

## THIRTY-NINTH DAY

Tuesday, March 22, 1983

The Senate of the Twelfth Legislature of the State of Hawaii, Regular Session of 1983, convened at 11:30 o'clock a.m., with the President in the Chair.

The Divine Blessing was invoked by the Reverend Kim On Chong, former Chaplain of Mid Pacific Institute, after which the Roll was called showing all Senators present.

The Chair announced that he had read and approved the Journal of the Thirty-Eighth Day.

At this time, Senator Cayetano made the following introduction to the members of the Senate:

"Mr. President, this hall has been graced by dignitaries from all over the world. The one we have this morning comes from virtually across the world. We all know that Botswana is the antipode of Hawaii. Our guest comes from Uganda, which is a neighbor to Botswana.

"Mr. President, he is a member of the Ugandan Parliament. He is the shadow cabinet minister for planning and economic development and chief economic policy advisor to the opposition Democratic Party. He is a participant in the International Visitor Program, sponsored by the U.S. Information Agency, and will be visiting ten states. Hawaii is the fifth on his agenda.

"His background is quite impressive. He has a master's degree from Columbia University, New York, a bachelor's degree in economics from Makerere University, Kampala, and a Certificate in Management Training Methods from the International Trade Center, Geneva.

"He is interested in gaining insights into the workings of the American economy, and he would like to observe the interplay between free enterprise and a democratic system of government and to be brought up-to-date on American and international economic development.

"Mr. President and members of the Senate, it gives me great pleasure to introduce today the Honorable Ponciano Sserumaga Mulema, member of Parliament, Kampala, Uganda.

"With Mr. Mulema is his host from the U.S. Information Agency, Mr.

Barry Wasserman.

"Mr. President, before we call a recess so Senators Young and Solomon can present a lei and a gift to Mr. Mulema, I want to bring to the members' attention that Mr. Wasserman is holding two gold caps for Mr. Mulema's sons in Uganda. Those caps say, 'Cayetano for Senator.'"

Senator Abercrombie added his remarks as follows:

"Mr. President, I arrived a bit late at the Legislature this morning and was unable to accept Senator Cayetano's invitation to meet with Mr. Mulema and I'd like to take this opportunity, while he is here, to express to him and to all the people of Uganda my profound thanks for the warm hospitality and welcome that I received in Uganda.

"Not everyone knows, and probably most people don't care, but I'm probably one of the few people who's had the privilege and pleasure of traveling the whole length of the Nile River from the Mediterranean in Alexandria all the way into Uganda.

"When I arrived in Uganda, the end of what was a very arduous trip in 1968, I thought that I had returned home to Hawaii. And I'm sure that Mr. Mulema knows whereof I speak ... the climate, the people, the atmosphere in Uganda, especially those people at Makerere University where we were domiciled. They took us in.

"We were able to stay there for some weeks, and I thought to myself then that if there was ever a place that I would like to come back to, to teach, to work, would be Uganda. And we all know the tragic circumstances that have taken place in Uganda since that time.

"I had the opportunity to be in the hall of Parliament in Kampala. It was a friendly and open place, a wonderful, wonderful place to be. The people were marvelous ... the kind of people that, in terms of hospitality, and, I might say, aloha, that we like to think that we exemplify here in the State of Hawaii.

"It's a pleasure to see Mr. Mulema here today. I hope he will take back with him to Uganda the greetings of

everyone in Hawaii, most particularly, my deep-felt thanks and gratitude and the hope that I can return one day soon to Uganda to see all of my many friends there and to take some of the hospitality from here back there again. Thank you."

At 11:43 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:50 o'clock a.m.

#### MESSAGE FROM THE GOVERNOR

A message from the Governor (Gov. Msg. No. 215) transmitting a report prepared by the University of Hawaii, in response to Senate Resolution No. 39 (1982), requesting the University of Hawaii to monitor federal financial aid cutbacks and to assess impact on state financial aid programs, was read by the Clerk and was referred to the Committee on Higher Education.

#### HOUSE COMMUNICATION

A communication from the House (Hse. Com. No. 293), returning Senate Concurrent Resolution No. 44, which was adopted by the House of Representatives on March 21, 1983, was read by the Clerk and was placed on file.

#### SENATE CONCURRENT RESOLUTION

A concurrent resolution (S.C.R. No. 49), entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE LEGISLATIVE AUDITOR TO REVIEW THE IMPLEMENTATION AND ADMINISTRATION OF THE PILOTAGE LAW," was offered by Senators Kawasaki, Carpenter, Abercrombie, Cayetano, Fernandes Salling, A. Kobayashi, Hagino, Solomon, Aki, B. Kobayashi, Ajifu and George, and was read by the Clerk.

By unanimous consent, S.C.R. No. 49 was referred to the Committee on Consumer Protection and Commerce.

#### SENATE RESOLUTION

A resolution (S.R. No. 60), entitled: "SENATE RESOLUTION REQUESTING THE LEGISLATIVE AUDITOR TO REVIEW THE IMPLEMENTATION AND ADMINISTRATION OF THE PILOTAGE LAW," was offered by Senators Kawasaki, Carpenter, Abercrombie, Cayetano, A. Kobayashi, Hagino, Solomon, Aki, B. Kobayashi, Ajifu and George, and was read by the

Clerk.

By unanimous consent, S.R. No. 60 was referred to the Committee on Consumer Protection and Commerce, then to the Committee on Legislative Management.

#### STANDING COMMITTEE REPORT

Senator Young, for the Committee on Legislative Management, presented a report (Stand. Com. Rep. No. 615) informing the Senate that Senate Concurrent Resolution No. 49 and Senate Resolution No. 60 have been printed and have been distributed to the members of the Senate.

On motion by Senator Young, seconded by Senator George and carried, the report of the Committee was adopted.

#### ORDER OF THE DAY

##### RE-REFERRAL OF HOUSE BILLS

The President made the following re-referral of House Bills that were received on Monday, March 14, 1983:

House Bills	Referred to:
No. 242, H.D. 1	Committee on Ways and Means
No. 243	Committee on Judiciary
No. 244, H.D. 1	Committee on Ways and Means
No. 546, H.D. 2	Committee on Ways and Means

At this time, Senator Fernandes Salling, Chairman of the Committee on Hawaiian Programs, requested a waiver of the 48-hour notice of a Public Hearing on H.B. No. 702, H.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS," and the President granted the waiver.

At this time, Senator Cayetano rose on a point of personal privilege and stated as follows:

"Mr. President, last week when we voted to send those bills to the House, one of the bills we voted on was entitled, 'Limitation of Actions,' and during the floor debate on that bill, you may recall that some of us who are opposed to the bill warned that what it will do, if it became law, would be to cut off the public from seeking redress for injuries suffered

as a result of construction defects and design.

"Presently, the existing law holds that the statute of limitation on one seeking redress, or filing suit on any action in negligence, is two years from the date of the accident or from the time that the negligence was discovered or the person had reason to discover the negligence.

"What we did when we passed that bill was for architects, designers, contractors, people in that field of business, making the statute of limitation two years from the date of discovery but no more than six years. And, as I said earlier, some of us argued that that was not conducive to the public interest.

"This morning's newspaper brings up a real example of what I was talking about. I'm looking at the Honolulu Advertiser, Tuesday, March 22, 1983 issue, and the title of the story is: 'If at the Capitol, be ready to duck fast,' by Sandra Oshiro.

"What this story is about, Mr. President, is that a five-by-three concrete slab on the wall of this Capitol came crashing to the basement floor on Saturday night.

"No one was injured' the story says, 'but it again drew state officials' attention to a potentially dangerous condition at the Capitol.

"Throughout the building there are concrete 'veneer' panels stuck to the hollow-tile walls by mortar. Somehow, one of those panels became loose above a basement office doorway.'

"The story goes on to say, 'It wasn't the first time it happened.

"Earlier this year, another smaller panel fell from a wall on the Capitol's third floor. After that incident, state officials went around checking the panels, removing those that appeared to be loose and marking others that needed watching.'

"The slab that came tumbling down Saturday was not marked.'

"Then it goes on to say that 'State Comptroller Hideo Murakami called his staff and an architect into a meeting yesterday to evaluate the problem. He ordered his staff to bolt the loose panels above doorways and other high-traffic areas to the hollow-tile walls.'

"We're very thankful that nobody got hurt," Murakami said. "Because if that thing falls on someone -- good night!"

"Murakami said he does not think the building right now needs to be cleared of people, many of whom are rushing about on legislative business.'

"The State Comptroller would not say if the building specifications for the Capitol called for the panels to be secured by bolts.'

"I don't want to get into the question of liability right now," he said. "My primary concern is to make this place safe."

"The reason I think this story needs to be brought to our attention, Mr. President, is because if someone had been hurt, if one of the many children who we invite to the Capitol had been injured by that five-by-three feet concrete slab ... all you have to do is go outside and see how big that thing is ... injured or killed, the child or the child's survivors would not have any redress under the bill that we passed, because in protecting the industry by limiting the actions to six years, we have denied people, who are injured, redress for injuries they suffer as a result of design defects and defaults.

"This Capitol is fifteen years old or so. It's just fortunate, I think, that nobody got hurt.

"I hope everybody reads this story.

"I hope people will reflect on what we did with that bill because it's gone to the House. Hopefully, it will be amended or not pass. But, if it ever comes back here, I hope people will think about the ramifications of what we did with that particular bill.

"Too often, we get so involved with the lobbyists who express a particular point of view, and a very legitimate point of view, and we get to understand their concerns, their problems, but there's nobody here lobbying for the consumer, for the public, and it seems to me that's our job. That's what we have to do. And stories like this, I think, help us remember that."

Senator Cobb, in response, stated:

"Mr. President, a response is definitely in order.

"First of all, I would disagree with

the assertions of the prior speaker that no one would be liable.

"First, the state would be liable.

"Second, if the construction was not done according to the specifications of the architect then the contractor would be liable. And, I think, that was one of the legitimate questions that was raised but not answered in the previous monologue.

"Third, as far as I am concerned, there should be the protection extending not only in terms of the limitation on actions for both parties, but also relative to the changing pattern of construction standards that has existed.

"What was permissible in 1940 is no longer permissible today. What was permissible in 1960 is, in many cases, illegal today because there is an ongoing evolution of building standards.

"I would disagree with the assertion that there would be no recovery in such an event. There would either be a recovery from the contractor or those who did the construction, or there would certainly be a recovery from the state.

"Furthermore, I'm perfectly willing to see whatever amendments that the House makes to the bill, but I think the entire subject is a proper vehicle for discussion and if it does come back from the House, I hope that it does address many of the concerns

raised by the previous speaker."

Senator Cayetano then answered as follows:

"Mr. President, just a brief rejoinder.

"I don't know what bill the chairman is reading but the bill that I read would preclude any lawsuit against the contractor and the architect.

"It is silly to say that you could sue the contractor if he didn't follow the specifications of the architect. I mean, that's the point of negligence. If the specification is not followed, then it's negligence. Otherwise, if that's the case, then that bill means nothing, and maybe that's why it's been declared unconstitutional by the courts two years in a row.

"And every time it's declared unconstitutional the industry comes back here. We change the darn thing; and somebody gets hurt; they go up to the court again; the court declares it unconstitutional; they come back here; we change it for them. Maybe we should think about the public."

#### ADJOURNMENT

At 12:02 o'clock p.m., on motion by Senator Cobb, seconded by Senator Soares and carried, the Senate adjourned until 11:30 o'clock a.m., Wednesday, March 23, 1983.