SUPPORT OF THE TWENTIETH LEGISLATURE OF THE STATE OF HAWAII FOR THE RESPONSIBLE USE OF AGRICULTURAL BIOTECHNOLOGY FOR THE BENEFIT OF HAWAII'S PEOPLE," was referred to the Committee on Economic Development.

Hse. Com. No. 417, transmitting H.C.R. No. 55, which was adopted by the House of Representatives on April 3, 2000, was placed on file.

By unanimous consent, H.C.R. No. 55, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY TO PROVIDE A STATUS REPORT ON THE RELOCATION OF THE CITY AND COUNTY OF HONOLULU'S BASEYARD FACILITIES FROM THE KAKAAKO MAKAI AREA," was referred to the Committee on Transportation and Intergovernmental Affairs, then to the Committee on Water, Land, and Hawaiian Affairs.

Hse. Com. No. 418, transmitting H.C.R. No. 75, H.D. 1, which was adopted by the House of Representatives on April 3, 2000, was placed on file.

By unanimous consent, H.C.R. No. 75, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION URGING THE COUNTIES TO INCORPORATE INTO THE COUNTY BUILDING CODES PROVISIONS FOR DISABILITY ACCESSIBILITY," was referred to the Committee on Health and Human Services, then to the Committee on Transportation and Intergovernmental Affairs.

Hse. Com. No. 419, transmitting H.C.R. No. 87, which was adopted by the House of Representatives on April 3, 2000, was placed on file.

By unanimous consent, H.C.R. No. 87, entitled: "HOUSE CONCURRENT RESOLUTION URGING LIBERTY NEWSPAPERS TO CONTINUE PUBLICATION OF THE HONOLULU STAR-BULLETIN AND TO ACTIVELY SEEK A BUYER TO PRESERVE TWO INDEPENDENT DAILY NEWSPAPERS IN THE COMMUNITY," was referred to the Committee on Commerce and Consumer Protection.

Hse. Com. No. 420, transmitting H.C.R. No. 102, which was adopted by the House of Representatives on April 3, 2000, was placed on file.

By unanimous consent, H.C.R. No. 102, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE NATIONAL MARINE FISHERIES SERVICE TO CLOSE THE NORTHWESTERN HAWAIIAN ISLANDS LOBSTER FISHERY TO PROTECT THE ENDANGERED HAWAIIAN MONK SEAL," was referred to the Committee on Labor and Environment, then to the Committee on Water, Land, and Hawaiian Affairs.

Hse. Com. No. 421, transmitting H.C.R. No. 132, which was adopted by the House of Representatives on April 3, 2000, was placed on file.

By unanimous consent, H.C.R. No. 132, entitled: "HOUSE CONCURRENT RESOLUTION ENCOURAGING STATE AGENCIES TO WORK COOPERATIVELY TO ALLOW PUBLIC ACCESS TO HAIKU STAIRS," was referred jointly to the Committee on Water, Land, and Hawaiian Affairs and the Committee on Transportation and Intergovernmental Affairs, then to the Committee on Ways and Means.

#### STANDING COMMITTEE REPORTS

Senator Nakata, for the Committee on Labor and Environment, presented a report (Stand. Com. Rep. No. 3187) recommending that the Senate advise and consent to the nominations of RICARDO MEDINA and TOM SUGITA to the Civil Service Commission, in accordance with Gov. Msg. No. 153.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 3187 and Gov. Msg. No. 153 was deferred until Wednesday, April 5, 2000.

Senator Nakata, for the Committee on Labor and Environment, presented a report (Stand. Com. Rep. No. 3188) recommending that the Senate advise and consent to the nominations of GARY MCKEAGUE and CLAYTON E. WINGER to the Hoisting Machine Operators Advisory Board, in accordance with Gov. Msg. No. 162.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 3188 and Gov. Msg. No. 162 was deferred until Wednesday, April 5, 2000.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 3189) recommending that the Senate advise and consent to the nominations of THEODORE E. GARDUQUE, LESTER H. INOUE, ARNALDO E. PREPOSE and OSCAR PORTUGAL to the State Board of Professional Engineers, Architects, Surveyors, and Landscape Architects, in accordance with Gov. Msg. No. 191.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 3189 and Gov. Msg. No. 191 was deferred until Wednesday, April 5, 2000.

Senators Chumbley and Matsunaga, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 3190) recommending that the Senate consent to the nomination of GERONIMO VALDRIZ to the office of Judge, District Court of the Second Circuit, for a term of six years, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, and in accordance with Jud. Com. No. 4.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 3190 and Jud. Com. No. 4 was deferred until Wednesday, April 5, 2000.

Senators Chumbley and Matsunaga, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 3191) recommending that the Senate consent to the nomination of KAREN S.S. AHN to the office of Judge, 11th Division, Circuit Court of the First Circuit, for a term of ten years, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, and in accordance with Gov. Msg. No. 222.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 3191 and Gov. Msg. No. 222 was deferred until Wednesday, April 5, 2000.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 3192) recommending that S.C.R. No. 51 be adopted.

On motion by Senator Chun, seconded by Senator Slom and carried, the report of the Committee was adopted and S.C.R. No. 51, entitled: "SENATE CONCURRENT RESOLUTION URGING LIBERTY NEWSPAPERS TO CONTINUE PUBLICATION OF THE HONOLULU STAR-BULLETIN AND TO ACTIVELY SEEK A BUYER TO PRESERVE TWO INDEPENDENT DAILY NEWSPAPERS IN THE COMMUNITY," was adopted.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 3193) recommending that S.R. No. 22 be adopted.

On motion by Senator Chun, seconded by Senator Slom and carried, the report of the Committee was adopted and S.R. No. 22, entitled: "SENATE RESOLUTION URGING LIBERTY NEWSPAPERS TO CONTINUE PUBLICATION OF THE HONOLULU STAR-BULLETIN AND TO ACTIVELY SEEK A BUYER TO PRESERVE TWO INDEPENDENT DAILY NEWSPAPERS IN THE COMMUNITY," was adopted.

#### ORDER OF THE DAY

##### ADVISE AND CONSENT

Stand. Com. Rep. No. 3035 (Gov. Msg. No. 159):

Senator Fukunaga moved that Stand. Com. Rep. No. 3035 be received and placed on file, seconded by Senator Levin and carried.

Senator Fukunaga then moved that the Senate advise and consent to the nominations to the Hawaii Performance Partnerships Board of the following:

LLOYD I. UNEBASAMI, term to expire June 30, 2002;

LORRAINE H. AKIBA and KATHRYN S. MATAYOSHI, terms to expire December 2, 2002; and

IRVING LAUBER, TARA LULANI MCKENZIE, RANDOLPH G. MOORE, JANIS A. REISCHMANN, FAITH SERENO REX and RUTHANN S. YAMANAKA, terms to expire June 30, 2004,

seconded by Senator Levin.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 3036 (Gov. Msg. No. 156):

Senator Inouye moved that Stand. Com. Rep. No. 3036 be received and placed on file, seconded by Senator Buen and carried.

Senator Inouye then moved that the Senate advise and consent to the nomination of LLOYD Y. KIMURA to the Board of Trustees, Deferred Compensation Plan, term to expire June 30, 2004, seconded by Senator Buen.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 3037 (Gov. Msg. No. 205):

Senator Inouye moved that Stand. Com. Rep. No. 3037 be received and placed on file, seconded by Senator Buen and carried.

Senator Inouye then moved that the Senate advise and consent to the nominations of WAYNE SALAS and ROBERT O. VALENTINE to the Board of Certification of Operating Personnel in Wastewater Treatment Plants, terms to expire June 30, 2004, seconded by Senator Buen.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 3038 (Gov. Msg. No. 206):

Senator Inouye moved that Stand. Com. Rep. No. 3038 be received and placed on file, seconded by Senator Buen and carried.

Senator Inouye then moved that the Senate advise and consent to the nominations of STEPHEN C. GREEN and NORA R. MACARIOLA-SEE to the Board of Certification of Operating Personnel in Water Treatment Plants, terms to expire June 30, 2004, seconded by Senator Buen.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 3039 (Gov. Msg. No. 4):

By unanimous consent, action on Stand. Com. Rep. No. 3039 and Gov. Msg. No. 4 was deferred to the end of the calendar.

Stand. Com. Rep. No. 3073 (Gov. Msg. No. 195):

Senator Kanno moved that Stand. Com. Rep. No. 3073 be received and placed on file, seconded by Senator Taniguchi and carried.

Senator Kanno then moved that the Senate advise and consent to the nomination of MILES T. NAKATSU to the Board of Pharmacy, term to expire June 30, 2004, seconded by Senator Taniguchi.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 3074 (Gov. Msg. No. 196):

Senator Kanno moved that Stand. Com. Rep. No. 3074 be received and placed on file, seconded by Senator Taniguchi and carried.

Senator Kanno then moved that the Senate advise and consent to the nominations of STEVE GOODENOW and FREDERICK WM. HACKBARTH to the Board of Private Detectives and Guards, terms to expire June 30, 2004, seconded by Senator Taniguchi.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 3075 (Gov. Msg. No. 197):

Senator Kanno moved that Stand. Com. Rep. No. 3075 be received and placed on file, seconded by Senator Taniguchi and carried.

Senator Kanno then moved that the Senate advise and consent to the nominations of CASEY K. CHOI and PETER RICE to the Real Estate Commission, terms to expire June 30, 2004, seconded by Senator Taniguchi.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 3076 (Gov. Msg. No. 204):

Senator Kawamoto moved that Stand. Com. Rep. No. 3076 be received and placed on file, seconded by Senator Buen and carried.

Senator Kawamoto then moved that the Senate advise and consent to the nominations of ROGELIO EVANGELISTA and DANIA S. KRAWEC to the Advisory Board on Veterans' Services, terms to expire June 30, 2004, seconded by Senator Buen.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

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

### THIRD READING

H.B. No. 2123, H.D. 2:

Senator Kanno moved that H.B. No. 2123, H.D. 2, having been read throughout, pass Third Reading, seconded by Senator Taniguchi.

At 11:56 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:57 o'clock a.m.

Senator Slom rose in opposition to the measure and said:

"Mr. President, I rise to speak in opposition to the bill.

"Despite what the committee report says, I don't think that there is any misrepresentation, deception, or any problem with understanding what service charges are all about. They are decisions by management in hotels and restaurants. They are part of their administrative expenses and organizations. And normally this is a collective bargaining item. It is not something that should be frozen in legislation and applied to all businesses.

"In addition to that, this bill is inconsistent. There's ambiguity here. Line 16, for example, in the bill states that the employer, quote 'shall distribute the service charge . . . as tip income . . .' But line 17 implies that the payment to the employee is optional. So for these and other reasons, Mr. President, I will be voting 'no.'

"Thank you."

The motion was put by the Chair and carried, H.B. No. 2123, H.D. 2, entitled: "A BILL FOR AN ACT RELATING TO WAGES AND TIPS OF EMPLOYEES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, 2 (Anderson, Slom). Excused, 1 (Bunda).

### MATTER DEFERRED FROM EARLIER ON THE CALENDER

#### ADVISE AND CONSENT

Stand. Com. Rep. No. 3039 (Gov. Msg. No. 4):

Senator Fukunaga moved that Stand. Com. Rep. No. 3039 be received and placed on file, seconded by Senator Levin and carried.

Senator Fukunaga then moved that the Senate advise and consent to the nomination of NEAL H. MIYAHIRA as Director of Finance, term to expire December 2, 2002, seconded by Senator Levin.

Senator Levin rose in support of the nominee and stated:

"Mr. President, I rise to speak in favor of the nominee.

"Mr. Miyahara has been acting director for a number of months. In the testimony that we received we had comments such as, 'Neal is the consummate professional. He is diligent, capable and hard working.' Testimony from Chuck Freedman, who is known to many of us -- 'This is the first time I have ever supported in writing, the nomination of a cabinet member by the governor.' Those are the kinds of comments we received, but I think the most meaningful comment was one that Neal himself gave to us, and that was that 'I am committed to public service. I've made public service my career with over 21 years of service in various capacities.'

"I think in a day when public servants are not always as well respected as they should be, for someone to dedicate his life to public service is admirable in itself. What we have a need for in this Legislature is someone who is dedicated, someone who is knowledgeable, someone who is a straight shooter, who is responsive to our requests for information. We believe we have such a person in the nominee, and we urge the members to vote in support.

"Thank you."

Senator Fukunaga rose and stated:

"Mr. President, I would also like to advise the members that in our confirmation hearings on Mr. Miyahira, he received many, many comments and letters of support from his former colleagues, the deputy directors of the governor's cabinet; and all of them spoke to the way in which he had worked very collaboratively with them to promote harmony and understanding in addressing many of the various departmental problems. He has served with distinction over his 21-plus years in public service and we would certainly encourage our members to vote in support of his nomination."

Senator Tam rose in support of the nominee and said:

"Mr. President, I wish to speak in favor of the nominee.

"I've known Neal since 1978, when he and I worked as budget analysts under former Senator Dickie Wong. Neal's characteristics can best be described in three words -- sincere, diligent, and intelligent -- especially in the area of budgeting.

"Thank you."

Senator Chun added his remarks as follows:

"I stand in favor of the nominee even though the current attorney general has said that he didn't agree with the way the budget director handled his budget. I still support the nominee anyway."

Senator Slom then requested his vote be cast "aye, with reservations," and the Chair so ordered.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

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

At this time, Senator Levin introduced Mr. Miyahira to the members of the Senate. (Mr. Miyahira, who was seated in the gallery, rose to be recognized.)

## RE-REFERRAL OF HOUSE BILLS

The Chair re-referred the following House bills that were received:

House Bill	Referred to:
No. 2507	Jointly to the Committee on Health and Human Services and the Committee on Judiciary
No. 3018	Jointly to the Committee on Health and Human Services, the Committee on Transportation and Intergovernmental Affairs and the Committee on Judiciary

## RE-REFERRAL OF SENATE CONCURRENT RESOLUTIONS

The Chair re-referred the following concurrent resolutions that were offered:

Senate Concurrent Resolution	Referred to:
No. 21	Jointly to the Committee on Transportation and Intergovernmental Affairs and the Committee on Economic Development
No. 157	Jointly to the Committee on Education and Technology and the Committee on Transportation and Intergovernmental Affairs

## RE-REFERRAL OF SENATE RESOLUTIONS

The Chair re-referred the following resolutions that were offered:

Senate Resolution	Referred to:
No. 8	Jointly to the Committee on Transportation and Intergovernmental Affairs and the Committee on Economic Development
No. 78	Jointly to the Committee on Education and Technology and the Committee on Transportation and Intergovernmental Affairs

Senator Taniguchi, for the Committee on Commerce and Consumer Protection, requested a waiver pursuant to Senate Rule 20 for H.B. Nos. 2158 and 2213, and the Chair granted the waiver.

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

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

"I would like to ask my colleagues if we could all get together and send a card of sympathy to Mr. Al Masini, who without additional taxpayer money and subsidy has closed down his business now and like the executive producer of Baywatch (two months before him) who threatened that if we don't get more taxpayer money here, we're taking our show and we're leaving. Mr. Masini's remarks, I think, are directly attributable to some of the actions that have occurred, some of the things that I've talked about on the Senate floor before, and some of the actions that we've taken in the Senate to try to help the film and television industry. But I don't think Mr. Masini and people like him get it.

"He is disappointed because he said that for the last several months, or a year, he's been spending mostly his own money for his own for-profit production. I would remind Mr. Masini that that's what every business woman and every business man does in this state -- they spend their own money! They have the

high cost of taxation, the high cost of rental, the high cost of labor, the high cost of mandated benefits. But unlike Mr. Masini, they can't come to this State Legislature and get a subsidy. This state subsidized Mr. Masini and his wife in their operations and their offices last year, subsidized the production, the talent search, which apparently doesn't have enough talent to get any ratings because that's what determines what's popular and what's paid for.

"Mr. Masini was quoted last night as saying that he is very, very, very disappointed that the bill that he helped write to steer funds to Hawaii's television industry has been so watered down as to have little effect, and he's talking about S.B. No. 2959, which we amended the other day -- rightfully so -- to provide as a loan guarantee.

"I would remind my colleagues and Mr. Masini and others that we have had a long list of successful television and movie productions in this state. People come to this state because Hawaii is magic. But the successful people have come because they've already had financing, they've already had a good production, and they don't come with their hand out. And they don't come threatening us that if we don't continue to subsidize them and pay for their problems, that they'll go away.

"The production of Moon Glow which was done entirely locally and cost over a million dollars was extremely successful. There was no state money asked for, nor none given. Pearl Harbor, the movie with mega-stars and a mega-budget just started shooting on Oahu on Saturday. They didn't ask for taxpayer money. They didn't say give us subsidies or we'll not film here.

"We have a lot to offer, but it's time that we got it straight that the purpose of the Legislature is not to subsidize individuals who happen to be favorites of the governor or other political leaders in this state. And it's not our job to take the hard earned money from our men and women in this community and give it to glamorous activities or to failing enterprises. Our job is to create a saleable business and investment climate so that people will want to come here, stay here, create the jobs, and provide Hawaii with economic balance and economic diversity.

"So right after this session, if you'd all like to sign the sympathy card with me, I'll be very happy to forward that to Mr. Masini.

"Thank you, Mr. President."

Senator Anderson then rose on a point of personal privilege and stated:

"Mr. President, I would like to request that we adjourn today in honor of those members of the 442nd that passed away recently. One of them was a very close friend, Mr. Thomas Sakamoto. Could we have a moment of silence in memory of Mr. Eiro Yamada and Mr. Thomas Sakamoto."

#### ADJOURNMENT

At 12:10 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, April 5, 2000, on a rising vote, observing a moment of silence in memory of the late Eiro Yamada and Thomas Sakamoto, two fallen veterans of the 442nd Regimental Combat Team from World War II.