

TWENTY-FIRST DAY

Monday, February 23, 2009

The House of Representatives of the Twenty-Fifth Legislature of the State of Hawaii, Regular Session of 2009, convened at 12:03 o'clock p.m., with the Speaker presiding.

The invocation was delivered by Representative Chris Kalani Lee, who asked for a moment of silence in memory of the late Councilwoman Barbara Marshall.

The Roll was called showing all Members present with the exception of Representatives Mizuno, M. Oshiro and Takai, who were excused.

By unanimous consent, reading and approval of the Journal of the House of Representatives of the Twentieth Day was deferred.

GOVERNOR'S MESSAGE

The following message from the Governor (Gov. Msg. No. 251) was received and announced by the Clerk and was placed on file:

Gov. Msg. No. 251, dated February 6, 2009, transmitting "A Report to the Legislature on High Technology; Incubation Center; Kakaako" pursuant to Senate Bill 896, Act 150, Session Laws of Hawaii, 2007 as of January 2009.

SENATE COMMUNICATIONS

The following communications from the Senate (Sen. Com. Nos. 21 through 23) were received and announced by the Clerk:

Sen. Com. No. 21, transmitting S.C.R. No. 40, entitled "SENATE CONCURRENT RESOLUTION URGING THE GOVERNOR AND THE ATTORNEY GENERAL TO WITHDRAW THE APPEAL TO THE UNITED STATES SUPREME COURT OF THE HAWAII STATE SUPREME COURT DECISION, OFFICE OF HAWAIIAN AFFAIRS V. HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII, 117 HAWAII 174 (2008)," which was adopted by the Senate on February 20, 2009.

At 12:07 o'clock p.m. Representative Evans requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 12:08 o'clock p.m.

At this time, Representative Berg moved that S.C.R. No. 40 be adopted and requested a roll call vote at the appropriate time, seconded by Representative Hanohano.

At this time, the Chair announced:

"Thank you. A motion for a roll call has been made, and a second supporting this motion has been recorded. The Chair at this time will be calling a short recess to allow the Clerk to verify the referral status of the measure in question. Since I envision a very short recess, I ask that all Members remain on the Floor."

At 12:09 o'clock p.m. the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 1:12 o'clock p.m.

At this time, the Chair announced:

"Prior to the recess there were two motions before this Body. The last motion that was made was a motion for a roll call vote, and at this time,

the Chair will recognize the movant of the roll call vote to withdraw that motion."

At this time, Representative Berg withdrew her request for a roll call vote, and Representative Hanohano withdrew her second.

Representative Berg then moved for the adoption of S.C.R. No. 40, seconded by Representative Hanohano.

Representative Pine rose to speak in support of the measure with reservations, stating:

"I'm just standing up with reservations, today. I haven't had the opportunity to ask my constituents how they feel about this particular measure. There's definitely strong feelings on both sides, and I would have preferred that there had been a hearing of some sort, so I would first be able to forward this information to my constituents.

"Actually, in light of that, I would like to move that we refer this Resolution to Water, Land, Ocean, and Judiciary."

At this time, Representative Pine moved that S.C.R. No. 40 be referred to the Committee on Water, Land, & Ocean Resources and the Committee on Judiciary, seconded by Representative Marumoto.

At 1:14 o'clock p.m. the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 1:21 o'clock p.m.

At this time, Representative Saiki requested a roll call vote on the motion to refer S.C.R. No. 40.

At 1:22 o'clock p.m. Representative B. Oshiro requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 1:23 o'clock p.m.

At this time, Representative Saiki withdrew his request for a roll call vote.

At this time, the Chair announced:

"Thank you very much. Members of the House, at this time, we have a motion before us in regards to the Senate Concurrent Resolution being referred to Committee. Any discussion?"

Representative Marumoto rose to speak in support of the motion to refer, stating:

"Mr. Speaker, I do believe that this Resolution would warrant more public testimony and input. I'm speaking to the motion to refer this measure to a Committee, and, if we do that, then we would be able to receive more public input from the community. Rather than pushing it through for adoption today, I believe that we should go step by step, and be a little more open and transparent. Thank you, very much."

Representative Thielen rose to speak in opposition to the motion to refer, stating:

"Thank you, Mr. Speaker. Mr. Speaker, I am speaking against the motion because time is imperative on this issue, with the court hearing going to be held this coming Wednesday."

Representative B. Oshiro rose to speak in opposition to the motion to refer, stating:

"Mr. Speaker, I rise in opposition. Very briefly, I just oppose referring this measure. We've heard this issue multiple times through various bill forms. This is actually just a Resolution that is in front of us. The issues are very similar, and therefore, I think the House is informed enough at this point to take a position without having to go through Committees. Thank you."

Representative Finnegan rose to speak in support of the motion to refer, stating:

"Thank you, Mr. Speaker. In support of the referral. Mr. Speaker, that's kind of in line with all the things that I've been for, in regards to making sure that it gets public testimony on issues. But, this particular Resolution has only gone to one Committee on the Senate side. I think it would be prudent of us to make sure that the public has ample time to respond to a big situation like this. Thank you."

Representative Ching rose in support of the motion to refer and asked that the remarks of Representative Finnegan be entered into the Journal as her own, and the Chair "so ordered." (By reference only.)

Representative Marumoto rose to respond, stating:

"Just a short rebuttal, Mr. Speaker. This is a substantive resolution, and previously, we've had in our rules that substantive resolutions must be referred to Committee so they could be fleshed out, and aired out. The only things that we passed on the Floor were congratulatory type of resolutions. I don't like this departure from tradition. This is a very important piece of legislation, and it's coming before the Supreme Court. I don't think we should unduly influence ..."

The Chair addressed Representative Marumoto, stating:

"Representative Marumoto, could you confine your remarks to the motion of the referral, and not the influencing of the US Supreme Court?"

Representative Marumoto continued, stating:

"Thank you, sir. Since this is so important, I urge you to vote for this to send it to Committee, so that we may fully discuss this issue. Thank you."

Representative Ward rose to speak in support of the motion to refer, stating:

"Mr. Speaker, I rise in support of the motion. Mr. Speaker, I would contend that, yes, there's an urgency, but I don't think there's a depth of understanding as to what we're really doing here. In the short run, there's a court case, but in the long run, the viability of the State of Hawaii is at stake. And I think all of our major groups need to buy in on this. I would contend that probably even those who think they know what it is, really don't know, because this has long, long, long, long, long, long range implications to it, depending on how this issue falls out in the legal side. So, to rush something that is so long range is premature."

At 1:27 o'clock p.m. Representative Souki requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 1:29 o'clock p.m.

Representative Pine rose to respond, stating:

"Just in rebuttal to the Majority Leader. He said that this issue has been discussed enough in different versions and different bills, but we could say that about everything that we're talking about. Civil unions, we've discussed so many times."

The Chair addressed Representative Pine, stating:

"Representative Pine, would you confine your remarks to the motion of the referral of the Resolution? I know it's very difficult."

Representative Pine continued, stating:

"It's hard. Okay, well, again in responding to the Majority Leader's remarks that, in his opposition to the referral, he said that we have talked about this issue multiple times. I would then rebut him on that particular comment on the motion, that we've discussed the same educational issues, and discussed civil unions. There are lots of issues that we have discussed in various forms, but we typically allow the public to give us more input, even though we've discussed it before, Mr. Speaker. And I think asking for transparency is a great thing for the people of Hawaii, and that's why I'd like to get more information through the Committee process."

Representative Souki rose to speak in support of the motion to refer with reservations, stating:

"Mr. Speaker, could you put me down for reservations, and I would want to state that the reservations are not against the good Hawaiian people, but in the manner that this is being done right now."

The Chair addressed Representative Souki, stating:

"Representative Souki, I believe you are out of order. The main motion is not before for us."

Representative Souki continued, stating:

"I'm speaking with reservations for the referral."

At 1:31 o'clock p.m. Representative Souki requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 1:32 o'clock p.m.

The motion that S.C.R. No. 40, entitled "SENATE CONCURRENT RESOLUTION URGING THE GOVERNOR AND THE ATTORNEY GENERAL TO WITHDRAW THE APPEAL TO THE UNITED STATES SUPREME COURT OF THE HAWAII STATE SUPREME COURT DECISION, OFFICE OF HAWAIIAN AFFAIRS V. HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII, 117 HAWAII 174 (2008)," be referred to the Committee on Water, Land, & Ocean Resources and the Committee on Judiciary, was put to vote by the Chair and upon a voice vote failed to carry with Representative Takai being excused.

(Main Motion)

Representative M. Oshiro rose to speak in support of the measure with reservations, stating:

"Mr. Speaker, I'll be registering a vote with reservations. A few points. The first one is that on page four, lines one through three, it states, 'Be it further resolved that the Legislature declares the public policy of the State of Hawaii, is to honor the decision of the Hawaii State Supreme Court.' It is my understanding as of today, that there are several vehicles being considered to change that policy. So, I for one, would not like to be bound to that declaration in this document.

"The second reason for my reservations, Mr. Speaker, is that I think we should also include having certified copies of the Concurrent Resolution be transmitted to our Congressional Delegation, Senators Inouye, Akaka, Congresswoman Hirono, Congressman Abercrombie, and also to the Office of Hawaiian Affairs. Thank you, Mr. Speaker."

Representative Thielen rose to speak in support of the measure with reservations, stating:

"Thank you, Mr. Speaker. In support, with some reservations. I would like to just add on to what my colleague said just a minute ago, that we also should request that certified copies of the Concurrent Resolution be transmitted to the United States Supreme Court."

Representative Chong rose to speak in support of the measure with reservations, stating:

"Thank you, Mr. Speaker. I stand in support, with reservations. I also have some concerns regarding the language of this Resolution. Thank you."

Representative B. Oshiro rose and asked that the Clerk record an aye vote with reservations for him, and the Chair "so ordered."

Representative Tsuji rose and asked that the Clerk record an aye vote with reservations for him, and the Chair "so ordered."

Representative Keith-Agaran rose and asked that the Clerk record an aye vote with reservations for him, and the Chair "so ordered."

Representative Chang rose and asked that the Clerk record an aye vote with reservations for him, and the Chair "so ordered."

Representative Nakashima rose and asked that the Clerk record an aye vote with reservations for him, and the Chair "so ordered."

Representative Tokioka rose and asked that the Clerk record an aye vote with reservations for him, and the Chair "so ordered."

Representative Sagum rose and asked that the Clerk record an aye vote with reservations for him, and the Chair "so ordered."

Representative Karamatsu rose and asked that the Clerk record an aye vote with reservations for him, and the Chair "so ordered."

Representative Ito rose and asked that the Clerk record an aye vote with reservations for him, and the Chair "so ordered."

Representative Ward rose to speak in support of the measure with reservations, stating:

"With reservations, with a couple of comments, Mr. Speaker. Mr. Speaker, some of us remember the Gavin Dawes book, *Land and Power in Hawaii*. This Resolution, I think, comes close to where the lines cross, and clearly, this is about land and power.

"The unfortunate thing is that resolution between land and power in the Hawaiian community has never been reached. We must reach some reconciliation. This Resolution however, calls into question the legitimacy of the State of Hawaii, or as Mark Bennett has said, the 'corpus' of the State of Hawaii.

"What's at stake is, was land transferred in 1959, to the State of Hawaii, really the State of Hawaii land. Do we, Mr. Speaker, have any land base in the State of Hawaii? Are we the legitimately-formed Body of the State of Hawaii? Which, if we are not, how can we give permission to sell land, if we don't have actually the land? So, there's a bit of a circular argument, a conundrum.

"But I recently found out, finally, how much land there is, and how much of the ceded lands are really at stake here. There are 4.2 million acres of land in the State of Hawaii. And 2.2 of those are in private hands; that's why the whole notion of land and power. There's a very, very few people who own a lot of the land. Half of it, 2.2 million acres are private lands. 1.4 million acres are public lands. 1.2 of those are the ceded lands that we are now talking about. That leaves the State of Hawaii 200,000 acres: 400,000 of federal lands and 200,000 for the Department of Hawaiian Home Lands.

"So, Mr. Speaker, can you have a state without any land? I don't know. It calls into question the legitimacy of the corpus, or the body of the State of Hawaii having a land base, rather than just if we have power, as we are as the constituted body.

"If we don't have clean title. And the US Supreme Court is going to decide whether we have that. I think it's a very, very pointed issue. The notion is, that's the short range, just the Supreme Court decision. But in

the long range, what happens to the State, is what my biggest concern is, in which we don't, hopefully, as impetuous as we have today, when this is resolved in the long run, we will have full deliberation with the people of Hawaii, and for the sake of preservation of the land and the eulogy of our people, to have as a primary consideration. Thank you, Mr. Speaker."

Representative Shimabukuro rose to speak in support of the measure, stating:

"Mr. Speaker, in strong support. Mr. Speaker, what the previous speaker just stated, to me, puts the case out for why this type of legislation is so critical. Land is so extremely scarce in our State of Hawaii. This is why issues like lease-to-fee conversion are so extremely controversial. When you live in a place like Hawaii, no amount of compensation can compensate for the loss of land. The claims of the Hawaiian people for reparations from the US Government, following the illegal overthrow of their kingdom are still unresolved. And this is why OHA, the Hawaiian community, people that typically don't agree, have agreed on this issue, that we cannot sell the ceded land until those claims are resolved.

"The ceded lands inventory's still not complete. Until that inventory is done, I cannot support the sale of land.

"Another thing I wanted to say is, one of the arguments made in favor of selling ceded land, is that we don't want to pass up deals. That may be a good deal, and we can then spend the money to benefit Native Hawaiians with affordable housing, and so on. What I would say to that is, no matter how good a deal may look today, the money's going to be made. The money will be made by today's policy makers. It will not be kept in trust for the future generations.

"We have to keep the land in the public trust, so it can be passed on to the next generation, and so on. And, it's a priceless legacy that will be guaranteed to increase in value. So, with that, I just urge my colleagues to support this measure."

Representative Magaoay rose and asked that the Clerk record an aye vote with reservations for him, and the Chair "so ordered."

Representative Yamane rose to speak in support of the measure with reservations, stating:

"Mr. Speaker, I'm standing up with reservations. I just want to say that I understand the intent, and this a very important Resolution. I just wish that we could have gotten this Resolution quicker from our colleagues on the other side. Thank you."

Representative Marumoto rose to speak in support of the measure with reservations, stating:

"Thank you, Mr. Speaker. I will be voting with strong reservations on this measure. As I said earlier, I think it's very premature for us to do it. This is an important case which bears better airing of the issues, and it deals really with the State ownership of public lands. If OHA is successful in this, it will give them greater leverage in negotiating the Native Hawaiian claims to ceded lands.

"I would like to see a resolution of this issue. I strongly support an amicable settlement of these claims between OHA and the State. We've had the opportunity in past Sessions. We did not avail ourselves of it. I have never heard this Resolution in the Committees I belong to. I serve on Agriculture, Tourism, Consumer Protection, and Judiciary Committees, and I do not recall airing these issues on this particular Resolution before, and I look forward to the opportunity. So, I would urge all people to express their reservations on this, pushing this Resolution through today. Thank you."

Representative Evans rose and asked that the Clerk record an aye vote with reservations for her, and the Chair "so ordered."

Representative Cabanilla rose and asked that the Clerk record an aye vote with reservations for her, and the Chair "so ordered."

Representative Yamashita rose and asked that the Clerk record an aye vote with reservations for him, and the Chair "so ordered."

Representative M. Lee rose in support of the measure with reservations and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative M. Lee's written remarks are as follows:

"Mr. Speaker, I stand in support with reservations. The short time that we have had to deliberate on this complex issue makes it difficult for me to form an opinion. Having listened to the opposing viewpoints has made the wisdom of this Resolution even less clear. It is doubtful that this Resolution will have the effect of removing the issue from the Court's agenda, and that it will be a mainly symbolic gesture."

Representative Awana rose in support of the measure with reservations and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Awana's written remarks are as follows:

"Mr. Speaker, I stand in support however, I have some reservations. As someone who resides and represents the largest concentration of Native Hawaiians in the world, I am in support for this Resolution. However, we are forced to decide upon this issue with a limited amount of time.

"In addition, the Resolution states that a copy of this measure is being sent to both the Governor and the Attorney General. I would have preferred that in addition, copies be delivered to the United States Supreme Court, the Hawaii State Supreme Court, our Hawaii Congressional Delegation and the Office of Hawaiian Affairs.

"As I understand, time is of the essence and support for this measure is relative to the decisions that may be made in Washington D.C. Being given this Resolution on Monday without proper time to review for clarity and consistency I believe is moving hastily. I believe allowing at least one Committee to review this Resolution, preferably the Hawaiian Affairs Committee should have been considered, thus still allowing this Resolution to move forward before opening statements are made in Washington D.C. on Wednesday. Thank you, Mr. Speaker."

Representative Carroll rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. In strong support. Mr. Speaker, the importance of this Senate Concurrent Resolution is for several reasons.

"First of all, it's the first time a state government has ever challenged the highest state court, being the Hawaii State Supreme Court. And let me just let everybody know here, that when the Hawaii State Supreme Court did their ruling, it wasn't challenging the title. It was just purely saying, 'Do not sell ceded lands until Hawaiians have their reconciliation process.' Remember, if you look back in history, and this is where the Attorney General does not want to go back before the Federal Admissions Act. He does not want to look at the history where the lands were stolen. So, when you see many independent Hawaiians out there saying that the lands were stolen, the Hawaiians did not turn over the land to the federal government. So, when the lands were ceded or put into the public trust with the notion in law in the Admissions Act, there were purposes, five purposes why those lands were put there, and one of them was for the betterment of Native Hawaiians.

"Now, we ask you to please support this issue, because first of all, if we're going to talk about transparency, the Governor never took the time to talk to the Native Hawaiian community before filing this appeal.

"The second thing is, she never had a conversation with us directly as to her intentions, until after the appeal.

"And thirdly, I do respect my colleagues who are voting with reservation because of our timing, but in our process, a lot of bills are rammed down our throat. If we talk about issues like the SuperFerry, and how that came down. That was an initiative that the Governor wanted. All we're purely

asking for, because of February 25th, where oral arguments are going to take place at the US Supreme Court, and because of their process, they don't have that much time to do the oral arguments.

"All this simply says, as a policy, in a resolution, and not a bill, is that this Body supports, as a policy, to not sell ceded lands. Or at least to give it consideration, because when you allow the State to sell ceded lands with no checks and balances, whether this Body, in the measures that are coming before us, decides, as a policy, we need checks and balances. Not just for us, but for the general public, and how those lands are used.

"And yes, there is a mistrust with government. Yes, the public out there says that we cannot trust government. And, as each and every one of us, who have to go out there and face our communities, and have to answer to them in how decisions are made. So, I ask kindly of this Body, to give this consideration. I know that this is an unusual situation with this Resolution being heard here at this time. But the timing is crucial. We need this Resolution, as a form to go to the US Supreme Court, to at least say that the Legislature supports some form of policy that ceded lands should not be sold or transferred until Native Hawaiians have their reconciliation process.

"In the appeal, it's challenging title. At the Hawaii State Supreme Court, it didn't challenge the title. All it said was, 'Don't sell the land, until Hawaiians have their process.

"And last, as someone who also comes from the Kamehameha line, which is my genealogy, I'm very torn, because we're not asking at this time to decide what that policy should look at. We're just asking that you honor the highest court in the State of Hawaii, with their ruling. And I understand some of the reservations, and I respect my colleagues because of the information. But, this would be a great Resolution to set forward, to take to the US Supreme Court. At least we can say that there's some support for some kind of policy to protect ceded lands until Native Hawaiians have their reconciliation.

"So, I humbly ask my colleagues of this House to please support this Resolution. Thank you."

Representative C. Lee rose in support of the measure and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative C. Lee's written remarks are as follows:

"I stand in support of SCR 40, which urges the Governor and the Attorney General to withdraw their appeal to the United States Supreme Court regarding the selling of the former Crown Lands of the Kingdom of Hawaii.

"It has been 50 years since Statehood and Native Hawaiian claims to the former Crown Lands that were "ceded" to the State of Hawaii have not yet been resolved. Our State Constitution entrusts our government as the steward of these lands and I agree with the Hawaii Supreme Court that no land should be sold until all Native Hawaiian claims to the former crown lands have been resolved.

"The Governor's appeal of the sale of Hawaii's ceded lands to the United States Supreme places the fate of this issue in the hands of nine judges in Washington D.C. as it currently is, and risks a ruling that could impact Hawaii's self-rule and any decision to reach a settlement with Native Hawaiians.

"I believe that it is in the interest of all people in our state to preserve our right to self-determination."

Representative Morita rose in support of the measure and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Morita's written remarks are as follows:

"Mr. Speaker, I stand in strong support of this Resolution. In January 2008, the Hawaii State Supreme Court in *Office of Hawaiian Affairs v. Housing and Community Development Corporation of Hawaii*, 117 Hawaii

174 (2008), enjoined the State from selling or otherwise transferring to third parties any ceded lands from the public lands trust until the claims of the Native Hawaiian people to the ceded lands have been resolved.

"The Court stated, that "[b]ased on a plain reading of the . . . [Apology Resolution], we believe Congress has clearly recognized that the native Hawaiian people have unrelinquished claims over the ceded lands, which were taken without consent or compensation and which the native Hawaiian people are determined to preserve, develop, and transmit to future generations." The Court further held, ". . . we believe and, therefore, hold that the Apology Resolution and related state legislation . . . give rise to the State's fiduciary duty to preserve the corpus of the public lands trust, specifically, the ceded lands, until such time as the unrelinquished claims of the native Hawaiians have been resolved. Such duty is consistent with the State's 'obligation to use reasonable skill and care' in managing the public lands trust and Ahuna court's declaration that the State's conduct 'should . . . be judged by the most exacting fiduciary standards.'" 117 Haw. at 193.

"In April 2008, the Governor directed the Attorney General to petition the United States Supreme Court for a writ of certiorari on whether the passage of Public Law 103-150, otherwise known as the Apology Resolution, strips the State of Hawaii of the authority to sell, exchange, or transfer ceded lands unless or until the State reaches a political settlement with the Native Hawaiian people about the status of these lands. In October 2008, the United States Supreme Court granted the State's petition for certiorari in the foregoing case.

"This Resolution sends a message to the Governor and the U.S. Supreme Court that the Hawaii State Legislature is a co-equal branch of government. And, in light of the unusual actions taken by Governor Lingle, I believe that it is necessary to reassert via this Resolution the Legislature's constitutional authority that it has the sole authority to resolve the ceded lands issue on behalf of the State and to dispose of lands under the control of the State as it deems appropriate."

Representative Pine rose to speak in opposition to the measure, stating:

"Yes, just in opposition. This has nothing to do with the contents of this Resolution, and I truly understand the emotion behind this. But I came here to believe that even someone that has a different philosophy to different people, that this Body would do things with transparency, and do things in the way that the people of Hawaii will honor. And that's by going through the proper procedures here.

"Just because we feel someone hasn't been transparent with us, doesn't mean that we should be leaders that also promote that same philosophy. Just because we feel that other leaders have rammed down our throats certain issues, doesn't mean that we should be leaders that do the same. I'm simply against the way that we're doing this today with the lack of transparency that we're promoting.

"This means that any other issue that a majority feels strongly about, that would possibly benefit them, in maybe a bad way next time, that we've set this precedent instead, that it's okay for this Legislature to do whatever we want. Thank you."

Representative Ward rose to respond, stating:

"Mr. Speaker, if I may just say a few more words, to make it clear that those of us who have voted with reservations are not saying that we should be selling ceded land. No one is saying that. And I don't even think the Administration has one parcel up for sale. The issue however, is if there's 1.4 million acres designated as public lands, and 1.2 million of those are ceded lands, and that is up to the Hawaiian Nation to discern, the corpus of the body of the State of Hawaii. Will the State of Hawaii be in business? That's the question.

"What is the preservation of the State of Hawaii, versus the reconciliation? And that's where this is a political question. We've got to be on one side or the other, and we're being rushed through with a very, very serious intent here today, Mr. Speaker. But the issue is not whether we should sell it. It's whether the legitimate transfer will not cloud the title

forever and ever, until the Akaka Bill and hereafter, we reach some resolution. That's really what's at stake. Mr. Speaker, thank you."

Representative Berg rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. I rise in strong support, and with a preface comment appreciating my colleagues for their voting with reservations, because it really indicates that we're thinking about what we're thinking about.

"You know, in 1993, Congress passed the Apology Resolution, acknowledging the complicity of the United States in the overthrow of the Hawaiian Kingdom, in violation of International Law, and in deprivation of the rights of the Hawaiian people to self-determination.

"Congress, in passing the Apology Bill, apologized to the Native Hawaiians on behalf of the people of the United States and 'Urged the President of the United States to also acknowledge the ramifications of the overthrow of the kingdom, and to support reconciliation efforts between the United States and the Native Hawaiian people.'

"In October of 2000, the US Departments of Interior and Justice issued a joint report entitled, *From Mauka to Makai*. This report detailed the conditions of the Native Hawaiians and outlined, outlined corrective actions for the Congress and federal agencies, including Justice and Interior to pursue, in order to implement the reconciliation between the United States and the Native Hawaiians.

"We've said before that we've been waiting for this reconciliation to happen. I believe that the efforts of the Native Hawaiian community are very visible right now. If we are able to pass this Resolution, the message will be sent very clearly to the Executive Branch, that the Executive Branch is not above the law, and cannot preempt what federal legislation has already put in place.

"The lawsuit will impede the reconciliation efforts. So, I respectfully request our colleagues to consider passing this forward with strong support, and give Hawaii, give the State, give the Hawaiians the opportunity to resolve those issues in a manner that is in the best way for us, ourselves here in Hawaii. Thank you, Mr. Speaker."

Representative Souki rose to speak in support of the measure with reservations, stating:

"Yes, thank you very much, Mr. Speaker and Members. Members, I'm tempted to vote 'no,' but I'll vote with strong reservations. The reason I will not vote 'no' is because I have great love for the Hawaiian people.

"But I don't appreciate the way this whole situation is being handled now. We get a bill at the last minute from the Senate. The Senate, in a desperate measure, because we didn't hear their bill, feels that this measure will influence the federal judge, and to make a decision. This is all about land. It's not about the Governor. It's not about the Hawaiians. It's not about the general population.

"And then who's going to hold the power and the title of the land? I believe the land should be shared among all of the people. Members, you have got to look into your own conscience as you vote for this bill."

The Chair interjected, stating:

"Representative Souki, it is not a bill, it's a resolution."

Representative Souki continued, stating:

"A resolution. Thank you very much, Mr. Speaker. I remember one time when I was correcting you a little bit. Anyway, let's go on. Thank you very much, Mr. Speaker, for giving me the time.

"But Members, again, I will vote with reservations. I want you to look in your heart, as to whom you represent. When you take your Oath of Office, you have your devout, but fiduciary relationship. So, you think of this as you move along and you vote, not only for this bill, but for all the

bills. You represent the people of the State of Hawaii. That's who you represent. And with this, Mr. Speaker, I end. And I hope that this will end peacefully for all of us. I do not appreciate the divisiveness that has been brought upon this Body here. And so I hope that we can have a *ho'oponopono* right after this. Thank you, very much."

Representative Pine rose to respond, stating:

"Just additional comments in opposition. I do want to publicly state that my opposition is not because I do not have love for the Hawaiian people. I was *hanai*-ed into a Hawaiian family and was raised partially by one. But my opposition is because I have a greater love for good government in the State of Hawaii, and I dream that no matter what happens, we will always be righteous in our actions, and how we listen, and how we do a certain process here, and not make special exceptions for certain things. I truly believe that we can become that, if we try."

Representative Bertram rose to speak in support of the measure, stating:

"Yes, I'm standing in strong support. I agree with both my colleagues from Maui. Both of them. I'm standing in strong support because I don't think it's so much about land, as it is about faith. And right now, there's a large group of people, Hawaiians, who have a very tenuous, if any, faith in our government. And so, I'm supporting this. I agree with many of the legal issues that are being put forth, and it's really going to be up to the Supreme Court at this point. But I think we need to give that faith a little shot in the arm, and that's why I'm voting in favor."

Representative Finnegan rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. In opposition. Thank you, Mr. Speaker. This has been an issue that we've had very intelligent, legal minds on both sides. And, for someone who does not have a law background, I've listened to both sides of the issue. Coming from the legal standpoint, both sides make very good arguments, Mr. Speaker. I think that it's important for us to hear from the general public, and that's one of the issues why I'm voting 'no.' But the one thing that I hear, from not only us, as elected officials, but also from the Administration, and the Governor's office, is that no one is talking about the intention to sell any land.

"And on this particular Order of Business that we have today, we have Senate Bill 1677, a bill that talks about giving the Legislature the authority, that it would be the Legislature's approval or disapproval, on the sale of ceded lands. If you were to ask me this question, about whether or not I'd be for this Resolution in, I don't know, two weeks from now. Maybe it goes through some Committees, and I may have a different decision. I may be up on it. But at this point in time, I will have to say 'no,' because of the possible ramifications of this, and Wednesday's oral arguments at the Supreme Court.

"I say it again. I haven't heard any intentions to sell any ceded land property. This bill, Senate Bill 1677, would show our commitment as individual elected legislators. To sum it all up, this affects all of us. I'm not Native Hawaiian, but my kids are. And I want what's best for the State of Hawaii, just like everyone else, and for the Native Hawaiian community. So, I think that our energy should be put into reconciliation. Thank you, Mr. Speaker."

Representative McKelvey rose to speak in support of the measure, stating:

"Thank you very much, Mr. Speaker. In support. Just a few brief words, if I may? I stand in support of this Resolution, because to me, when you look at the four corners of the issue, it's pretty much about, should this be a process that we handle within the State of Hawaii? And should we not have a process of reconciliation in place before ceded lands are sold?

"When coming over on the plane today, it was the words of our former Governor Waihee, who did not agree with other Governors; Governor Waihee basically does oppose this lawsuit going forward, and I thought his

reasonings were very profound in that we are inviting the ugly hand of federalism into what is pretty much a state issue.

"Members, to me, this Resolution says, do we believe that we should look at this issue and keep it in our own backyard, instead of inviting federalism and the United States Supreme Court into it. And should we have a policy of reconciliation in place before we move forward with the sale of ceded lands?

"To me, that's really what the focus of the Legislature needs to shift to now, is the reconciliation process of embarking upon it now, because this is going to continue to dog us and future generations of all the people of Hawaii.

"My good colleague from the other side of the island said to remember, you took an oath of office for all of the people of Hawaii, and he is correct. But, reconciliation is a process that brings all of the people of Hawaii to the table.

"To me, the Resolution today is simply to say 'Whoa, pull back. Let's not take this to the next level.' And also what worries me about this Court case is that this could have a nebulous touching effect upon 14th Amendment arguments, which have been raised as to the legitimacy of the entitlement programs up for Native Hawaiians.

"So, that's why I stand in support of this Resolution today, Mr. Speaker. Because I believe that it is a call to bring the *ho'oponopono* process home. To have it done at home, and to work with all of the people of Hawaii to bring resolution so that justice may be served to all of us. Both, now in the present, and most importantly, especially looking at the *keiki* up there, to the future. Thank you, Mr. Speaker."

Representative Shimabukuro rose to respond, stating:

"Thank you, Mr. Speaker. I just wanted to respond to some of the comments that were made by some previous speakers, about there being no discussion of sale of ceded land. I would beg to differ. We talked a couple days ago about House Bill 828, about the sale of public housing. HPHA has said that they want to be able to sell public housing, most of which is on ceded land.

"Another thing is that, the reason there hasn't been much discussion about what the intention of the Administration is, is because there has been no disclosure. If you look at the exhibits that have been to the Supreme Court, there's only one exhibit that talks about the sale of ceded land, and it only covers, I think from the mid '70s to the mid 1990s. And, it doesn't have acreage. They admit to selling over 2200 sales in fee of ceded land, without acreage provided.

"When you ask the question about what's happened in the past 10 years plus, there's no response. I submitted a request to DLNR to tell me what has been sold; what ceded lands have been sold, and still no response. So, in that respect, I think that's why there's been no discussion. We need more disclosure on that fact.

"The other thing I wanted to respond to is this issue of this Resolution being rammed down our throats. This issue of the ceded lands moratorium, and the Supreme Court appeal has been all over the media. You'd have to have been dead or asleep for the past, I don't know how many months, if you didn't know what was going on. It was in the Sunday paper, there were several pieces on it. There was a huge article I saw. There was an editorial on it. So, this is nothing new. It's a simple Resolution. We're asking the Lingle Administration to withdraw its appeal to the Supreme Court, and I don't really think there's many people that read the news in Hawaii that don't know what we're talking about. Thank you."

Representative Carroll rose to respond, stating:

"Thank you, Mr. Speaker. Just some additional comments. We talk about fiduciary rights or fiduciary responsibilities. Well the Hawaii State Supreme Court said the State has a fiduciary responsibility to Native Hawaiians.

"Members, I'd like to think of this discussion as a meaningful and healthy discussion, and not a devisive one. Because like anything that is of urgency, we all put our efforts, whether we agree or disagree, we have that discussion. So, I'd like to think that it is not necessary to have a *ho'oponopono*, because we are already *pono*, in whatever we decide.

"The other thing is, as my colleague from West Maui said, this reconciliation process does bring everyone to the table, because it involves all of us. And our hope is that that will happen soon, especially with Legislation at the federal level that is happening at this time.

"The other thing is that, as the Chair of the Hawaiian Affairs Committee, I've had meetings with the Governor, with the Attorney General. We've had through Hawaiian Caucus many different forums where the public has been invited. I've sat through many different debates of this issue. And that concluded for me, as an individual, and as a lawmaker, why is the Governor doing this? Why is she challenging the Hawaii State Supreme Court? So, this is just basically asking her to withdraw her appeal.

"Whether or not we agree on the issue of title, again, the Hawaii State Supreme Court did not challenge the title, but just merely said that, do not sell our ceded lands or transfer them until the fiduciary responsibility of the State is fulfilled.

"And also, it would not hinder the Governor's ability to do what she's already been doing, and what Governors in the past have been doing, where lands are transferred within State agencies. Again, I ask for your support. Thank you."

Representative Ching rose to speak in support of the measure with reservations, stating:

"Thank you, Mr. Speaker. I rise with strong reservations. Very strong reservations. I'd like to adopt the words of the Representative, Speaker Emeritus of Wailuku/Waihe'e. Thank you. This is a very difficult decision, because I think that you have important issues on either side, to which have already been articulated.

"I know that we all have a deep love and recognize that Hawaii would not be Hawaii without our Native Hawaiians. However, as Speaker Emeritus did mention, everyone is involved. And actually the best interest of the people sometimes are impeded, because of the way the land policy is right now of our Native Hawaiian people. So, in the best interest of this State, again, I reiterate that there's some things that need to be done, and to vilify the Fifth Floor. It's really tough. She's making a tough decision.

"So, I think that people have to understand, there's no one who wants to do bad to anyone. It's just your principles, you're standing for your principles, and actually the person who's sometimes the toughest, is the one that you should take a look at. The one that's been willing to stand up on the unpopular side of an issue. Maybe they're the ones that are willing to stand by their principles. So, to me it's what's in the best interest of all of our people. We don't want to divide our people. And at the same time, I think that it is bad policy to be pushing things so fast, which is one reason I was in favor of a referral.

"The formality of a hearing, versus some of the forums that we've had. Sure, they're forums, but then why do we have hearings? We have hearings so that there's a formal way for our public of all sides to benefit us, and making decisions with good legislation to come feeling free, feeling not intimidated, and not so charged, and that is a good system. So I'm voting with strong reservations."

Representative Souki rose to respond, stating:

"Mr. Speaker, thank you very much. Mr. Speaker, I feel compelled again that I need to speak. Some say that the Supreme Court, coming up with their decision, and how dare we speak against the Supreme Court. The Supreme Court is only one of the triangles of government. The check and balance system. The Legislature through laws can trump the Supreme Court. The Governor can have differences with the Supreme Court.

"I remember some years ago, when the Supreme Court Justice Moon was speaking on the State of the Judiciary to the Legislature. And in the end of his speech, he mentioned that the Legislature has the 'trump card.' Not the Supreme Court. They are not omnipotent. If you would continue to rely on the Supreme Court, you would not need the Legislature and you would not need the Executive Branch. Each one is of equal power, and because we have differences with the Supreme Court, that doesn't mean that we are doing something that is not *pono*. We have every right to disagree with the Supreme Court, and I believe in this time, the Supreme Court erred when it mentioned that it had to do with the apology.

"Yes, we need to have reconciliation with the ceded land. But not this way. Not the way that we are doing it. You're forcing a situation, and it's not true *ho'oponopono* where you are working it out. You're putting a sledge hammer on our heads. That's what you're doing right now. And with this, I'll end my remarks right here."

Representative Finnegan rose to respond, stating:

"Thank you, Mr. Speaker. Second time in opposition, just a quick comment. Thank you, Mr. Speaker. Mr. Speaker, I'm sure we're all trying to be very mindful on this decision, and I just wanted to read something short, from an article this morning. And it said, 'Lingle also said it's possible anti-Native Hawaiian groups would have sued the State, had it not appealed.' Then she follows up by saying, 'that would have opened up this whole issue in a very big way,' Lingle said. I think that by us doing the case ourselves and narrowing it, we have actually reduced the possibility that this would go on to other issues.

"Mr. Speaker, the reason why I bring this up, is because I actually had conversations with people who were a part of former lawsuits against the State having to do with this issue, and they were preparing a case, Mr. Speaker. So, although it says 'possible,' I can tell you that they were preparing a case, a suit against the State.

"The other issue having to do with this being a federal issue, we would love to keep it only in Hawaii, and it be our backyard issue and stay here, but like we know, this issue has already been brought, not particularly this issue, but the issue as a whole, has already been brought to the feds, with the Akaka Bill and other things.

"So, Mr. Speaker, it would be great if we could keep it in the confines of our State, but I don't think that that possibility, especially with some of the quotes that I've read a little bit earlier, that we can do that. And that's why we are all focusing in on what we think is best for the Native Hawaiian groups and Native Hawaiian people, and I think we just see things maybe in different ways on how we might be able to do that.

"So, I hope that we can continue to have this debate. Thank you."

Representative Pine rose and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Pine's written remarks are as follows:

"Mr. Speaker, I stand in opposition to the subversion of the people's right to testify by permitting SCR 40 to be adopted on the Floor without prior hearing in Committee. The issue of ceded lands as this Resolution addresses is a topic which is extremely complex and is not so simple a matter as to advance by rubber stamp as some of our colleagues would have us do by adopting it without due process. To make such a bold and sudden initiative as a legislative body as to direct the Governor and Attorney General of Hawaii to withdraw an appeal presently before the U.S. Supreme Court is a matter that deserves public input and its own hearing.

"Mr. Speaker, we are a government of the people, by the people, not a government of the few, for the few. I am reminded of the motto an old company once proudly displayed: "No job is so important, no service is so urgent that we cannot take the time to perform our work safely." I recognize that many feel that the issue of ceded lands is one which time is of the essence, but no issue is so important as to override and overstep the due process of the people's House.

"Bills and resolutions are referred to Committees before coming to a Floor vote because our process is built on the understanding that the people have a right to discuss their support and opposition before those they have granted a trust to vote on their behalf. Mr. Speaker, I strongly support the spectrum of Hawaiian issues, but what I do not support is this attempt to sidestep a system that works for the people. Quite simply Mr. Speaker, this action opens the door to allow us to abuse democracy.

"I urge my colleagues to do what is right and oppose the passage of SCR 40 that we may return to the rule of law and respect for the people."

Representative Ching rose and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Ching's written remarks are as follows:

"Thank you, Mr. Speaker. I stand in support with reservations to S.C.R. 40 – Relating to Native Hawaiians; Appeal; United States Supreme Court. While I am in support of ensuring a fair and just settlement leading to reconciliation with the Native Hawaiian people and fully committed to the support of Native Hawaiian rights, I agree, as stated by Mark Bennett, that "The state's defense sought to preserve intact the state's right to manage the ceded lands for the benefit of all its citizens." And that, "The ceded lands at issue are explicitly entrusted to the state for the benefit of all the citizens of the state."... "The sovereign dignity of this State and the interest of all its citizens require nothing less."

The motion was put to vote by the Chair and carried, and S.C.R. No. 40, entitled "SENATE CONCURRENT RESOLUTION URGING THE GOVERNOR AND THE ATTORNEY GENERAL TO WITHDRAW THE APPEAL TO THE UNITED STATES SUPREME COURT OF THE HAWAII STATE SUPREME COURT DECISION, OFFICE OF HAWAIIAN AFFAIRS V. HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII, 117 HAWAII 174 (2008)," was adopted with Representatives Finnegan and Pine voting no, and with Representative Takai being excused.

Sen. Com. No. 22, transmitting S.B. No. 426, entitled: "A BILL FOR AN ACT RELATING TO DENTISTRY," which passed Third Reading in the Senate on February 20, 2009.

Sen. Com. No. 23, transmitting S.B. No. 1677, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO LANDS CONTROLLED BY THE STATE," which passed Third Reading in the Senate on February 20, 2009.

On motion by Representative Evans seconded by Representative Pine and carried, the following Senate bills passed First Reading by title and further action was deferred: (Representative Takai was excused.)

S.B. No. 426
S.B. No. 1677, SD 1

ORDER OF THE DAY

COMMITTEE REASSIGNMENTS

The following bills were re-referred to committee by the Speaker:

H.B. Nos.

Re-referred to:

1273	Jointly to the Committee on Energy & Environmental Protection and the Committee on Housing
1355	Committee on Human Services, then to the Committee on Finance
1412	Committee on Finance

STANDING COMMITTEE REPORTS

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 620) recommending that H.B. No. 39, as amended in HD 1, be recommitted to the Committee on Finance.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 39, HD 1, entitled: "A BILL FOR AN ACT RELATING TO STATE REVENUES," was recommitted to the Committee on Finance, with Representative Takai being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 621) recommending that H.B. No. 42, as amended in HD 1, be recommitted to the Committee on Finance.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 42, HD 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," was recommitted to the Committee on Finance, with Representative Takai being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 622) recommending that H.B. No. 1153, as amended in HD 1, be recommitted to the Committee on Finance.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 1153, HD 1, entitled: "A BILL FOR AN ACT RELATING TO CONFORMITY OF THE HAWAII INCOME TAX LAW TO THE INTERNAL REVENUE CODE," was recommitted to the Committee on Finance, with Representative Takai being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 623) recommending that H.B. No. 1260, as amended in HD 1, be recommitted to the Committee on Finance.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 1260, HD 1, entitled: "A BILL FOR AN ACT RELATING TO GOVERNMENT," was recommitted to the Committee on Finance, with Representative Takai being excused.

SUSPENSION OF RULES

On motion by Representative Evans, seconded by Representative Pine and carried, the rules were suspended for the purpose of considering a certain House bill for Third Reading by consent calendar. (Representative Takai was excused.)

THIRD READING

H.B. No. 1188, HD 1:

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, H.B. No. 1188, HD 1, entitled: "A BILL FOR AN ACT RELATING TO AFFORDABLE HOUSING," passed Third Reading by a vote of 44 ayes to 6 noes, with Representatives Awana, Belatti, Coffman, Hanohano, Morita and Takumi voting no, and with Representative Takai being excused.

At 2:12 o'clock p.m., the Chair noted that the following bill passed Third Reading:

H.B. No. 1188, HD 1

INTRODUCTION OF RESOLUTIONS

By unanimous consent, the following resolutions (H.R. Nos. 64 and 65) and concurrent resolutions (H.C.R. Nos. 82 and 83) were referred to Printing and further action was deferred:

H.R. No. 64, entitled: "HOUSE RESOLUTION EXPRESSING LEGISLATIVE SUPPORT FOR THE ANE KEOHOKALOLE HIGHWAY EXTENSION, MID-LEVEL ROAD, IN THE COUNTY OF HAWAI'I," was jointly offered by Representatives Coffman, Chang, Evans, Hanohano, Herkes, Nakashima and Tsuji.

H.R. No. 65, entitled: "HOUSE RESOLUTION ENDORSING THE EARTH CHARTER AND URGING THE GOVERNOR, MAYORS, AND COUNTY COUNCILS TO ADOPT AND USE THE CHARTER AS PART OF THE FRAMEWORK FOR SUSTAINABLE PLANNING AND DEVELOPMENT," was jointly offered by Representatives Berg, Ching, Hanohano, Manahan, McKelvey, Aquino, Bertram, Choy, Evans, Finnegan, Nakashima, Wakai and Yamashita.

H.C.R. No. 82, entitled: "HOUSE CONCURRENT RESOLUTION EXPRESSING LEGISLATIVE SUPPORT FOR THE ANE KEOHOKALOLE HIGHWAY EXTENSION, MID-LEVEL ROAD, IN THE COUNTY OF HAWAI'I," was jointly offered by Representatives Coffman, Chang, Evans, Hanohano, Herkes, Nakashima and Tsuji.

H.C.R. No. 83, entitled: "HOUSE CONCURRENT RESOLUTION ENDORSING THE EARTH CHARTER AND URGING THE GOVERNOR, MAYORS, AND COUNTY COUNCILS TO ADOPT AND USE THE CHARTER AS PART OF THE FRAMEWORK FOR SUSTAINABLE PLANNING AND DEVELOPMENT," was jointly offered by Representatives Berg, Ching, Hanohano, Manahan, McKelvey, Wooley, Aquino, Bertram, Evans, Finnegan, Nakashima, Wakai and Yamashita.

ADJOURNMENT

At 2:13 o'clock p.m. on motion by Representative Evans, seconded by Representative Pine and carried, the House of Representatives adjourned until 12:00 o'clock noon tomorrow, Tuesday, February 24, 2009. (Representative Takai was excused.)