

TWENTY-FIRST DAY

Wednesday, February 20, 1991

The Senate of the Sixteenth Legislature of the State of Hawaii, Regular Session of 1991, convened at 11:35 o'clock a.m. with the Vice President in the Chair.

The Divine Blessing was invoked by the Reverend Allan Lee, United Church of Christ, after which the Roll was called showing all Senators present with the exception of Senator Chang who was excused.

The Chair announced that he had read and approved the Journal of the Twentieth Day.

The following introductions of visitors seated in the gallery were then made to the members of the Senate:

Senator McCartney, on behalf of Senator Koki and himself, introduced a group of kindergarten students from the Hawaiian Language Immersion Program of Puohala Elementary School in Kaneohe, accompanied by their teachers, parents and members of the school community.

Senator A. Kobayashi introduced Major Doris Knowland and members of the Salvation Army Auxiliary.

Senator Hagino then recognized Senate Sergeant-at-Arms Ben Villaflor as follows:

"Mr. President, one of the great joys in life is to see your offsprings be singled out for their accomplishments. We have such a parent on our chamber floor today. This parent has himself been honored previously in his own right. However, his child has not chosen to follow in the footsteps of his accomplished father but instead excels in a sport foreign to his father until a few years ago. No, this child is not going to become a future boxer, I believe, but instead Ben Villaflor Jr. is the starting halfback for the Aiea High School soccer team and was recently named to the United States Youth Soccer Association All-American Boys Soccer Team. I'm sure my colleagues join me in congratulating Ben Villaflor Jr. for his accomplishment and to the other Ben, 'Well done, dad.'"

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 158 to 170) were read by the Clerk and were placed on file:

Gov. Msg. No. 158, dated January 14, 1991, transmitting a report prepared by the Department of Public Safety in response to Section 192G, Act 299, SLH 1990, requesting a detailed expenditure report of the \$548,217 monies provided for training and development of Department of Public Safety employees.

Gov. Msg. No. 159, dated January 15, 1991, transmitting a report prepared by the Department of Public Safety in response to Section 192E, Act 299, SLH 1990, requesting a detailed expenditure report of the \$420,000 allotted for remedial measures to clean up oil spills at and within the vicinity of the Halawa Correctional Facility.

Gov. Msg. No. 160, dated January 17, 1991, transmitting a report prepared by the Department of Public Safety in response to Section 192D, Act 299, SLH 1990, requesting a detailed expenditure report of the \$842,363 allotted for the 28 positions requested in the 1990-1991 supplemental budget.

Gov. Msg. No. 161, dated January 15, 1991, transmitting the report "Needle Exchange Program Evaluation Report," prepared by the Department of Health in response to Act 280, SLH 1990.

Gov. Msg. No. 162, dated January 15, 1991, transmitting a report prepared for the Department of Health by ICF Incorporated in response to Act 317, SLH 1990, requesting a study on the development of a state financial assurance fund program for owners and operators of underground storage tanks.

Gov. Msg. No. 163, dated January 25, 1991, transmitting the report prepared by the Department of Health Commission on Persons with Disabilities in response to Section 8, Act 324, SLH 1990, requesting a needs assessment of at-home family caregiving.

Gov. Msg. No. 164, dated January 25, 1991, transmitting a report prepared by the Department of Health in response to H.R. No. 346 (1990) and H.C.R. 336 (1990), requesting review and recommendations from the director of health on the examination of issues related to head injury.

Gov. Msg. No. 165, dated January 25, 1991, transmitting a report prepared by the Department of Health in response to S.C.R. No. 172 (1990) and S.R. No. 156 (1990), requesting a report of progress from the director of health on the implementation of recommendations to address the shortage of trained physical and occupational therapists and other professionals serving handicapped children in the public schools of Hawaii.

Gov. Msg. No. 166, dated January 28, 1991, transmitting the "Hawaiian Genealogy Project Master Plan," prepared by the Hawaiian Genealogy Project Inter-Agency Task Force in response to Act 56, SLH 1990.

Gov. Msg. No. 167, dated February 11, 1991, transmitting a report prepared by the Office of State Planning in response to S.C.R. No. 165 (1990), requesting a study on the feasibility of establishing a development authority to oversee future development of certain lands and use of waters within the West Hawaii region, including North and South Kohala on the Island of Hawaii.

Gov. Msg. No. 168, dated February 11, 1991, transmitting a report prepared by the Office of State Planning in response to H.C.R. No. 73 (1990), requesting a report about tourism jobs.

Gov. Msg. No. 169, dated December 17, 1990, transmitting the "Hawaii State Certified Arbitration Program (SCAP) 1990 Report," prepared by the Department of Commerce and Consumer Affairs.

Gov. Msg. No. 170, dated January 23, 1991, transmitting the "1990 Annual Report of the Regulated Industries Complaints Office (RICO)," prepared by the Department of Commerce and Consumer Affairs.

COMMITTEE REPORTS

Senator A. Kobayashi, for the Committee on Executive Appointments, presented a report (Ldr. Com. Rep. No. 49) recommending that the Senate advise and consent to the nomination of Hoaliku L. Drake for Chairman, Hawaiian Homes Commission, in accordance with Gov. Msg. No. 62.

In accordance with Senate Rule 34, action on Stand. Com. Rep. No. 49 and Gov. Msg. No. 62 was deferred until Thursday, February 21, 1991.

Senator Chang, for the Committee on Agriculture and Environmental Protection, presented a report (Stand. Com. Rep. No. 50) recommending that S.B. No. 255, as amended in S.D. 1, pass Second Reading and be recommitted to the Committee on Agriculture and Environmental Protection.

On motion by Senator Solomon, seconded by Senator George and carried, the report of the Committee was adopted and S.B. No. 255, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PROTECTION OF HAWAII'S NATIVE FLORA AND FAUNA," passed Second Reading and was recommitted to the Committee on Agriculture and Environmental Protection.

Senator Chang, for the Committee on Agriculture and Environmental Protection, presented a report (Stand. Com. Rep. No. 51) recommending that S.B. No. 924, as amended in S.D. 1, pass Second Reading and be recommitted to the Committee on Agriculture and Environmental Protection.

On motion by Senator Solomon, seconded by Senator George and carried, the report of the Committee was adopted and S.B. No. 924, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HAZARDOUS WASTE," passed Second Reading and was recommitted to the Committee on Agriculture and Environmental Protection.

Senator Chang, for the Committee on Agriculture and Environmental Protection, presented a report (Stand. Com. Rep. No. 52) recommending that S.B. No. 1962, as amended in S.D. 1, pass Second Reading and be recommitted to the Committee on Agriculture and Environmental Protection.

On motion by Senator Solomon, seconded by Senator George and carried, the report of the Committee was adopted and S.B. No. 1962, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HAZARDOUS WASTE," passed Second Reading and was recommitted to the Committee on Agriculture and Environmental Protection.

Senator McMurdo, for the Committee on Health and Human Services, presented a report (Stand. Com. Rep. No. 53) recommending that S.B. No. 246 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Solomon, seconded by Senator George and carried, the report of the Committee was adopted and S.B. No. 246, entitled: "A BILL FOR AN ACT RELATING TO MENTAL HEALTH," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Mizuguchi, for the Committee on Employment and Public Institutions, presented a report (Stand. Com. Rep. No. 54) recommending that S.B. No. 1294 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Solomon, seconded by Senator George and carried, the report of the Committee was adopted and S.B. No. 1294, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR COMPENSATION OF CRIMINAL INJURIES," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Mizuguchi, for the Committee on Employment and Public Institutions, presented a report (Stand. Com.

Rep. No. 55) recommending that S.B. No. 1338, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Solomon, seconded by Senator George and carried, the report of the Committee was adopted and S.B. No. 1338, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO SALARIES AND CLASSIFICATION," passed Second Reading and was referred to the Committee on Ways and Means.

ORDER OF THE DAY

RE-REFERRAL OF SENATE BILLS

The Chair re-referred the following Senate bills that were introduced:

Senate Bill	Referred to:
No. 812	Committee on Ways and Means
No. 999	Committee on Housing and Hawaiian Programs, then to the Committee on Ways and Means
No. 1393	Committee on Ways and Means
No. 1400	Committee on Ways and Means
No. 1630	Committee on Transportation and Intergovernmental Relations
No. 2071	Committee on Judiciary
No. 2075	Committee on Ways and Means

Senator Solomon rose to speak on a point of personal privilege as follows:

"Mr. President, your Committees on Science, Technology and Economic Development as well as Planning, Land and Water Use Management had a public hearing to receive testimony and to discuss Senate Bill 1233, Relating to Income Tax Surcharge. Mr. President, as you know, I represent the West Hawaii District, North and South Kohala, as well as East Maui. My constituents are very much in support of a bill such as this, and I would like to speak on behalf of my constituents and on behalf of this bill.

"Mr. President, the adoption of this bill will be the result of a cooperative effort between the administration and the Legislature to resolve the problems of speculation and foreign investment. Together with Act 213, Session Laws of Hawaii 1990, providing for the withholding of tax on capital gains on the sale of real property, this bill will provide some mitigation on speculative investment in Hawaii of residential real property and of property which is later reclassified for residential purposes such as conservation and agricultural lands.

"The intent, Mr. President, of this bill is to slow down speculation, if not stop it, in residential or potential residential areas. Residential real property is the focus of this bill because this is where our residents are hurting the most.

"This bill exempts developers from the surcharge. Thus, Mr. President, the first sale of any interest by a developer of a developed land or condominium apartment would be exempt under this bill. There are eleven exemptions in this bill, including sales due to military orders or business reassignment, sales for purchase of another home, condemnation, leasehold conversion and the like.

"With the passage of this bill, those investors wishing to invest in Hawaii will be those interested in a longer investment run than may now be the case. Therefore, this bill should not defeat the state's intention of stimulating economic growth and encouraging business development through the infusion of investment capital in the state.

"Let me remind you, colleagues, that in 1973, 1974 and 1975 similar bills were introduced in the Legislature, but failed. It was then ten years before we realized that we are still facing a problem in the price of homes available in Hawaii.

"Beginning again in 1987, bills were introduced attacking this issue. Must we wait another ten years before action is taken while the prices of homes rise even higher?

"There can be no question that speculation is occurring in this state and that it is having an undesirable effect on land prices. This bill is but one way to get a handle on this problem.

"The one state with capital gains tax, Vermont, and the one study on that state's experience concludes that in Vermont this tax coupled with other controls probably reduced land speculation. This is what I am looking for and asking for.

"There is no emotion involved in this solution. As you know, the Legislature has been reviewing the alternatives. In the last session and in this session, we have considered a number of initiatives to control speculation, such as the 'use-it-or-lose-it' bill, the disclosure bill, and a bill to withhold taxes for property sales made by non-residents. This bill is yet another tool developed to meet the recurrent problem that faces Hawaii.

"Because the impact of this tax is neither draconian nor difficult to understand, I believe that it will accomplish its purpose to slow or stop speculation and will not be a drag on the economy as would many other bills being considered by the Legislature this session.

"Colleagues, let us take this initiative and help those of our constituents who do not qualify for affordable housing, who are now the new workforce and who otherwise must move to the mainland to own a home because they do not make enough income to buy a home in Hawaii. I am asking the chairmen of both committees to please take this into consideration, especially the crises that I am now facing in West Hawaii when our land, one acre is going for a million dollars.

"These are realities. These are the pragmatics of Hawaii we live in today, and I'm asking for your consideration on these bills that are before your committee. Thank you."

Senator Matsuura also rose to speak on a point of personal privilege and said:

"Mr. President, since this bill was heard in my committee and that of the Planning, Land and Water Use Management Committee, I think I should explain the intent of this measure.

"As the previous speaker said, we have passed some measures in curbing speculative buying. We passed the disclosure bill, the 'use-it-or-lose-it' bill, and we have also passed a bill that withhold tax due from non-residents selling their real estate property.

"Let me explain what this bill does. When a person buys a property and sells it within a period of one year,

he pays a 45 percent surcharge on the capital gain. If you hold it for up to two years, it is a 25 percent surcharge, and up to the third year it is a 12 percent surcharge. This surcharge is for residents, foreigners, everybody.

"Now, let's look at the impact. Let's take, for an example, a woman that owns a small piece of property next to the Ala Wai. She wants to build but she doesn't have the capital so let's say she contacts Dillingham Corporation. Dillingham then decides to go into partnership and then builds a condominium. This lady who owns the property and the developer then sells it to ABC Realty Company who sells the individual units in the condominium. If ABC Realty sells all the units within the first year, they're going to lose 45 percent of their capital gain. Who will build housing units with this law in the book?

"The question that you have to ask is, in a free market situation is speculation something bad? Are investors to be penalized? It is these investors who are making these housing developments to take place.

"Ask any banker, any businessman, any economist, and they'll tell you that the reason why Hawaii's economy is healthy is because of these investors that come to Hawaii. Do we want to give them the message that we don't want them to come to Hawaii to invest? You will be giving a negative report to them. If this bill passes, we need to examine the impact of this bill further. Thank you."

Senator Solomon then continued:

"Mr. President, I know that a point of personal privilege is not really for the purpose of debate, but I just felt compelled to make a response to the previous speaker's remarks.

"I can appreciate the Senator's concerns in terms of investors and speculation because no one knows that better than I do, as I represent the West Hawaii area. I would like to remind the Senator that the reason the bill has a three-year period is for this purpose. I don't want to get too involved in this, but the three-year period was chosen in the bill to slow down the rapid spiralling prices that happens when sales occur and recur in a short period of time. And I think that this is the issue that we're talking about in terms of speculation -- the spiralling cost of the 'aina.' And one just has to be reminded of the two large pieces of land in Mahaiula which the state was interested in. You all read in the newspaper that it went from \$10 to \$17 to \$30 million in just one day.

"So, I think that the purpose of this bill really is to try to bring to the attention of the Legislature that this is a very, very serious problem, to bring to the attention of this body that something definitely has to be done. Because what we're interested in is securing those investors or entrepreneurs who are very serious when they come to Hawaii and make these kinds of investments.

"I do not consider this a bad bill. I consider this a stepping stone, as a bill that could be worked through the process, possibly this session and perhaps lead to something that is more palatable to all of us involved. I just would like to remind the two committee chairmen that this is a bill that is of great importance to my constituency. An average working person cannot even buy a home now in West Hawaii, North and South Kohala.

"So this is the reason for me bringing this matter up on a point of personal privilege. Thank you."

At 11:55 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:56 o'clock a.m.

At this time, Senator Koki introduced to the members of the Senate Ms. Leinaala Drummond, member of the Maui County Council, seated in the gallery.

Senator Tungpalan, on behalf of Senators Mizuguchi, Iwase and herself, then introduced a group of third and fourth grade students from the Hawaiian Language Immersion Program of Waiiau Elementary School and teacher Miss Noe Yong. (The students rose to be recognized and gave a recitation in the Hawaiian language for the Senators and guests.)

At this time, the Senate President made the following observation:

"Members of the Senate, you are reminded that Friday is the first lateral deadline. Senate bills must be reported out to the final committee by Friday in order to remain under active consideration. Hopefully, we can accomplish this without having to stay too late in session on Friday evening.

"Committee chairs are asked to get their committee reports drafted and circulated for signatures as early as possible. All Senators are requested to make themselves available over the next two days to sign committee reports.

"Please get the committee reports down to the Clerk's office as early as possible so that we can avoid the last minute logjam that occurs in our Printshop. Your cooperation will be appreciated. Thank you very much."

ADJOURNMENT

At 11:59 o'clock a.m., on motion by Senator Solomon, seconded by Senator Koki and carried, the Senate adjourned until 11:30 o'clock a.m., Thursday, February 21, 1991.