

FIFTY-SEVENTH DAY

Wednesday, April 26, 2000

The Senate of the Twentieth Legislature of the State of Hawaii, Regular Session of 2000, convened at 11:36 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by Pastor Owen Tanoue, Kalihi Union Church, after which the Roll was called showing all Senators present.

The President announced that he had read and approved the Journal of the Fifty-Sixth Day.

MESSAGE FROM THE GOVERNOR

Gov. Msg. No. 319, informing the Senate that on April 24, 2000, he signed into law House Bill No. 2537 as Act 37, entitled: "MAKING AN EMERGENCY APPROPRIATION FOR THE ADULT MENTAL HEALTH DIVISION," was read by the Clerk and was placed on file.

DEPARTMENTAL COMMUNICATION

Dept. Com. No. 32, from the State Auditor dated April 24, 2000, transmitting a report, "Financial Audit of the Department of Land and Natural Resources," (Report No. 00-11), was read by the Clerk and was placed on file.

HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 714 and 715) were read by the Clerk and were placed on file:

Hse. Com. No. 714, returning S.C.R. No. 16, which was adopted by the House of Representatives on April 25, 2000.

Hse. Com. No. 715, informing the Senate that pursuant to the disagreement of the Senate to the amendments proposed by the House to the following Senate concurrent resolutions and the request for a conference on the subject matter of said amendments, the Speaker on April 25, 2000, appointed managers on the part of the House for the consideration of said amendments:

S.C.R. No. 129, S.D. 1 (H.D. 1):

Representatives Morita, Schatz, co-chairmen, Fox.

S.C.R. No. 204 (H.D. 1):

Representatives Morita, Schatz, co-chairmen, Fox.

CONFERENCE COMMITTEE REPORTS

Senator Inouye, for the Committee on Conference on the disagreeing vote of the House to the amendments proposed by the Senate to H.B. No. 1947, H.D. 2, presented a report (Conf. Com. Rep. No. 4) recommending that H.B. No. 1947, H.D. 2, S.D. 2, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15, of the Constitution of the State of Hawaii, action on Conf. Com. Rep. No. 4 and H.B. No. 1947, H.D. 2, S.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO FISHERIES," was deferred for a period of 48 hours.

Senator Nakata, for the Committee on Conference on the disagreeing vote of the House to the amendments proposed by the Senate to H.B. No. 2530, H.D. 1, presented a report (Conf. Com. Rep. No. 5) recommending that H.B. No. 2530, H.D. 1, S.D. 1, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15, of the Constitution of the State of Hawaii, action on Conf. Com. Rep. No. 5 and H.B. No. 2530, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO AIR POLLUTION CONTROL PUBLIC NOTIFICATION," was deferred for a period of 48 hours.

Senator Inouye, for the Committee on Conference on the disagreeing vote of the House to the amendments proposed by the Senate to H.B. No. 2406, H.D. 1, presented a report (Conf. Com. Rep. No. 6) recommending that H.B. No. 2406, H.D. 1, S.D. 1, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15, of the Constitution of the State of Hawaii, action on Conf. Com. Rep. No. 6 and H.B. No. 2406, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO AGRICULTURE," was deferred for a period of 48 hours.

Senator Inouye, for the Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House to S.B. No. 2411, S.D. 1, presented a report (Conf. Com. Rep. No. 52) recommending that S.B. No. 2411, S.D. 1, H.D. 1, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15, of the Constitution of the State of Hawaii, action on Conf. Com. Rep. No. 52 and S.B. No. 2411, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO SPECIAL PURPOSE REVENUE BONDS FOR PROCESSING ENTERPRISES," was deferred for a period of 48 hours.

Senator Inouye, for the Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House to S.B. No. 2530, S.D. 1, presented a report (Conf. Com. Rep. No. 53) recommending that S.B. No. 2530, S.D. 1, H.D. 1, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15, of the Constitution of the State of Hawaii, action on Conf. Com. Rep. No. 53 and S.B. No. 2530, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO AGRICULTURE," was deferred for a period of 48 hours.

Senator D. Ige, for the Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House to S.B. No. 185, S.D. 2, presented a report (Conf. Com. Rep. No. 54) recommending that S.B. No. 185, S.D. 2, H.D. 1, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15, of the Constitution of the State of Hawaii, action on Conf. Com. Rep. No. 54 and S.B. No. 185, S.D. 2, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," was deferred for a period of 48 hours.

Senator D. Ige, for the Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House to S.B. No. 2837, S.D. 1, presented a report (Conf. Com. Rep. No. 55) recommending that S.B. No. 2837, S.D. 1, H.D. 2, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15, of the Constitution of the State of Hawaii, action on Conf. Com. Rep. No. 55 and S.B. No. 2837, S.D. 1, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATIONAL ACCOUNTABILITY," was deferred for a period of 48 hours.

STANDING COMMITTEE REPORTS

Senators Fukunaga and Levin, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 3585) recommending that the Senate advise and consent to the

nomination of CAROL RAE BAPTISTA to the Board of Taxation Review, First Taxation District (Oahu), in accordance with Gov. Msg. No. 200.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 3585 and Gov. Msg. No. 200 was deferred until Thursday, April 27, 2000.

Senators Fukunaga and Levin, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 3586) recommending that the Senate advise and consent to the nominations of ALAN K. BERNALDO and RANDOLPH R. CABANILLA to the Board of Taxation Review, Second Taxation District (Maui County), in accordance with Gov. Msg. No. 201.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 3586 and Gov. Msg. No. 201 was deferred until Thursday, April 27, 2000.

Senators Fukunaga and Levin, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 3587) recommending that the Senate advise and consent to the nominations of BRADLEY T. KINOSHITA, GORDON Y. INABA and RICHARD G. WITHINGTON to the Board of Taxation Review, Third Taxation District (Hawaii), in accordance with Gov. Msg. No. 202.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 3587 and Gov. Msg. No. 202 was deferred until Thursday, April 27, 2000.

Senators Fukunaga and Levin, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 3588) recommending that the Senate advise and consent to the nomination of SANDRA I. KLUTKE to the Board of Taxation Review, Fourth Taxation District (Kauai), in accordance with Gov. Msg. No. 203.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 3588 and Gov. Msg. No. 203 was deferred until Thursday, April 27, 2000.

Senator Chun Oakland, for the Committee on Health and Human Services, presented a report (Stand. Com. Rep. No. 3589) recommending that the Senate advise and consent to the nominations of ANGIE CONNOR, M.D., CANDICE CULLINPAYNE, WILLIAM AUSTIN BURWELL, ELLEN M. CHING, MARTHA GUINAN, GARY A. OKAMOTO, M.D., HEATHER PROUD, LAURA ROBERTSON, BETSY WHITNEY and ANITA YUSKAUSKAS, PH.D., to the State Planning Council on Developmental Disabilities, in accordance with Gov. Msg. No. 276.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 3589 and Gov. Msg. No. 276 was deferred until Thursday, April 27, 2000.

Senator Chun Oakland, for the Committee on Health and Human Services, presented a report (Stand. Com. Rep. No. 3590) recommending that the Senate advise and consent to the nominations of KENNETH C.C. CHANG, JAN LORI FRIED, AARON S. FUJII, GRETCHEN S. LAWSON, MARK B. MACANAS, RONALD K. AWA, HAROLD R. DECOSTA, DEAN M. GEORGIEV, STEPHEN G. LARACUENTE, DONALD A. MEDEIROS, CHRISTINA M. PILKINGTON, ANTHONY S. AKAMINE, RICHARD R. CHAVES, FRANCINE M.L. AONA KENYON, LUCY MILLER, PH.D., PATRICIA M. NIELSEN and OSCAR C. PAEZ, JR., to the Disability and Communication Access Board, in accordance with Gov. Msg. No. 277.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 3590 and Gov. Msg. No. 277 was deferred until Thursday, April 27, 2000.

Senator Chun Oakland, for the Committee on Health and Human Services, presented a report (Stand. Com. Rep. No. 3591) recommending that the Senate advise and consent to the nominations of JAMES P. EPURE, M.D., and STEPHEN K. MIYASATO, M.D., to the Drug Product Selection Board, in accordance with Gov. Msg. No. 278.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 3591 and Gov. Msg. No. 278 was deferred until Thursday, April 27, 2000.

Senator Chun Oakland, for the Committee on Health and Human Services, presented a report (Stand. Com. Rep. No. 3592) recommending that the Senate advise and consent to the nominations of DAVID WILLIAM MAY, TEOFILO PHIL TACBIAN, DOUG CONNORS, ED.D, PATRICIA S. JONES, MILTON C. MARTIN, CATHY STEVENS, ANGELA M. TEXEIRA and JOSEPH W. TURBAN, M.D., to the Emergency Medical Services Advisory Committee, in accordance with Gov. Msg. No. 279.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 3592 and Gov. Msg. No. 279 was deferred until Thursday, April 27, 2000.

Senator Chun Oakland, for the Committee on Health and Human Services, presented a report (Stand. Com. Rep. No. 3593) recommending that the Senate advise and consent to the nomination of ELROY K. MALO to the State Planning Council on Developmental Disabilities, in accordance with Gov. Msg. No. 299.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 3593 and Gov. Msg. No. 299 was deferred until Thursday, April 27, 2000.

Senator Chun Oakland, for the Committee on Health and Human Services, presented a report (Stand. Com. Rep. No. 3594) recommending that the Senate advise and consent to the nomination of STANLEY G. YATES to the Kauai County Subarea Health Planning Council, in accordance with Gov. Msg. No. 302.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 3594 and Gov. Msg. No. 302 was deferred until Thursday, April 27, 2000.

Senator Chun Oakland, for the Committee on Health and Human Services, presented a report (Stand. Com. Rep. No. 3595) recommending that the Senate advise and consent to the nominations of PAULINE D. ARELLANO, VICKY M. FOLLOWELL, ALBERT HAUOLA PEREZ, GORDON M. BRONSON, LONIA BURROUGHS, SALLY J. CROVO, DEBRA T. FARMER, WILLIAM C. LENNOX, JR., HOWARD A. LESSER, JAMES M. MIHALKE, SHARON ROSE NOBRIGA and SHARON P. YOKOTE to the State Council on Mental Health, in accordance with Gov. Msg. No. 304.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 3595 and Gov. Msg. No. 304 was deferred until Thursday, April 27, 2000.

Senator Nakata, for the Committee on Labor and Environment, presented a report (Stand. Com. Rep. No. 3596) recommending that the Senate advise and consent to the nominations of BRIAN K. NAKAMURA and KATHLEEN RACUYA-MARKRICH to the Hawaii Labor Relations Board, in accordance with Gov. Msg. No. 300.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 3596 and Gov. Msg. No. 300 was deferred until Thursday, April 27, 2000.

At 11:41 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

ADVISE AND CONSENT

Stand. Com. Rep. No. 3582 (Gov. Msg. No. 221):

Senator Nakata moved that Stand. Com. Rep. No. 3582 be received and placed on file, seconded by Senator Chumbley and carried.

Senator Nakata then moved that the Senate advise and consent to the nomination of RANDALL Y. IWASE to the Labor and Industrial Relations Appeals Board, term to expire June 30, 2010, seconded by Senator Chumbley.

Senator Nakata rose in support of the nominee and said:

"Mr. President, it is my privilege to present to this body the nomination of Randall Y. Iwase to the Labor and Industrial Relations Appeals Board and recommend advise and consent to his nomination.

"In the confirmation hearing that we held, he was given overwhelming support and recognition that, although he may lack some of the experience in labor management and medical matters, he is a quick study. This was mentioned over and over again and I believe that to be true.

"Like many of us, Randy's strengths are his weaknesses. And I say that because one of the qualities I see in him is a measure of impatience, but that also means that he will want to move things quickly. One of the criticisms of the board now, is that it doesn't make decisions quickly. So I think that quality in him is important.

"My observation of him is also that he does have an analytical and incisive mind, that he quickly sizes up situations. I believe he works hard and he has said that he will study this area diligently before he takes office and learn from the experiences that he will have in the office. He is very much action oriented. Again, a good quality for someone serving on this board. His various experiences in public office will also stand him in good stead. On this board, which is small, I believe that he will have much influence on the operations of the board. In our political context here, his energies have been scattered over many, many areas. But when they are focused on a narrow spectrum, I believe they will be sharpened and enhanced.

"I believe that this nominee will do a good job for this state, for the people of this state, so I urge my colleagues to vote in favor of this nomination. Thank you."

Senator Tanaka also rose in support of the nominee and stated:

"Mr. President, I rise in support of Gov. Msg. No. 221."

"Mr. President and members, you know I very seldom stand and speak in favor of anybody. In fact, I think this is the first time I'm doing it. (Laughter.) I would rather sing karaoke. (More laughter.) Randy is a very special person, and I do it only for someone who does outstanding things for the state, the community, or an outstanding person. And I think Randy is a very special person and he's a good friend of mine.

"Mr. President, members, I'm not an eloquent speaker like the Senator from Hawaii Kai or the Senator from South Maui, and I'm not as witty or humorous as the Senator from Kahala, and I don't quote poetry or recite lines like the Kaneohe Senator, and I'm not as emotional as the Senator to my right (laughter), and I've been told that I'm not as good looking as the Senator from God's country -- so just be patient with me.

"Being a small businessman, I said, How am I going to present Randy Iwase? He's a very dull person. It's very difficult to do anything for him. (Laughter.) So I made a balance sheet -- as a small businessman would -- and I know Sam will agree with me, because the legislature and the administration just don't treat us right. The Senator from Waimanalo wants to know what a balance sheet is, so I'll tell you.

"In front of you, you have a Randy Iwase balance sheet. Anything on the left is what we call assets -- that's the good things about Randy, the plus side. Anything on the right is a liability -- the bad side about Randy, the negatives. Then the bottom line is the net profit. So, what we see in the assets are a whole bunch of good things about Randy, so I'll just mention a few. Randy spent about 26 years in public service -- that's all his adult life -- and he's only 39 years old I heard. (Laughter.) He was deputy AG for 11 years; he spent one term on the City Council; he worked at Aloha Tower Development Corp for two years; and he's been in the Senate for 10 years -- that's 26 years. And if we do confirm him, that's another 10 years that he's obligated to serve in public service. I think that's a lot of time for a person to do it. Aside from you, Mr. President, nobody has those years.

"Let's see the liability side -- it says here, lack of experience in the area of labor management and medicine. But then let's go to the asset side and you have honesty, reliable, personable, intelligent. Yesterday, the Senator from Kaneohe said that Randy was such an intelligent guy, he wanted to keep him here in the Senate . . . not me -- I want him out! (Laughter.) So, with his intelligence, it will balance the negative.

"The other liability I see is the lack of hair. (Laughter.) I don't know if Randy is listening, but Randy, you're on your own on this one. When we look at the asset side we see he's a good father, he's a good brother, he's a good husband. Maybe a good sense of humor would balance the lack of hair.

"This is the way I show to you, Mr. President and members, the worth of Randy Iwase. He's a very special person. I said if confirmed, the bottom line -- this is your net profit -- the bottom line would be the State of Hawaii and its people, because Randy will serve in his capacity as a very good labor appeals board member.

"So with that, I ask for your support. Please vote for Randy so we can send him out of here. (Laughter.) Thank you very much."

Senator Kawamoto rose to speak in favor of the nomination and said:

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

"Mr. President, I've known the nominee for more than 18 years now. He was the 'akamai' guy, and I was the guy who didn't know anything about politics. But we all, collectively, ran together for a special election, and somehow he got more people there than I did and he won the nomination for the election to the City Council back when Toraki lost his seat to a recall. From there, we continued to be involved in politics, and since 1994, he's become my neighboring Senator.

"All of his life, he's been trying to work for the good of the state and the good of the people in central Oahu and the Waipahu community. He sometimes says he's not a Senator from the Waipahu area, but he does have a few spots in Waipahu, like most of Gentry in Waipahu.

"All I can say is that both he and Jan are just good people and he deserves this appointment. He's worked hard and he'll do good for the State of Hawaii. So I urge all of my colleagues to vote 'aye' on this nominee.

"Thank you."

Senator Slom also rose in favor of the nominee as follows:

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

"First thing though, Mr. President, I would ask my colleagues if we could please have the legislative auditor check the balance sheet and audit that very carefully. (Laughter.)

"I have known Randy Iwase since the time he had hair. (Laughter.) I've known him from the days at the City Council and from the days in the state Attorney General's Office. I've known Randy Iwase since the time he was a dissident . . . come to think of it, several of us still are dissidents.

"I've always found him to be fair and open and receptive to new ideas, usually to be energetic, and a person who's been able to support different people and different ideas. I think the interesting thing is, during the early part of the confirmation process, people were accusing him of being pro-business and all the labor unions showed up to support him. People have said, in many ways, he's more like a Republican -- but all the Democrats came to support him. So he's been able to bridge the gap, been able to bring people together -- Republicans and Democrats; business people and labor organizations; and so forth. I think that is part of the talent and the expertise and the experience that he will be bringing to the labor board.

"We all expect a great deal from him. We expect to see that he's going to be able to speed up the process and to be able to make changes there, as he sought to make changes here in the State Legislature and the State Senate.

"You know, Mr. President, it's always good to see one of our own go on to other areas other than jail. (Laughter.) So I think that from this standpoint, we can all stand by and support the confirmation of Senator Randy Iwase.

"Thank you, Mr. President."

Senator Chumbley rose to speak in support of the nomination and said:

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

"Mr. President, today when I came down to the Floor, I tried to put myself in the nominee's shoes and said, What would Randy Iwase be thinking about? We all know that two of his favorite things are the Beatles and John Fitzgerald Kennedy, so I dug deep into the history books to find a couple of quotes that I thought were appropriate. Unlike the good Senator from Central Maui, I won't sing the Beatles' song, I'll just recite the words. There's a song called 'Yesterday' by John Lennon and Paul McCartney that came to mind and I'm sure that Randy, somewhere today, is reciting these words:

'Yesterday, all my troubles seemed so far away
Now it looks as though they're here to stay
Oh, I believe in yesterday

Suddenly, I'm not half the man I used to be
There's a shadow hanging over me
Oh, yesterday came suddenly'

I'm sure that he's thinking today, that he wishes that it was yesterday.

"I then looked at some of the quotes from John Fitzgerald Kennedy and came up with two that I thought were appropriate. The first one, Mr. President, is something that I hope is not accurate but we've heard rumors that it may be the case and this is a quote from President Kennedy:

'When we got into office, the things that surprised me the most was to find that the things were just as bad as we were saying they were.'

"I hope that the Labor and Industrial Relations Appeals Board is not as bad as they have said they are.

"Lastly, Mr. President, I'd like to say, in memory of Randy Iwase's mother who recently passed away -- 'Mothers all want their sons to grow up to be presidents, but they don't want them to become politicians in the process.' With that in mind, we now hope that the governor will choose this nominee to be the chairperson of the Labor Relations Board and no longer a politician.

"I ask all my colleagues to support this nomination. Thank you."

Senator Chun rose to speak in support of the nominee with reservations as follows:

"Mr. President, I rise in support of the nominee with reservations.

"Mr. President, I've worked with Randy not only in my capacity as a Senator but I served with him and worked with him when he was a member of the City Council. I also worked with him while he was a State Senator and I was just a lowly deputy corporation counsel for the city and for the county of Kauai. In my dealings with him, he's always been very fair, honest, and extremely intelligent in the areas that he's worked on, so I have no problems in terms of the nominee and his intelligence and his quick learning.

"I am confident that as a member of the Labor and Industrial Relations Appeals Board he will be able to understand and grasp the legal issues that confront him as a member on a day to day basis. However, I must speak with reservations on this nomination because I feel that even with his intelligence and his abilities, it is extremely important that the chair of the Labor and Industrial Relations Appeals Board has an intimate knowledge of all the issues confronting that board, more than the nominee has right now. The chair makes the decisions on evidentiary hearings; he makes the decisions whether to accept any evidence in or not accept it in; he makes the decision, oftentimes, that would break any tie votes; he makes the decisions as far as administering other departments and whether or not the directions they go are going to lead to a quicker hearing. All these things add up, Mr. President, that the chair's position is extremely important in the running of that department.

"Mr. President, the nominee admittedly does not have the kind of experience needed to be the chair. I have asked the attorney general for an opinion whether or not our action today will result in the nominee serving as the chair of the board or as a member. The attorney general's opinion was very clear that the Senate only has the confirmation power to confirm the nominee as a member of the board and that the designation of the chair is a matter solely left to the power of the governor, pursuant to the statute. Based upon that, we're acting to confirm the nominee as a member. I would have no problems confirming him as a member and I will support that. And I would ask the governor that when he decides to appoint any of the members to serve as the chair, that he take into consideration the relative lack of experience that the nominee has and that he chooses a chair that has experience, that he chooses a chair that knows the system well, and he chooses a chair that can begin to address the hard questions and the hard issues that confront the board on a daily basis and not take time to learn about what needs to be done or what needs to be improved.

"Mr. President, I guess what I'm saying is that we will have to trust the governor, pursuant to his powers, that he will do the

right thing and appoint a chair that will be able to step right in rather than learn on the job.

"And one more thing, Mr. President, I'm going over the balance sheet of the honorable Senator from Maui and I must disagree with him to a certain extent on the liability, lack of hair. Rather than be on the liability side, it should be on the asset side, because as we all know, the lack of hair shows the increase of intelligence." (Laughter.)

Senator Hanabusa rose in opposition to the nominee and stated:

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

"Unlike my good colleague from Kauai, who's been able to look at the requirements of this position and say that he can go with reservation, I cannot. Mr. President, I'm not saying that my colleague should follow my concerns, but I do have them, and I believe my colleague from Kauai and I may be the only ones who have actually practiced before the Labor and Industrial Relations Appeals Board. I have done cases which I refer to as a Mitchell case, which is a stress related case. I have done fraud cases before them.

"What troubles me is, as I listened to the confirmation, I heard testimony over and over again that nobody's an expert on everything. The fact that Senator Iwase would quickly learn the law, I do not take any dispute with. I believe that he will.

"There was a statement made by one testifier that this is a situation where attorneys try the case and basically you're sitting there as a judge and as a hearings officer. Mr. President, that is what I have the most problem with. When you read the Senate Journal and the standing committee reports which address the basis of 371-4 when it was enacted, the statement was made very clear by our former colleagues who preceded us, that unlike a judge, who is not expected to be a specialist in the subject matter of every case that is tried before him and necessarily must rely primarily on parties to develop facts for him, the members of the board are expected to be and should be specialists in the matter before them. That is the trouble that I have.

"I do not have any trouble with my colleague, Senator Iwase. It's a very difficult matter, as evidenced by all the speakers before me, to speak about one's colleague and to speak in opposition to one's colleague. However, I cannot get over what the standing committee report has said as to the requirement of that provision of the law and what is expected. Even my good colleague from Maui -- the best vice chair anyone could ever have in a committee -- even under the liability section he places, lacks experience of the area of labor management and medicine. But anyway, that's not the requirement. The requirement is in workers' compensation. And every testifier that I listened to, and I listened to it over the television, no one came forward and said that he had the necessary experience which I believe is clearly the intent of this provision of the law. And for that reason, I cannot vote in favor of this nominee, because I believe that it goes contrary to what the intent of this section of the law intended.

"Thank you, Mr. President."

Senator M. Ige also rose in opposition and said:

"Mr. President, I, too, rise in opposition.

"Mr. President, before I do that, I need to ask a point of parliamentary inquiry to the previous speaker from Kauai. I have the governor's message here on the remarks in succeeding Frank Yap . . . Labor and Industrial Relations Appeals Board . . . March 9. The question I have for the Senator from Kauai is, Was the AG's opinion in writing or was it verbal via telephone? Because it's my understanding, via this message, that it's to succeed Frank Yap."

Senator Chun responded:

"Mr. President, in response to the question from the Senator from Kaneohe, the response was in writing and was transmitted to both the nominee and also to the chairman of the labor committee."

Senator M. Ige continued:

"Then I guess I have a question to the chair from Kahaluu -- Was that circulated to the members?"

At 12:10 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:14 o'clock p.m.

Senator M. Ige rose and said:

"Mr. President, I withdraw my request. It seems to be causing some problems.

"I hate to rain on anybody's parade . . . I don't like that, but I would appreciate the diligence of my colleagues in letting me express some of my thoughts on this appointment. I don't take this negative vote lightly -- I take it very seriously.

"Mr. President, I'm just concerned, basically, on two points: number one, the term 'inefficiency,' and of course, Senator Iwase's qualifications, but I won't get into that too much. Let me just talk a few minutes about the term 'inefficiency.' When you look at the law, Mr. President, as the vice chairman of the committee on labor, the law is very specific that because cumulative experience and continuity in office are essential to proper handling of appeals on the workers' compensation law and other labor laws, it is hereby declared to be in the public interest to continue board members in office as long as efficiency is demonstrated. So I guess, Mr. President, the question I have is, when I looked under the term efficiency or inefficiency, they talked about waste of time, waste of energy, incapable, incompetent. And when we looked at the labor relations board, way back in January during the budget briefings, it was very clear that this panel was very important to the working people of Hawaii.

"Some of the questions that we had raised were, How many cases did they receive? In '94 they had 859 cases; in '95, 800 cases; in '96, 766 cases; in '97, 650 cases. They disposed of in '94, 700 cases; 800 cases in '95; 700 cases in '96; and 700 cases in '97. So it appears that the amount of cases they received yearly was being disposed of within the 12-month frame. In terms of OSHA cases, the amount of cases received in '96 was 56, and 52 in '97. Disposed of cases was 50 in '96, and 55 in '97. I guess one of the things that shocked me was that, of the total amount of cases -- in the thousands, Mr. President -- there were only 19 appeals to the Supreme Court in '96 -- only 19. In '97, only 12.

"What does this say about the office? In my opinion, my argument is that, as the vice chairman of that committee, it's being run efficiently. It's making decisions that are independent of the thinking of the moment, based on facts. And I think that's important for the legislature to consider. Was this department ever given any type of evaluation to prove in fact if it wasn't an efficient operation? And we have literature or we have documentation from the director saying there was never any performance based criteria on the measurement of this office being efficient or not. And I think that's really sad, Mr. President. I think that's very, very sad.

"Senator Iwase mentioned during his nomination, something to the effect that there were several cases that were years old, years old. In doing the research, there was one case in '95 and two cases in '96. And all three cases have gone to trial. The parties involved have asked that no decision be made at this

time, for whatever reason. There have been four cases in OSHA. The oldest case went to trial 11-20-98. And based on their attorneys, they are in the process of issuing a decision as it is currently in the hands of their staff attorneys who are doing the drafting. So I think when Senator mentioned these four cases, I beg to differ that it was because of some delay or some inefficiency in the office of the appeals panel.

"Mr. President, in conclusion, I believe that this office is being run efficiently. And as a result, this nomination should not be before us, because the statute is very clear about that. It is in the public interest to continue. But what bothers me, Mr. President, is that, if you take the spirit of the statute literally and inefficiency is not demonstrated, then what is that saying about us? What is that saying about this Senate when we can take a program, or the governor can take a program and willy-nilly lop off programs with no rhyme or reason, with no justification?"

"I think what's sad is that there's one real shiny example, which is the Office of Community Services, that we wrestled with. We're going to move a little office from the Department of Labor to the Department of Human Services, and nobody knows why. Until Tuesday night at Conference, the chair decided to kill the bill. What does that say about us as Democrats? What we fought for, what we believe in, the importance of our working people in Hawaii . . . there needs to be some criteria, Mr. President, to move one person to another place or even termination. Let's at least go back to what is important to who we are and what we stand for. And that is not the case with this particular office, Mr. President. I believe what we did with the community services bill is shameful. It should have never gotten this far. I just hope that there are no compromises made with the department to satisfy some of their service providers. That is the rumor out there right now, and I hope that it ends.

"Mr. President, this board must be independent. This board must make decisions based on fact -- what is before them -- not who is the governor at this time, what is the philosophy, or government restructuring. We're talking about injured workers, for goodness' sake. We're talking about people who got injured on the job. What about them? That is why this person is there for ten years. Mr. Yap has not proved inefficiency. Do we want him to make rules in 30 days? In 60 days? Nowhere in the statutes does it say that. If that's what we want, make that a goal. Make that a part of PPB. Don't just go back and say, well, philosophically, he's not with me. Mr. President, I beg to differ. This office was not set up to be a political of any governor, any legislature. This office was set up for working people in Hawaii to make sure that they get just compensation for injuries that they receive on the job. Mr. Yap has done that. I do not believe that it is appropriate to even consider Senator Iwase's nomination without first defining whether or not that office was efficient or inefficient.

"Senator Hanabusa read the concern that she had about Senator Iwase not being qualified, and I was going to talk about that statute or that standing committee report, which was brought up in the hearing.

"Mr. President, I just need for you to know that Senator Iwase and I go back some time -- with Senator Tanaka -- and we sat in his office many a time -- with Senator Bunda, as well -- and we had the profile of President Kennedy in the background, and it was a smoke-filled room. We didn't have the hammer or the power to make decisions at that time -- this was three years ago when you were the President -- but you know what? I remember those days and I remember how bright he is, how sharp he is. I don't agree with Senator Tanaka that he's handsome, but I do remember those stories and the jokes that we told amongst each other. In fact, we even met in this Minority caucus room on a Sunday afternoon.

"He is bright; he is capable -- but, Mr. President, not for this office. I will support him for any department, any commission, any board -- even, at one time, the presidency of the Senate

(laughter) -- but, Mr. President, not for this position. It is inappropriate . . . inappropriate.

"Mr. President, based on my two concerns regarding the inefficiency of the office as well as the qualifications that should go along with that office, I do not believe Senator Iwase is qualified for that position. So, with a heavy heart, I cannot support this nomination.

"Members and Mr. President, thank you for the time."

Senator Sakamoto rose in support of the nomination and said:

"Mr. President, I rise in support of the nominee, and since he's not on the floor to respond to some of the comments, I'd like to respond to some of them.

"The Senator from Kauai pointed out, yes, it's the governor's choice. So that's the choice the governor makes. When you're governor or if you're governor, you can make the choices as well. I believe that's clear.

"In regard to the comment about being a specialist . . . people can interpret committee reports differently. I believe at the time, changing the term to ten years created a specialist who was allowed to stay in a position for a long time to become a specialist, had he or she not been a specialist prior. I believe relating to being a specialist as compared to judges and other people who do mediation, when you center on Chapter 386, a specific chapter as opposed to all of the HRS, you have an opportunity and, in fact, will become a specialist. So I believe you can look at the term specialist in the committee report to read such that the position does relate to Chapter 386 and other chapters, but specifically workers' comp, and ten years, specifically, as opposed to three years or some other shorter term, Mr. President.

"I think the debate is not about how efficient one party was or isn't. My question would be for the party in office. The current holder could have done an efficiency assessment. It's not for an incumbent to say how inefficient it was and it's the governor's choice. I think for efficiency's sake, when I heard that there were 19 appeals to the Supreme Court in one year and 12 in another year, for me, as a person in business, I would question how efficient that was if there were that many cases. If indeed there were hundreds, why should any be appealed to the Supreme Court from a body that would purport to be specialists in workers' comp?"

"A couple more issues. From the media reports and from hearsay, I heard that the governor was moving towards consolidating some boards to create efficiency and that was rebuffed. So I think there are concerns related to efficiency and not against the current person in the office. But I believe there were efforts to become more efficient and those were not accomplished.

"Knowing Senator Iwase and the comments made on his demeanor in moving things forward, certainly there would be quick action. With his intelligence, I know they'll be correct actions, Mr. President.

"Thank you."

Senator Tam rose in opposition and said:

"Mr. President and fellow colleagues, I wish to register my vote as a 'no' vote.

"I usually state my reasons so that people can understand. And the reason for my 'no' vote is because I'm very familiar with the labor laws, being that it was my former occupation, and I believe at this time, with due respect to Senator Iwase, that he does not have the qualifications in the labor area.

"Thank you."

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

Ayes, 21. Noes, 3 (Hanabusa, M. Ige, Tam). Excused, 1 (Iwase).

Stand. Com. Rep. No. 3583 (Gov. Msg. No. 310):

Senator Chumbley moved that Stand. Com. Rep. No. 3583 be received and placed on file, seconded by Senator Matsunaga and carried.

Senator Chumbley then moved that the Senate consent to the nomination of KARL K. SAKAMOTO as Judge of the 1st 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, seconded by Senator Matsunaga.

Senator Chumbley rose in support of the nominee and said:

"Mr. President, I rise to speak in support of this nomination.

"Mr. President and colleagues, Karl Sakamoto holds a B.A. degree in psychology from the University of Hawaii and a J.D. degree from the University of Hawaii's Richardson School of Law. Mr. Sakamoto's legal career includes serving as a deputy public defender, an associate in the civil litigation section of a private law firm, and most recently as senior attorney and deputy executive director for the state Civil Rights Commission. In addition to his professional career, Mr. Sakamoto has made time for several professional and community organizations which include the National Employment Lawyers Association Hawaii Chapter, and the Japanese American Citizens League, just to name a few.

"During the Senate Judiciary Committee hearing, the Committee heard his thoughts on the creation of special classes of criminal offenses, how to address substance abuse offenses, and whether his civil rights experience would bias his opinions as a judge on the bench. The Committee also heard from the Hawaii Civil Rights Commission; the Office of the Public Defender; the National Employment Lawyers Association Hawaii Chapter; and twenty private individuals and members of the legal community voice their support for Mr. Sakamoto. In summary, the testimony indicated that Mr. Sakamoto possesses the necessary temperament and legal ability to serve as a jurist. Additionally, testifiers indicated that he is well prepared, willing to make decisions, and is a fair-minded person with good listening skills.

"I am confident that Mr. Sakamoto will be an asset to the judiciary in his capacity as a Circuit Court Judge. I urge my colleagues to consent to this nomination.

"Thank you."

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

Ayes, 25. Noes, none.

At this time, Senator Chumbley introduced Judge Sakamoto to the members of the Senate. (Judge Sakamoto, who was seated in the gallery with family and friends, rose to be recognized.)

Stand. Com. Rep. No. 3584 (Gov. Msg. No. 311):

Senator Chumbley moved that Stand. Com. Rep. No. 3584 be received and placed on file, seconded by Senator Matsunaga and carried.

Senator Chumbley then moved that the Senate consent to the nomination of SIMEON R. ACOBA, JR., to the office of Associate Justice, State Supreme Court, for a term of ten years, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, seconded by Senator Matsunaga.

Senator Matsunaga rose to support the nomination as follows:

"Mr. President, I rise in support.

"Mr. President, Simeon Acoba, Jr., has served as a state jurist since 1979, having first been appointed as a per diem judge for the District Court of the First Circuit, and subsequently serving as a judge in the Circuit Court of the First Circuit, and most recently as an Associate Judge for the Intermediate Court of Appeals. His legal experience prior to his service as a judge included positions as legal counsel for several governmental agencies and a private law practice which included both civil and criminal litigation. In addition to his professional career, Judge Acoba has made time for numerous professional and community organizations.

"During the Senate Judiciary Committee hearing, the Committee diligently questioned the nominee regarding his legal background and philosophies, his rulings, and his opinions of several recent Hawaii Supreme Court decisions. Further, your Committee requested his thoughts and views on the privacy provision of the Hawaii Constitution, the need for an evaluation process for jurists sitting at the appeals level courts, the need for constitutional rights for crime victims, and the constitution as a 'living' document.

"Mr. President, the Committee also heard from several members of the legal community and over 80 private citizens all overwhelmingly voicing their support for Judge Acoba. In summary, the testimony indicated that Judge Acoba is viewed as a fair, unbiased deliberator who makes his decisions based upon the facts of the case and the current law. Additional comments mentioned his sense of efficiency and proficiency in ensuring that his rulings and opinions were issued in a timely manner. Finally, many individuals who have worked for and argued before Judge Acoba acknowledge his diligent work ethic and strong sense of ensuring that justice is served upon all who come before him.

"Mr. President, this appointment comes with great support and is well-deserved. I am confident that Judge Acoba is committed to excellence in judicial performance and will serve our State Supreme Court well. I urge my colleagues to consent to his nomination.

"Thank you."

Senator Kawamoto also rose to support the nominee and said:

"Mr. President, I rise in favor of this nominee.

"Mr. President, I hate to say how long I've known this nominee, but back in 1962 he was a pledge for my fraternity at the university -- that's almost 40 years ago. At that time, his work habits and his integrity were above reproach.

"I've admired his climb in the courts from afar and from here. And again, like the Senator from Waiialae indicated, he's earned and is deserving to sit on the highest court of the state, the Hawaii Supreme Court, and I urge my colleagues to vote 'aye' on this nominee.

"Thank you."

Senator Chun added his support as follows:

"Mr. President, I rise in support of the nominee.

"Mr. President, I have appeared numerous times before the judge while he was a circuit court judge, and although he has not always ruled in my favor, I've always found that his rulings were articulate and well-reasoned. I believe that this ability and this thought process will serve him well in the Supreme Court.

"I was also at his confirmation hearing and his answers to the questions (and they were very excellent questions by the Judiciary Committee) were very well thought out and reasoned, and it shows a very clear respect and understanding of the lines between the judiciary, legislative, and executive branches. I feel that his expertise and his knowledge would serve all the people of Hawaii well."

Senator Hanabusa rose to speak in favor of the nomination and said:

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

"Mr. President, I believe that I've been one of the very fortunate young lawyers who was able to train under Judge Acoba, and I use the word train. Back when I began practicing law, we had what we called the 'three kings' -- we jokingly referred to them as that -- and they were Judge Acoba, former Justice Klein, and former Judge Yim. Each of them had their strengths, and if we were fortunate enough to appear before them, we experienced it all. For example, Judge Yim would grill you on evidentiary objections like there was no tomorrow; Judge Klein would just argue with you until you just wanted to say 'Okay, I give up'; but Judge Acoba was special -- he is by far the best settlement judge that I have ever had the opportunity to appear before. This is because Judge Acoba expected us to be prepared, to be candid, and he was always fair.

"You wouldn't believe it, but it's been a while since we were all young lawyers sitting outside the various courtrooms commenting, 'Gee it's not fair; all these guys have all their friends who are judges.' And now, it's come that my friends and my colleagues are now judges. I spoke to one, a female judge, and the reason I raise this is because there's been a lot of news about gender equity in the courts. I spoke to her because I have a great deal of respect for her, and I said, 'Are you considering putting in for the Supreme Court?' And she said, 'Do you remember how we used to sit outside of Judge Acoba's court?' And I said 'Yes.' She said, 'I'd never do it because Judge Acoba is the most deserving, and you and I both know it.' And I said 'that's true,' and I agreed with her. And she said it was Judge Acoba and appearing before him, and his fairness, and his hard work, and his knowledge, and his respect for the law that encouraged her to be a judge. She has told me that she looks forward to one day maybe making it up to the high court and to be able to sit alongside Judge Acoba and continue the learning process with him.

"My fellow colleagues, that is one of the highest praises I believe anyone can give to another, and that is why I ask that you all support Judge Acoba. Those of us who have had the pleasure and the honor of working with him know that he will be a great addition to the Hawaii Supreme Court.

"Thank you."

Senator Taniguchi also supported the nominee and said:

"Mr. President, I rise to support the nominee.

"Mr. President, Judge Acoba was my first year seminar professor at the University of Hawaii law school. Although that was less than 40 years ago -- although it seems like it was 40 years ago (laughter) -- at that time he made the law relevant to me and he really kept me going when law school seemed overwhelming.

"I believe he is an excellent choice and will make a great justice. I ask my colleagues to support his nomination.

"Thank you."

Senator Slom added his comments in support of the nominee with reservations as follows:

"Mr. President, I rise to support the nomination with reservations.

"First of all, my reservations are not based on the nominee's qualifications, integrity, or character. My reservations, instead, have to deal with the nature of certain rulings that were made. I, too, heard the questions that were asked. I'm just not as satisfied with some of the answers that were provided.

"Secondarily, I'm also very concerned about the judicial selection process in this state, the politicization of this process, and the fact that in many ways we discourage people from applying because the perception has been that it is who you know rather than what you know.

"So I will support the nomination with those reservations. Thank you."

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

Ayes, 25. Noes, none.

At this time, Senator Matsunaga introduced Associate Justice Acoba to the members of the Senate. (Justice Acoba, who was seated in the gallery with his family and friends, rose to be recognized.)

At 12:41 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:42 o'clock p.m.

FINAL READING

S.B. No. 2849, H.D. 1:

On motion by Senator Chun Oakland, seconded by Senator Chumbley and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 2849 and S.B. No. 2849, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO REVIEW HEARINGS," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (M. Ige).

S.B. No. 2930, S.D. 2, H.D. 1:

On motion by Senator Chun Oakland, seconded by Senator Chumbley and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 2930, S.D. 2, and S.B. No. 2930, S.D. 2, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CONTROLLED SUBSTANCES," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (M. Ige).

Conf. Com. Rep. No. 1 (H.B. No. 2062, H.D. 2, S.D. 1, C.D. 1):

By unanimous consent, action on Conf. Com. Rep. No. 1 and H.B. No. 2062, H.D. 2, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HIGHER EDUCATION," was deferred until Tuesday, May 2, 2000.

Conf. Com. Rep. No. 2 (H.B. No. 2514, S.D. 2, C.D. 1):

By unanimous consent, action on Conf. Com. Rep. No. 2 and H.B. No. 2514, S.D. 2, C.D. 1, entitled: "A BILL FOR AN

ACT RELATING TO PUBLIC ASSISTANCE," was deferred until Tuesday, May 2, 2000.

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

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

"Mr. President, 24 hours have gone by since this body voted to approve S.B. No. 862, medical marijuana, and so far the earth has not fallen, although I do see our ceiling has fallen which to me is a sign that we better not extend, better not have any Special Session, we better get out on time. But one thing I was bothered about last night was that I saw some of the national coverage of our events and all, and I kept hearing the impassioned pleas from the good Senator from Moanalua and I kept seeing holes in bills and things like that. I was very disturbed. But then I remembered a remark he also made yesterday, and part of the remark was, How do we know that the people support these things? How do we have the direct response from the people? And then I remembered, doggone it, that's right, it's been the Republicans that have been introducing initiative, referendum, and recall -- year, after year, after year, after year!

"We don't even get hearings on bills that allow the public to let us know directly how they feel or to approve the actions that we take. And then of course we have a constitutional convention election and we make sure that we come up with a cockamamie idea that blank ballots are 'no' votes so that we can defeat that idea. And that's why all of the other states that approve these measures, they were approved because the people initiated them or the people approved them directly. But we don't trust the people enough to do that. And that is why we don't have referendum, and that is why we don't have statewide initiative. And maybe, Mr. President, that's some of the things that we should consider so that we can talk about other issues as was brought up by the Majority Floor Leader yesterday, such as fluoridation or other issues that the public seems to want.

"So I'm very happy and content with the action that we took under the circumstances, but again I'm derelict in not bringing that up yesterday in responding to the good Senator.

"Thank you."

Senator Sakamoto also rose on a point of personal privilege and said:

"Mr. President, a brief response.

"My point on the initiative and referendum was that all of the other states did this by initiative and it wasn't the legislature that initiated the action. So it was my objection for us as legislators to be the first to initiate this action. I was not in favor . . . I didn't speak that I was in favor of initiative and referendum, just to clarify that point.

"My point related to initiative and referendum is that many times they're good and worthy issues, just as in the proposed poll on this medical marijuana issue when you ask the question, Who would be against that? It's hard for people to say 'I wouldn't support someone who's ailing and needs help.' The problem, which I was pointing out yesterday, is the mechanism to do it isn't what it should be.

"Thank you."

Senator Slom rose again and said:

"Just a brief response to that, Mr. President, just to make sure that we're all clear on this.

"The reason that the other people and the other states use the mechanism is because they possess that mechanism. The reason that the people in the State of Hawaii don't have the

opportunity is because we have not allowed them to have those mechanisms. So I would be very happy to have the good Senator from Moanalua join hands with me in a bipartisan effort to really allow the people of this state to exercise their free will on this and other issues.

"Thank you, Mr. President."

ADJOURNMENT

At 12:47 o'clock p.m., on motion by Senator Chun, seconded by Senator Slom and carried, the Senate adjourned until 6:30 o'clock p.m., Thursday, April 27, 2000.