

FORTY-FIFTH DAY

Thursday, April 4, 2002

The Senate of the Twenty-First Legislature of the State of Hawaii, Regular Session of 2002, convened at 12:15 o'clock p.m. with the President in the Chair.

The Divine Blessing was invoked by the Honorable Norman Sakamoto, Hawaii State Senate, after which the Roll was called showing all Senators present with the exception of Senator Ihara who was excused.

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

Senators Sakamoto, Taniguchi and Nakata, introduced and congratulated the following recipients of the Outstanding International Educator Awards: Leonard Wilson, Radford High School; Michael Ibara, Puuhale Elementary School; Suzanne Acord, Educational Laboratory School; and Margaret Almony, Ahuimanu Elementary School. Also recognized was Kelly Chung, St. Joseph High School, who was not present.

Senator Sakamoto then introduced Christina Rathyen, a teacher at Moanalua High School, and congratulated her for being selected as the recipient of the Christa McAuliffe Award.

Senator Sakamoto, on behalf of President Bunda and himself, recognized Haleiwa Elementary School for its historical and educational significance and introduced Principal Jan Yoneda and Hoyt Parker, a retired teacher. Accompanying Mr. Parker was his wife, Pat.

At 12:32 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:43 o'clock p.m.

HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 342 to 349) were read by the Clerk and were disposed of as follows:

Hse. Com. No. 342, transmitting H.C.R. No. 30, which was adopted by the House of Representatives on April 3, 2002, was placed on file.

By unanimous consent, action on H.C.R. No. 30, entitled: "HOUSE CONCURRENT RESOLUTION SUPPORTING THE ACQUISITION BY THE UNITED STATES NATIONAL PARK SERVICE OF KAHUKU RANCH FOR EXPANSION OF THE HAWAII VOLCANOES NATIONAL PARK AND OF KI ILAE VILLAGE FOR EXPANSION OF PU'UHONUA O HONAUNAU NATIONAL HISTORICAL PARK," was deferred until Friday, April 5, 2002.

Hse. Com. No. 343, transmitting H.C.R. No. 55, which was adopted by the House of Representatives on April 3, 2002, was placed on file.

By unanimous consent, action on H.C.R. No. 55, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO REPORT TO THE LEGISLATURE ON THE PROGRESS OF PRESERVING AND PROTECTING THE KOHALA HISTORICAL SITES MONUMENT AND THE FEASIBILITY OF PROPERTY CONDEMNATION TO

PROTECT THESE SITES, AND TO REVIEW PRESENT ZONING LAWS," was deferred until Friday, April 5, 2002.

Hse. Com. No. 344, transmitting H.C.R. No. 66, H.D. 1, which was adopted by the House of Representatives on April 3, 2002, was placed on file.

By unanimous consent, action on H.C.R. No. 66, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION AUTHORIZING DESIGNATION OF AN INDUSTRIAL PARK," was deferred until Friday, April 5, 2002.

Hse. Com. No. 345, transmitting H.C.R. No. 83, which was adopted by the House of Representatives on April 3, 2002, was placed on file.

By unanimous consent, action on H.C.R. No. 83, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE BOARD OF LAND AND NATURAL RESOURCES TO MEET WITH ALL STAKEHOLDERS AND USERS OF KEEHI LAGOON TO DEVELOP A CONCEPTUAL MASTER PLAN WITH FOCUS ON PRODUCTIVE USE OF UNUTILIZED LANDS AND REQUESTING THE BOARD OF LAND AND NATURAL RESOURCES TO LEASE UNUTILIZED FAST AND SUBMERGED LANDS SUBJECT TO LEGISLATIVE DISAPPROVAL," was deferred until Friday, April 5, 2002.

Hse. Com. No. 346, transmitting H.C.R. No. 87, which was adopted by the House of Representatives on April 3, 2002, was placed on file.

By unanimous consent, action on H.C.R. No. 87, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE BOARD OF LAND AND NATURAL RESOURCES TO INVESTIGATE EXISTING CONFLICTS BETWEEN ORGANIZED WATER SPORTS EVENTS AND INDIVIDUAL RECREATIONAL USERS AND DEVELOP RECOMMENDATIONS FOR EQUITABLE ACCESS TO AND USE OF THE WATERS AND BEACHES OF THE STATE," was deferred until Friday, April 5, 2002.

Hse. Com. No. 347, transmitting H.C.R. No. 147, which was adopted by the House of Representatives on April 3, 2002, was placed on file.

By unanimous consent, action on H.C.R. No. 147, entitled: "HOUSE CONCURRENT RESOLUTION PROCLAIMING SEPTEMBER 2002 AS VOTER EDUCATION MONTH," was deferred until Friday, April 5, 2002.

Hse. Com. No. 348, transmitting H.C.R. No. 163, which was adopted by the House of Representatives on April 3, 2002, was placed on file.

By unanimous consent, action on H.C.R. No. 163, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO FACILITATE SECURING SPACE FOR THE COMMERCIAL HAUL OUT OF BOATS FOR SAFETY, COMPLIANCE INSPECTIONS, AND ECONOMIC DEVELOPMENT," was deferred until Friday, April 5, 2002.

Hse. Com. No. 349, transmitting H.C.R. No. 200, H.D. 1, which was adopted by the House of Representatives on April 3, 2002, was placed on file.

By unanimous consent, action on H.C.R. No. 200, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE ESTABLISHMENT OF A TASK FORCE TO STUDY THE FEASIBILITY OF ESTABLISHING A FRESHWATER FISHERY AT THE WAHIAWA RESERVOIR, OAHU," was deferred until Friday, April 5, 2002.

STANDING COMMITTEE REPORTS

Senators Inouye and Tam, for the Committee on Water, Land, Energy, and Environment and the Committee on Economic Development and Technology, presented a joint report (Stand. Com. Rep. No. 3138), recommending that S.C.R. No. 20, as amended in S.D. 1, be referred to the Committee on Ways and Means.

On motion by Senator English, seconded by Senator Hemmings and carried, the joint report of the Committees was adopted and S.C.R. No. 20, S.D. 1, entitled: "SENATE CONCURRENT RESOLUTION AUTHORIZING THE LEASE OF NON-EXCLUSIVE EASEMENT COVERING PORTION OF SUBMERGED LANDS AT MAUNALUA, OAHU, HAWAII, FOR MAINTENANCE OF THE HAWAII KAI MARINA ENTRANCE CHANNEL PURPOSES," was referred to the Committee on Ways and Means.

Senator Inouye, for the Committee on Water, Land, Energy, and Environment, presented a report (Stand. Com. Rep. No. 3139), recommending that S.C.R. No. 96, as amended in S.D. 1, be referred to the Committee on Ways and Means.

On motion by Senator English, seconded by Senator Hemmings and carried, the report of the Committee was adopted and S.C.R. No. 96, S.D. 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING DEVELOPMENT OF AN ACTION PLAN TO ASSESS AND REDUCE CARBON DIOXIDE EMISSIONS," was referred to the Committee on Ways and Means.

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 3140) recommending that S.C.R. No. 61 be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 3140 and S.C.R. No. 61, entitled: "SENATE CONCURRENT RESOLUTION URGING THE HAWAII CONGRESSIONAL DELEGATION TO SUPPORT AN AMENDMENT TO THE FEDERAL CABLE ACT OF 1992 FOR 'MUST-CARRY' LEGISLATION," was deferred until Friday, April 5, 2002.

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 3141) recommending that S.R. No. 31 be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 3141 and S.R. No. 31, entitled: "SENATE RESOLUTION URGING THE HAWAII CONGRESSIONAL DELEGATION TO SUPPORT AN AMENDMENT TO THE FEDERAL CABLE ACT OF 1992 FOR 'MUST-CARRY' LEGISLATION," was deferred until Friday, April 5, 2002.

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 3142) recommending that S.C.R. No. 108 be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 3142 and S.C.R. No. 108, entitled: "SENATE CONCURRENT RESOLUTION REAFFIRMING SUPPORT FOR THE HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII'S HOPE VI

REVITALIZATION GRANT APPLICATION FOR KUHIO PARK TERRACE AND URGING THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TO ACT FAVORABLY ON THE APPLICATION," was deferred until Friday, April 5, 2002.

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 3143) recommending that S.R. No. 57 be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 3143 and S.R. No. 57, entitled: "SENATE RESOLUTION REAFFIRMING SUPPORT FOR THE HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII'S HOPE VI REVITALIZATION GRANT APPLICATION FOR KUHIO PARK TERRACE AND URGING THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TO ACT FAVORABLY ON THE APPLICATION," was deferred until Friday, April 5, 2002.

Senator Kanno, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 3144) recommending that S.C.R. No. 87 be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 3144 and S.C.R. No. 87, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF PUBLIC SAFETY, WITH THE ASSISTANCE OF THE HAWAII CRIMINAL JUSTICE DATA CENTER, TO COMPARE THE RECIDIVISM RATES OF INMATES TRANSFERRED TO MAINLAND CORRECTIONAL FACILITIES WITH SIMILARLY SITUATED INMATES WHO REMAINED INCARCERATED IN HAWAII," was deferred until Friday, April 5, 2002.

Senators Kawamoto, Tam and Kim, for the Committee on Transportation, Military Affairs, and Government Operations, the Committee on Economic Development and Technology and the Committee on Tourism and Intergovernmental Affairs, presented a joint report (Stand. Com. Rep. No. 3145) recommending that S.R. No. 41, as amended in S.D. 1, be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 3145 and S.R. No. 41, S.D. 1, entitled: "SENATE RESOLUTION REQUESTING THE DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM, IN CONJUNCTION WITH THE DEPARTMENT OF TRANSPORTATION, TO DEVELOP A MASTER PLAN FOR THE HONOLULU WATERFRONT," was deferred until Friday, April 5, 2002.

Senator Kanno, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 3146), recommending that S.C.R. No. 109 be referred to the Committee on Ways and Means.

On motion by Senator English, seconded by Senator Hemmings and carried, the report of the Committee was adopted and S.C.R. No. 109, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE JUDICIARY TO MONITOR THE COLLECTION OF CRIME VICTIM COMPENSATION FEES," was referred to the Committee on Ways and Means.

Senator Kanno, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 3147), recommending that S.R. No. 58 be referred to the Committee on Ways and Means.

On motion by Senator English, seconded by Senator Hemmings and carried, the report of the Committee was

adopted and S.R. No. 58, entitled: "SENATE RESOLUTION REQUESTING THE JUDICIARY TO MONITOR THE COLLECTION OF CRIME VICTIM COMPENSATION FEES," was referred to the Committee on Ways and Means.

ORDER OF THE DAY

REFERRAL OF HOUSE CONCURRENT RESOLUTIONS

MATTERS DEFERRED FROM WEDNESDAY, APRIL 3, 2002

H.C.R. No. 103, H.D. 1 (Hse. Com. No. 334):

By unanimous consent, action on H.C.R. No. 103, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE STATE ENVIRONMENTAL COUNCIL, THE DEPARTMENT OF LAND AND NATURAL RESOURCES, SIERRA CLUB, HAWAII CHAPTER, LAND USE RESEARCH FOUNDATION, CONSERVATION COUNCIL OF HAWAII, ESTATE OF JAMES CAMPBELL, EARTHJUSTICE LEGAL DEFENSE FUND, UNIVERSITY OF HAWAII, AND OTHER INTERESTED PARTIES, TO ANALYZE POTENTIAL AMENDMENTS TO HAWAII'S ENDANGERED SPECIES LAW, CHAPTER 195D, HAWAII REVISED STATUTES, TO FURTHER THE GOALS OF PROTECTING AND PROMOTING THE RECOVERY OF HAWAII'S UNIQUE AND IMPERILED FLORA AND FAUNA," was deferred until Friday, April 5, 2002.

H.C.R. No. 123 (Hse. Com. No. 335):

By unanimous consent, action on H.C.R. No. 123, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE UNITED NATIONS TO CONSIDER THE ESTABLISHMENT IN HAWAII, OF A CENTER FOR THE HEALTH, WELFARE, AND EDUCATION OF CHILDREN, YOUTH, AND FAMILIES FOR ASIA AND THE PACIFIC AND REQUESTING SUPPORT FOR THE CENTER FROM THE PRESIDENT AND THE CONGRESS OF THE UNITED STATES," was deferred until Friday, April 5, 2002.

H.C.R. No. 190 (Hse. Com. No. 336):

By unanimous consent, action on H.C.R. No. 190, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING A REPORT BY THE PATIENT SAFETY TASK FORCE OF THE HEALTHCARE ASSOCIATION OF HAWAII," was deferred until Friday, April 5, 2002.

ADVISE AND CONSENT

Stand. Com. Rep. No. 3113 (Gov. Msg. No. 177):

Senator Inouye moved that Stand. Com. Rep. No. 3113 be received and placed on file, seconded by Senator Chun Oakland and carried.

Senator Inouye moved that the Senate advise and consent to the nominations of MEREDITH J. CHING and CLAYTON W. DELA CRUZ to the Commission on Water Resource Management, terms to expire June 30, 2005, seconded by Senator Chun Oakland.

Senator Inouye rose in support and stated:

"Mr. President, I rise in support of Gov. Msg. No. 177.

"Mr. President and colleagues, your Committee on Water, Land, Energy, and Environment would like your support for the

confirmation of Meredith J. Ching and Clayton Dela Cruz, gubernatorial nominees to the Water Resource Management Commission for terms to expire June 30, 2005.

"Meredith Ching is vice president in charge of government and community relations for Alexander and Baldwin. She is responsible for developing and implementing government relations, community relations, and public relations programs for A&B, the parent company and its subsidiaries. She's also responsible for developing and implementing strategies and programs for the optimum utilization of the corporation's natural resource assets, including its land, water and energy, in light of operating unit long-term needs and changing regulatory and social climates. In her almost 20 years with A&B, she has worked with the companies water systems and infrastructure and long-term water resource planning. Ms. Ching is active in the community. She participates as a board member on a number of community organizations including the Hawaii Nature Center, the Nature Conservancy of Hawaii, the YMCA, and the Kapiolani Health Foundation. She is a member of the board and executive committee of the Land Use Research Foundation and was president of the Foundation in the 1990-1992 fiscal year. She was also a member of the board and executive committee for the Hawaii Resort Developer's Conference for which she was secretary, treasurer, vice president, and president at different periods of time.

"Ms. Ching would bring to the water commission a wealth of experience from the private sector as well as from serving as a trustee and board member for various environmental and community organizations. Her nomination is historic in that she will be the first woman commissioner to serve in the commission's 15-year history.

"Clayton Dela Cruz is a division director of the ILWU, Local 142, a position in which he has demonstrated high principles and integrity. He has hands-on experience working in Hawaii's sugarcane fields for almost 20 years and being exposed to the work environment of water resource management. He has experience working on Kekaha Sugar's Kekaha, Kikiaola, and Kokee ditch systems. He has demonstrated his commitment to Hawaii by participating on the boards of numerous community organizations including the Kekaha Community Association, County of Kauai Liquor Commission, and the Executive Board of the Kauai United Way. He is currently a member of the Statewide Workforce Development Council and has been since 1999. Mr. Dela Cruz's long-term hands-on experiences with ditch systems and service on various boards and commissions will make him a valuable contributor to the water commission.

"After full consideration of the background, character, experience, and qualifications of each of the nominees, your Committee has found the nominees to be qualified for the positions to which they have been nominated and recommends that the Senate support the nominations.

"Thank you, Mr. President."

Senator Chun rose in support of the nominees and said:

"Mr. President, I stand in support of the nominations.

"Mr. President, I stand in support of the nomination specifically of Clayton Dela Cruz. Mr. President, all too often we look at somebody's credentials on papers – how much schooling they have, how much education they have – and we neglect the practical hands-on experience that comes with working in the fields. That's why I feel I really stand proud to support the nomination of Clayton Dela Cruz.

"The statute specifically requires us to look at somebody's experience in resource management, and there is no better experience than actually working in the field, seeing how the system works, seeing the impact of the sweat and toil of your own hands. That is why Mr. Dela Cruz's experiences in that regard will be of great, great help in regards to the decisions to be made on the water commission.

"In addition, Mr. President, I stand in support of the nomination of Meredith Ching. Meredith is the brains, I guess, because she has the education and the professional background in resource management. We've heard many, many testifiers against Ms. Ching and the testimony did not come across in terms of questioning her intelligence, the testimony did not come across as questioning her experience in resource management, nor did the testimony come across in regards to her ethics in terms of her ability to separate her job with her requirements of being a board member. What it boiled down to is they would rather have somebody else. But Mr. President, sometimes we all rather have somebody else but we're left with the statutory requirements for us to determine whether or not she has the requisite qualifications of someone with knowledge and experience in resource management. Mr. President, I find that she also has requisite experience and knowledge

"I support these nominations. Thank you, Mr. President."

Senator Chumbley rose in support of the nominees and said:

"Mr. President, I, too, rise to speak in support of both of the nominees.

"Clayton, I'm sorry, she also has the beauty in addition to the brains. (Laughter.)

"Mr. President and colleagues, I know both of these individuals and have worked with them in the past. Mr. Dela Cruz, I believe, does bring a tremendous amount of experience and knowledge to the water commission and will be viewed as an asset.

"With respect to Ms. Ching, I know there was a lot of controversy around the issue of the potential conflict of interest. Both she and I work for large companies. I can assure you, from my experience of working with her in the past, that she is a person of integrity and she is a person of character, and I believe very strongly that when there is a potential conflict that may arise, she will recuse herself from participation and she will not use her opportunity of contact to unduly influence Mr. Dela Cruz. He's a man of his own mind and he'll make his own decisions.

"So with that, Mr. President, I am quite honored to support both of these nominees for confirmation. Thank you."

Senator Nakata rose and said:

"Mr. President, it's with respect and regret that I feel impelled to speak against the confirmation of Meredith Ching to the water commission.

"The water commission was created through the efforts of many people of diverse viewpoints. It took a generation for the creation of the code and the commission. Most of the impetus for the constitutional amendment, the adoption of the legislation creating the commission and the code, much of the impetus came from the environmental community. We worked extremely hard at it.

"I am the first and last person from that community with strong ties to that community to have been on the commission.

Now, for the last few years, there has been no one from that community. I left the commission in 1995 and there has been none. Now there will be two out of the four public appointees who come from the corporate community. A matter of balance here is what I'm talking about. And what has happened now, with this appointment, is an unbalanced commission. There has been talk that there was no candidate from the environmental community. I actually know otherwise, but I am not permitted to disclose names because of a ruling from the Office of Information Practices.

"Water is one of the most important resources we have. It affects everybody in this State. So I believe that there is a need for balance. There may not be a legal requirement for it, but there is a need for it. So that is one of the bases on which I am voting against confirmation of Meredith Ching.

"The other has been alluded to in terms of conflict of interest. Before the hearing, I felt that there were conflicts. After the hearing I am more disturbed because of the magnitude of the conflicts of interest. This nominee may find herself in the position of recusing her from many, if not most, of the important issues that this commission will be facing. She is not an ordinary employee of Alexander and Baldwin. She's a corporate officer, and in particular, her role is government relations officer, vice president for government relations.

"Alexander and Baldwin owns the East Maui irrigation system, one of the biggest users and developers of water in this State. That system drains many streams in East Maui. So, issues of in-stream flow standards are important there. Issues of appurtenant water rights are important. On in-stream flow standards, I questioned former Chief Justice Richardson whether she would be able to participate in the Waiahole ditch case, which involves in-stream flow standards, and his answer was that he did not doubt her ability to handle that, and I would agree with him, but he also said that he believed that she may have to recuse herself from that. I believe that it could set a precedent whatever she does on any stream, with regard to stream flow standards in this State, will be questioned. Well, I have no doubt that the environmental community will question her participation, not that they will prevail in every case but I think that there will be a fair number of times when she will have to recuse herself from that.

"The issue of appurtenant water rights, which are guaranteed in the State Constitution, will be another major issue that will come before the commission. There have been bills in the Legislature concerning appurtenant water rights. My question to the chair of the commission, as to whether she would have to recuse herself on those issues, was interesting. He asked, 'In which arena?' Basically meaning in the legislative arena in her role as government relations officer or her role as water commissioner, and then he further said, 'well, she would have to be very careful in saying which hat she was wearing.' That is a very inherent conflict there – as a corporate officer charged to carry out or advocate the policies of the company that she works for and the commission where her role is to manage the water resources in the best interest of the State.

"I could go on, but I won't. I think this starkly illustrates the problems with this nominee. Again, respectfully and regretfully, I will be voting 'no' on this nominee. Thank you."

Senator Kim rose in support as follows:

"Mr. President, I rise in support of the confirmation of Meredith Ching.

"Mr. President, I have nothing but the highest regard and respect for Meredith. As a personal friend for many years, I can

personally attest to her character – smart, honest, ethical, dedicated, and professional – and to her ability to be fair and to make important and meaningful contributions to the affairs of this commission.

“Mr. President, while I agree that there is a need for balance, I believe that we should not single out just Meredith’s appointment for the unbalance. Meredith is an outstanding appointment to this post and I urge my colleagues to support both nominees.

“Thank you.”

Senator Kawamoto rose in favor of the nominees and said:

“Mr. President, I rise to speak in favor of the nominee Meredith Ching.

“Meredith Ching belongs to A&B corporation. God’s country feels very elated that A&B came to God’s country and made it more beautiful. So I’d like to say that they have taken control of the environment on a piece of property that was kind of left abandoned and they have really done a great job of making it an industrial park that provide opportunities of business, provide opportunities of landscaping, and provide opportunities for housing in that area.

“So we appreciate that and we appreciate her efforts and her hands-on, as far as our community is concerned. We bless the day that A&B came to God’s country.

“Thank you.”

Senator Hemmings rose to speak in favor of the nominees and said:

“Mr. President, I rise to speak in favor of Gov. Msg. No. 177.

“I think Mr. Dela Cruz’s nomination is a good one and we all stand in unity in support of him. There was controversy regarding the nomination of Meredith Ching and I’d like to address some of the things said on the Floor today and some of the things said in Committee.

“I was one of the Committee members who rode the fence on this issue until I listened, under the leadership of the good Senator from the Big Island, to testimony. It was absolutely amazing, and one thing that had to be noticed was that the environmental community was not against Meredith Ching. In fact, the majority of the environmentalists who came and testified in front of our Committee supported her wholeheartedly. Quite honestly, there were some environmentalists that were against her, but much of their testimony was fraught with misinformation. Statements were made like – A&B is the biggest water consumer in the world. That’s absolutely ridiculous. So the facts are that the environmental community, at the worst, is split on this, but I would say at best is overwhelmingly in support of this nomination.

“There were comments made about in-stream water flow standards and the facts are that those standards are set stream by stream and oftentimes individually by each stream. Though there may be some grand formula on a larger basis, flow standards are in fact, as the research from DLNR so clearly pointed out, done so on a stream by stream basis.

“Much was made about the number of times that Ms. Ching would have to recuse herself because of the huge conflicts of interest. Research done on that showed that the East Maui

issues that concern the East Maui watershed and water use by A&B was very minimal over the course of the history in the voting records of the water commission. Therefore, the times she would have to recuse herself concerning a direct conflict of interest are minimal to none.

“Most overwhelming on this whole process was the astounding amount of testimony in favor of this woman’s character, and more importantly was the dignity in which she conducted herself and the systematic excellence in her presentation on behalf of her nomination and the people who stood up in favor of her. We’re doing a wonderful thing today by confirming her. We’re showing that we’re not doing what’s politically correct but we’re going to do what’s politically right for the people of Hawaii.

“Thank you, Mr. President.”

At 1:03 o’clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 1:05 o’clock p.m.

Senator Nakata rose and said:

“Mr. President, not understanding the process very well, let me request that the Clerk split my vote – an ‘aye’ for Mr. Dela Cruz and a ‘no’ for Ms. Ching. Thank you.”

The Chair so ordered.

The motion to advise and consent to the nomination of MEREDITH J. CHING was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 20. Noes, 2 (Kanno, Nakata). Excused, 3 (Fukunaga, Ige, Ihara).

The motion to advise and consent to the nomination of CLAYTON W. DELA CRUZ was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Fukunaga, Ige, Ihara).

Stand. Com. Rep. No. 3114 (Gov. Msg. No. 186):

Senator Inouye moved that Stand. Com. Rep. No. 3114 be received and placed on file, seconded by Senator Chun Oakland and carried.

Senator Inouye then moved that the Senate advise and consent to the nominations of PRAVIN DESAI, STEVEN LEE MONTGOMERY, PH.D., and RANDALL F. SAKUMOTO to the Land Use Commission, terms to expire June 30, 2006, seconded by Senator Chun Oakland.

Senator Inouye rose in support of the nominees and said:

“Mr. President, I speak in support of Gov. Msg. No. 186 and the names of Pravin Desai, Steven Lee Montgomery, Ph.D., and Randall F. Sakumoto.

“Mr. President and members, your Committee on Water, Land, Energy, and Environment would like your support for the confirmation of Pravin Desai, Steven Lee Montgomery, and Randall F. Sakumoto, gubernatorial nominees to the Land Use Commission for terms to expire June 30, 2006.

“Mr. Desai is director of architecture and interior design at CDS International. He has worked on a myriad of projects from housing to healthcare and educational facilities throughout

Hawaii, on the mainland, and in the Far East. He's also a member of the State of Hawaii Governor's construction roundtable and has been active in several professional and civic organizations including St. Francis Hospice, teaching interior architecture and the UH Manoa, and serving as vice president of the Hawaii Chapter of the American Society of Interior Designers. Mr. Desai was appointed to the commission in 1998 and has been proven to be a conscientious and dedicated active participant. His background in urban form and design adds an important dimension and contributes to the efficacy of the commission's proceedings and decision-making.

"On a side note, Mr. Desai had the honor of designing the Governor's new quarters - a 5,000 sq. ft. house which will be completed sometime after the November 2002 election.

"Steven Lee Montgomery has a strong background in biological science with a Ph.D. and a master's degree in entomology from the UH Manoa and a B.A. in biology from Grinnell College. He has extensive experience in all ecosystems in the Hawaiian Islands and has led a number of scientific expeditions to several of the Pacific Islands, including the Marquesas, Tuamotu, and Society Archipelagos. He has also done fieldwork in divergent environments around the world. Dr. Montgomery is also active in the community. He has been a research associate in entomology at the Bishop Museum since 1979; the Hawaii representative for the National Waialae Federation for the last 20 years; and a member of the board of directors and the Governor's appointee to the Natural Area Reserves System Commission from 1993 to 2000. Dr. Montgomery's dedication to caring for Hawaii's natural environment and native ecosystems will be a great asset to the Land Use Commission.

"Randall Sakumoto joined McCorrison Miller Mukai MacKinnon LLP in 1989 as a member of the firm's business and real estate department. Since joining the firm, his practice has focused primarily upon commercial, industrial, and residential real estate transactions in Hawaii. His area of expertise includes zoning and land use, acquisitions of real estate, real estate financing, operations of office retail and mixed use properties, and title insurance. Mr. Sakumoto served as a consultant to the City and County of Honolulu, Department of Planning and Permitting. He assisted in the rewriting of the land use ordinance to streamline the land use permit process. He's also a member of the Bishop Museum, Hawaii Nature Center, and Polynesian Voyaging Society. Mr. Sakumoto's high level of skill and experience in complex real estate transactions will bring an important dimension to the commission.

"After full consideration of the background, character, experience, and qualifications of each of the nominees, the Committee has found them to be qualified for the positions to which they have been nominated and recommends that the Senate support their nominations.

"Thank you."

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

Ayes, 22. Noes, none. Excused, 3 (Fukunaga, Ige, Ihara).

At 1:11 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 1:12 o'clock p.m.

ADOPTION OF RESOLUTION

MATTER DEFERRED FROM WEDNESDAY, APRIL 3, 2002

Stand. Com. Rep. No. 3112 (S.C.R. No. 15, S.D. 1):

On motion by Senator English, seconded by Senator Hemmings and carried, the joint report of the Committees was adopted and S.C.R. No. 15, S.D. 1, entitled: "SENATE CONCURRENT RESOLUTION CREATING A WORKING GROUP OF REPRESENTATIVES FROM HAWAIIAN ORGANIZATIONS, THE DEPARTMENT OF HAWAIIAN HOME LANDS, AND THE DEPARTMENT OF HEALTH TO FORM A COALITION TO PROVIDE BETTER ACCESS TO STATE VITAL STATISTICS RECORDS," was adopted.

RE-REFERRAL OF SENATE CONCURRENT RESOLUTION

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

Senate
Concurrent
Resolution Referred to:

No. 67 Committee on Hawaiian Affairs, then to the Committee on Transportation, Military Affairs, and Government Operations

STANDING COMMITTEE REPORT

Senator Chun, for the Committee on Hawaiian Affairs presented a report (Stand. Com. Rep. No. 3148), recommending that S.C.R. No. 67 be referred to the Committee on Transportation, Military Affairs, and Government Operations.

On motion by Senator English, seconded by Senator Hemmings and carried, the report of the Committee was adopted and S.C.R. No. 67, entitled: "SENATE CONCURRENT RESOLUTION URGING THE UNITED STATES NAVY TO MAINTAIN ITS INITIATIVE AND RESPONSIBILITY TO CLEAR KAHO'OLAWA OF UNEXPLODED ORDNANCE BEYOND THE DATE IT IS CURRENTLY SCHEDULED TO BE TURNED OVER TO THE STATE," was referred to the Committee on Transportation, Military Affairs, and Government Operations.

Senator Inouye, Chair of the Committee on Water, Land, Energy, and Environment, requested a waiver of the notice requirement pursuant to Senate Rule 20 for the following resolutions:

S.C.R. No. 21;
S.C.R. No. 68; and
S.C.R. No. 133,

and the Chair granted the waiver.

Senator Kawamoto, Chair of the Committee on Transportation, Military Affairs, and Government Operations, requested a waiver of the notice requirement pursuant to Senate Rule 20 for S.C.R. No. 67.

Senator Kawamoto noted:

"Mr. President, the reason for this is that the Navy requested an audience on this resolution. So Senator Chun and I agreed to do it this way."

The Chair then granted the waiver.

Senator Taniguchi, Chair of the Committee on Ways and Means, requested a waiver of the notice requirement pursuant to Senate Rule 20 for H.B. Nos. 870 and 2752.

Senator Taniguchi noted:

“Mr. President, we received some information recently and would like to have those bills heard.”

The Chair then granted the waiver.

Senator Menor, Chair of the Committee on Commerce, Consumer Protection and Housing, requested a waiver of the notice requirement pursuant to Senate Rule 20 for H.B. Nos. 1700 and 2245.

Senator Menor noted:

“Mr. President, for H.B. No. 2245, the reason is because the votes apparently have shifted and changed. I think one of my colleagues has had a change of heart and would like to reconsider his vote on this measure so we’d like to put it up for vote again.

“The reason for the waiver of H.B. No. 1700 is because we need to hear a proposed S.D. 1, which would temporarily reduce the annuity forfeiture interest rate from 3 percent to 1.5 percent for contracts issued after June 30, 2002 and before July 1, 2004. We posted the hearing notice on this measure on April 3. The hearing notice indicated that the proposed S.D. 1 was and is available in my office for distribution to the public for prior review. For those reasons, we’d like to proceed with the hearing.”

The Chair then granted the waiver.

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

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

“Mr. President, I know that after yesterday it’s kind of a slow news day and I think the Governor’s got too much time on his hands because he issued a press release to all of my colleagues here and in the House in which he attacked the Republicans. I’ve actually cut to the quick, Mr. President.

“Governor Cayetano criticized Republican legislators for proffering ‘half-baked, unrealistic ideas at a time when the state is facing a significant budget crisis, and abandoning their pledge to set politics aside.’ Mr. President, I know that you know that all of our ideas are fully baked, and sometimes they’re broiled, depending on what the temperature should be and all of that. As far as being unrealistic, I think part of the problem is unrealism is in the eyes of the beholder. I will be very happy at any time to have these ideas put before the Senate for full and open discussion and a public hearing where people actually come and testify at a public hearing and talk about these things.

“But the Governor went on, and the Governor said that ‘rather than offering viable solutions, the Republicans have put forward narrow minded, unrealistic proposals devoid of merit.’ And he pointed out that one of the things was the \$4 million in uncollected fines of the library system. He said that I had made a statement yesterday that if these fines were collected that there’d be no more financial problems for the libraries. I didn’t say that. I said that we should start with collecting fines, just as we should start with collecting overpayments that were made by the state. We should start by getting payments that the state has

missed because of its ineptness – matching grants, matching monies, funds, rebates, and so forth – and that would go a long way. But what he says is ‘it doesn’t take a Wharton M.B.A. to understand that this is no solution whatsoever.’ I think the Governor’s spending too much time up in the altitude at Waialae Iki Ridge with his non-union contractor for his home and I would suggest that he look to the substance of what we’ve really said.

“We have offered viable solutions. We have offered alternatives. They have not, however, been given a reasonable or full hearing. I know that my good friends in the media usually yawn and they say, ‘oh, we’ve heard this before.’ The problem is we don’t really examine it critically and look at these options and alternatives, and there are options and alternatives for everything that we’ve done.

“So, Mr. President, besides being hurt personally, I note that this is the first year we did not challenge the House to a basketball game, which we always look forward to for the physical contact, nor did we challenge them to a softball game, which was fun also, nor golf either. So, at this time I’d like to issue a challenge to the Governor to come down here to the Senate Floor and let’s do it, Governor. Let’s do some extreme, unrealistic, half-baked issues debating.

“Thank you, Mr. President.”

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

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

“On a follow-up to the good Senator from Hawaii Kai’s comments regarding the esteemed Governor, he went on to beat a drum that he beat on the day of his state of the state speech about putting aside political differences and working in a bipartisan manner. Well his drum rings hallow as do his words and I will say the record will reflect that your loyal opposition, your Republicans, have worked when we can, constructively, with the Majority Party.

“We worked with you on the veto override and I think we were at the tip of the spear on presenting that as a viable alternative to the dictatorship of our legislative process by the executive branch of government since 1957. We worked closely with the Majority Party in amending a bill during the emergency session that was called the ‘King Ben Bill.’ We did open the worksheets that have been closed for years and years and years on how the budget is come to.

“So your loyal opposition has been loyal, but it has not been loyal to a political monopoly. It’s been loyal to the people that sent us here who don’t care what political label we wear. And when this Chamber has worked in those people’s interest, we have all emerged victorious. On every one of the issues I just mentioned, the people did not say, oh, it was a victory for one party or the other. It was a victory for them and therefore it was a victory for all of us.

“I want to remind the Governor, with my remarks here on the Floor, that there are three of us but we don’t represent three people. We represent the parents of the thousands of children that are going to public schools and not getting educated properly. We represent those kids that get out of the public education system that on rare occasion, but unfortunately too many, can’t read their diploma. We represent the businesses of Hawaii that are living with the incredible amount of mandates and taxation heaped on this economy by the party that has monopoly control of our state government. We represent the young people who study hard in our schools and graduate and

have to go to the mainland to seek gainful employment. We represent the thousands, if not hundreds of thousands, the people of Hawaii who had to leave the state where their heart is so that they can survive. We represent the sick who pay a tax to go to the doctor. We represent the hungry that pay a tax to eat. We represent the homeless and the poor that pay a tax to have a roof over their head.

“But most importantly, Mr. President and colleagues, we represent good government because good government is balanced like everything in life – like ying and yang, like male and female, like light and darkness. But the Governor doesn’t want this balance. His idea of bipartisanship is to listen to what they say or what he says and then we’ll all get along. Well, Mr. President and colleagues, I wasn’t sent here to get along. I was sent here to try to make a difference. And I resent – resent – the Governor continuing to beat this drum of bipartisanship when he continues to practice his political monopoly.

“Thank you, Mr. President.”

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

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

“Two quick comments before my privilege, though. If the good Senator from Manoa would like, I’ll make the motion to suspend the Rules to extend the deadline so that the Ways and Means Committee can finish its work, Mr. President.

“And second, colleagues, I promise that my action today won’t take the four hours that it did yesterday.

“Constitutional rights are important to me, Mr. President, particularly First Amendment rights and freedom of speech. In respecting those rights, I also respect the viewpoints of others. But Mr. President, sensationalized reporting belongs in the grocery store tabloid racks and not in news reports about government. This is the very example of why the public has so little trust in Legislators and why there is so much voter apathy.

“Let me give you a few examples. This is from the Hawaii Reporter; Freedom to Report Real News. That’s great. We all like real news, but how about the factual and the truthful news. This goes on to say the ‘Fight Between Three Major Senate Factions Leads to Initial Victory, Big Profit for Public Unions’ . . . big profit? I don’t think we talked about big profit yesterday . . . misinformation. ‘Yesterday will go down in history as one of the more memorable days in the state Senate.’ I doubt it. Unfortunately, the Peruvian Senator was gone. If he had been here, we might have been here another half-hour or so. So you missed one of the more memorable days, surfer.

“It goes on to say, ‘close if not as controversial as the ousting of former state attorney general Margery Bronster.’ I don’t think so. It goes on, ‘. . . overriding an agreement with the House to stay on a specific legislative timetable so that the session ends on time May 2 . . .’ Not true. What we did was suspend Rule 3(15), which is an internal deadline and has nothing to do with the timeline of May 2. ‘These moves prevented public testimony on the bill’ . . . not so. The Senator who chairs the Education Committee is in fact holding an informational briefing at four o’clock today in room 229 on this very issue. It goes on to say that we acted in ‘flippant violation of Senate rules.’ Flippant violations? That’s absurd. It’s a constitutional right that each of us have.

“This may be one of the only more accurate statements in the whole four pages here, ‘Senator Avery Chumbley, D-Maui-Kauai, who led the charge,’ not quite true, it was teamwork, ‘to

recall the bill says he has the right to do so under the Hawaii State Constitution.’ That’s one correct statement. ‘The debate was over hundreds of millions of dollars once controlled by the public unions through their own health trust fund.’ It wasn’t about hundreds of millions of dollars of debate. We have a defined contribution plan. We have Act 88. Research the facts.

“‘The unions vowed last year to get the legislation overturned this year, and lobbied legislators hard, including giving many of the lawmakers sizable campaign contributions.’ Colleagues, I went back and looked at my campaign contributions from the 1998 election period moving forward the last four years: Hawaii State Teachers Association, their last contribution to me was on May 12, 1999, \$200; Hawaii Government Employees Association, zero; UPW (United Public Workers), zero; UHPA (University of Hawaii Professional Assembly), last donation was on May 5, 2001, \$250. Well, that’s \$450 I got – not a sizable amount of money.

“It goes on to say that Senator Kalani English of Maui is considered a floater. Well, I don’t know if he’s a floater. I think he’s more of an independent than he is a floater. A floater is a dead person. It goes on to say, ‘If the union tactics do succeed in the full Senate on the final read of the bill and in the House, the Hawaii Government Employees Association and the United Public Workers Union also once again would be beneficiaries of unaccounted for taxpayers’ subsidies’ . . . not so. Act 88 is in place. This measure yesterday on the VEBA trust does nothing to repeal Act 88. Everything still is in place.

“‘The background: Hawaii state government pays 100 percent of the health benefits for employees and their dependents, and retirees and their dependents for life’ . . . wouldn’t it be so nice. ‘The union gets 60 percent of the premiums paid for these employees by the state, paid direct to the unions.’ Well, which is it? Is it 100 percent or is it 60 percent? Is it 60 percent or 100 percent? Let’s articulate it correctly. ‘. . . the United Public Workers Union and the Hawaii Government Employees Union seeks to nullify the legislation passed last year.’ Again, not true. All this does is amend Act 88.

“‘The Hawaii State Teachers Association argues that its VEBA trust is different from the other unions and has been more accountable and teachers need enhanced benefits as well as higher salaries.’ That is the single most truthful statement in the four pages.

“‘Yesterday there was 48-hour public notice given as is required and an informational briefing by a committee not originally scheduled to hear the bill, education, for Friday at 4 p.m. in conference room 229.’ Anybody that goes on Friday is going to be a day late. It’s Thursday, today, at 4:00 in room 229. It just takes a little bit of effort to research the facts, Mr. President and colleagues.

“These are the very reasons why there is so much apathy and so much mistrust for us as Legislators. I want to plea to the reporter of this tabloid-like sensationalized material to do a little bit of research, to get the facts right, and report what accurately and truly happened.

“Thank you, colleagues.”

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

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

“I’ve been called many things, Mr. President, but a floater? (Laughter.) Statesman, diplomat, perhaps. I have fun working

with all factions and all groups, and I get along well with everyone, including our loyal opposition.

“So, I agree with the previous speaker, Mr. President, that in a free society we have one protected industry, and that is the media. But the media owes it to the general public to report accurately, and this is one example of misinformation, misreporting, and perhaps actual skewing of information to have a specific outcome.

“So, on the real serious side, Mr. President, I’m glad that my colleague from Maui has brought this forward because we do see a lot of this what we’d call sensationalized journalism in Hawaii and it’s time that we start calling it.

“Thank you, Mr. President.”

ADJOURNMENT

At 1:35 o’clock p.m., on motion by Senator English, seconded by Senator Hemmings and carried, the Senate adjourned until 11:30 o’clock a.m., Friday, April 5, 2002.

Respectfully submitted,

Clerk of the Senate

Approved:

President of the Senate