

## THIRTY-EIGHTH DAY

Tuesday, March 29, 1994

The Senate of the Seventeenth Legislature of the State of Hawaii, Regular Session of 1994, convened at 11:36 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by the Reverend Shigenori Makino, Honpa Hongwanji Mission, after which the Roll was called showing all Senators present.

The President announced that he had read and approved the Journal of the Thirty-Seventh Day.

## STANDING COMMITTEE REPORTS

Senator Ikeda, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 2722) recommending that H.B. No. 3090, H.D. 1, as amended in S.D. 1, pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Chang, seconded by Senator Reed and carried, the report of the Committee was adopted and H.B. No. 3090, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CIGARETTE AND TOBACCO TAX LAW," passed Second Reading and was placed on the calendar for Third Reading on Thursday, March 31, 1994.

Senator Ikeda, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 2723) recommending that H.B. No. 3187 pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Chang, seconded by Senator Reed and carried, the report of the Committee was adopted and H.B. No. 3187, entitled: "A BILL FOR AN ACT RELATING TO THE PAYMENT OF INTEREST ON TAXES," passed Second Reading and was placed on the calendar for Third Reading on Thursday, March 31, 1994.

Senator Ikeda, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 2724) recommending that H.B. No. 3192 pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Chang, seconded by Senator Reed and carried, the report of the Committee was adopted and H.B. No. 3192, entitled: "A BILL FOR AN ACT RELATING TO A TAX ADMINISTRATION FUND," passed Second Reading and was placed on the calendar for Third Reading on Thursday, March 31, 1994.

Senator Ikeda, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 2725) recommending that H.B. No. 3350, H.D. 1, pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Chang, seconded by Senator Reed and carried, the report of the Committee was adopted and H.B. No. 3350, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO DISASTER RELIEF," passed Second Reading and was placed on the calendar for Third Reading on Thursday, March 31, 1994.

Senator Ikeda, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 2726) recommending that H.B. No. 3417 pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Chang, seconded by Senator Reed and carried, the report of the Committee was adopted and H.B. No. 3417, entitled: "A BILL FOR AN ACT RELATING TO CERTAIN REVOCABLE TRUSTS," passed Second Reading and was placed on the calendar for Third Reading on Thursday, March 31, 1994.

Senator Ikeda, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 2727) recommending that H.B. No. 3675, H.D. 1, pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Chang, seconded by Senator Reed and carried, the report of the Committee was adopted and H.B. No. 3675, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO RECOVERY COSTS ASSOCIATED WITH HURRICANE INIKI," passed Second Reading and was placed on the calendar for Third Reading on Thursday, March 31, 1994.

Senator Levin, for the Committee on Human Services, presented a report (Stand. Com. Rep. No. 2728) recommending that H.B. No. 2949, as amended in S.D. 1, pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Chang, seconded by Senator Reed and carried, the report of the Committee was adopted and H.B. No. 2949, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CHILDREN," passed Second Reading and was placed on the calendar for Third Reading on Thursday, March 31, 1994.

## ORDER OF THE DAY

RE-REFERRAL OF  
SENATE CONCURRENT RESOLUTIONS

The President re-referred the following Senate concurrent resolutions that were offered:

Senate Concurrent Resolution	Referred to:
No. 117	Committee on Tourism and Recreation
No. 143	Committee on Tourism and Recreation
No. 207	Committee on Tourism and Recreation

## RE-REFERRAL OF SENATE RESOLUTIONS

The President re-referred the following Senate resolutions that were offered:

Senate Resolution	Referred to:
No. 86	Committee on Tourism and Recreation
No. 110	Committee on Tourism and Recreation
No. 165	Committee on Tourism and Recreation

Senator Graulty then rose on a point of personal privilege, as follows:

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

"Mr. President, yesterday, I received a fax from an organization called Common Sense Now attaching a copy of an ad that they were going to be running in tomorrow's edition of the Honolulu Advertiser and the Star-Bulletin. The ad relates to the issue of same-sex marriage, specifically H.B. 2312, S.D. 1. The fax goes on to say that the individual who is the president of this organization, Mr. Mike Gabbard, indicates that he had personally hand-carried the ad to the offices of Senators Levin, Matsunaga, Kobayashi, Chang and Baker this morning and asked them to call him immediately if the information was incorrect.

"Yesterday, prior to the session, Senator Baker had approached me expressing her concerns about this ad that was going to run, and I indicated that I would speak or try to speak to the individuals involved and ask that they not do this. I got word yesterday afternoon that they had agreed to postpone the publication of the ad until, I believe, sometime tomorrow. I called them back this morning and asked if they would not publish the ad at all. Unfortunately, I was not successful in getting the organization to understand that this kind of an ad was going to polarize the committee even further and make it very difficult for us to come to a consensus on the issue of same-sex marriage.

"Mr. President, I have tried for the last two weeks to come up with the necessary support in order to move the bill, and we are deadlocked. I believe that all ten of us are sincere individuals who have studied the issue very well and are very sincere about our positions on the issue. I have met with almost every one of the Senators and I am convinced of that, and I respect each Senator's opinion with regard to the issue of same-sex marriage. What is important for me is that we continue to try to discuss and deliberate on the issue, respecting each other's rights and trying to find the common ground without being intimidated, perhaps, into taking a position that one otherwise would not take.

"The issue of same-sex marriage, to me, has always been an issue of conscience. It goes to the very basis, I guess, of us as a people and a civilization. It goes to marriage and who should be entitled to marry under the laws of our state.

"I have written seven, perhaps eight (I'm not sure anymore), drafts of the bill. I have tried to satisfy the concerns of each of the members of the committee. At this point, it is my honest and sincere feeling that there is not the consensus in the committee in order to be able to move the bill further. And as a result, although the deadline might be April 8th, I am not going to engage in any further discussions on the bill in the committee.

"Secondly, and perhaps the precipitating reason for my moving up the deadline to come up with the bill, is the ad that's coming out in tomorrow's editions of the newspapers. I do not feel that it is respectful of each Senator's opinions and feelings on an issue of conscience, and I feel that this development will make it very difficult for the Senators to make the best possible judgment with all the facts and with all the information that they need for the benefit of the people of the State of Hawaii.

"As a result of the ad that's coming out in tomorrow's papers, I feel that we need to terminate discussions this session on H.B. 2312 and therefore, as far as I am concerned, Mr. President, 2312 will not be passed onto the floor. I will accept defeat, but I will also do so, fully respecting each member's rights on the matter.

"Thank you, Mr. President."

Senator Matsuura also rose on a point of personal privilege and stated:

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

"On the comments made by the chairman of the Judiciary Committee, I just want the chairman to know that my vote goes along with him. You're not making a decision by yourself only. I'm also casting my vote with you. Whatever your decision is, is my decision. I don't want you to take the brunt of getting the blame for killing this measure. I believe that your comments are believable and fair. Your standards in which you have maintained within the committee are honorable. I want you to know that I support you in your decision.

"Thank you."

Senator Reed, rising on a point of personal privilege, then said:

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

"There's an odd thing that bothers me a lot about legislative bodies and politicians, and that is anger at the idea that the public would attempt to pressure their public servants on an issue, whatever the issue is. In the past, I remember a member of this body complaining aloud about the pressure being brought by Mothers Against Drunk Driving and others trying to get this legislative body to pass legislation that would toughen the drunk driving laws. Essentially, what she said was, if we allow the public to pressure us on this issue, who knows what will come in the future, it's a dangerous precedent being set.

"I think that this reaction today is a further indication of this kind of arrogance that takes great offense at the public exercising not only its justifiable and legitimate right, but essential right to pressure legislators to take stands on issues that are not politically easy and not lacking controversy. Thank you."

Senator Iwase then rose on a point of personal privilege and said:

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

"Mr. President, I'd like to express some comments on the statements made by the chair of the Judiciary Committee. I'd like to join him in his concern over the methodology or the method that may be employed to pressure people to vote a certain way.

"I am disappointed if, in fact, the bill is not going to move because I think there are constitutional issues on the questions of separation of power, and whether or not the Supreme Court of the State of Hawaii properly took this case and, in my own view, judicially legislated a major and momentous policy change.

"I do, however, support the chair and commend the chair for the statements he made regarding the kinds of tactics which may be employed to pressure people to vote. The public does have the right to express its views to all of us. One would hope, and it's too often the exception rather than the rule, that the debate can remain somewhat at a higher plain.

"Arch Lustberg once said that 'we have, today, become a society of crucifiers and inquisitioners' so that we can no longer discuss serious matters because we keep calling each other names or because we keep threatening each other. We have gone through many very serious issues where we have been told in very threatening terms -- not

physically threatening, but perhaps politically threatening -- that if you don't do this, we're going to do that. I don't think that anyone here should vote on an issue of this magnitude because of a threat. The decisions we make should be based on more objective, rational reasons with some factual basis to it, and not because someone is out there saying that we're going to fire missiles at you or blow you out of the water with bazookas. That's just not going to do. That is not democracy -- that's a Salem witch-hunt, and I don't think we need to tolerate that kind of thing.

"I agree with the Senator from Maui that we should listen to public opinion, that we should be cognizant of what the public says to us. We are, after all, a body which is supposed to be the closest to the people of this state, and it is for that reason that I had concerns about the court's decision, because two people on the Supreme Court should never have made such a momentous decision as this.

"I again commend the chair of the Judiciary Committee for standing up in defense of colleagues of mine and his on the committee who appeared to be under some threatening cloud. We should not proceed to act because of that threat.

"Thank you, Mr. President."

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

"Mr. President, I'd like to second the sentiments of the Senator from Mililani and extend my support to the chairman of the Judiciary Committee.

"The Senator from Mililani was quite correct in saying that we are open and sensitive to the expression of public opinion. The difficulty with this particular item is that the level of debate has descended in many sectors to name calling, misstatement of facts, betrayal of trust and confidence, distortion, and exaggeration. We have come to a situation where, in many instances, zealotry has overwhelmed truth and responsibility. It is more prudent, at this time, to take a time out and have everyone who has feelings and positions on this matter to assess how they are going to proceed in elevating the discussion and debate on this issue to a higher and more responsible plane.

"I personally feel that there is time for the Legislature to further consider this matter. In my estimate of the court proceedings, it appears that decisions may not be made on this matter until May or June of 1995. I think that this cooling-off period, if you will, gives us all an opportunity to make a studied inquiry into the very basic institutions that are presented for our discussion and decision, and gives us an opportunity to make use of all of our community's resources in insuring that this studied inquiry does yield the kinds of facts and philosophies that will bring light and truth to the whole matter.

"I'd like to, again, extend my support to the chairman of the Judiciary Committee in establishing this process and moving this process forward. Thank you."

Senator Reed, again on a point of personal privilege, stated:

"Mr. President, if I may continue on the same point of personal privilege.

"The Senator who chairs the Judiciary Committee was kind enough to hand me a copy of the ad in question and I just fail to see what this 'threat' is. The Senator from Mililani used the word 'threat' as if there is some

ominous 'threat' here of bazookas and cannons blowing people out of the water or some such imagery, and the previous speaker talked about name calling and this debate falling to some level that is totally unbecoming such an honorable body. The ad may violate some internal rules or tread upon some lines of sensitivity to people who survive by election, but it sure doesn't constitute any 'threat' or discern any kind of name calling. It simply is a statement of the facts. It says, 'So far five Senators have not signed the bill to support traditional marriage.' It goes on to say, 'If you agree that marriage should be reserved for one man and one woman, phone or fax these Senators.' That's a partial reading, but it's the crux of it and it lists the five Senators who have not yet signed off on H.B. 2312 and provides their phone numbers and fax numbers.

"I would wonder what the hell that 'threatens,' other than public pressure or public involvement in the legislative process. What is the problem with that? This can only be offensive to people who not only no longer encourage public input, but indeed feel threatened by public input."

Senator Iwase then responded:

"Mr. President, having heard the statements from the Senator from Maui, I withdraw the imagery of bazookas and instead substitute submarines running silent, running deep with torpedoes and polaris missiles. Thank you."

At 11:57 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:01 o'clock p.m.

Senator B. Kobayashi then rose on a point of personal privilege and said:

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

"I respect the tough decision made by the Judiciary chairman who, I believe, embodies the highest levels of consciousness of public trust and goodwill. He said that the decision on the same-sex marriage is one of conscience. I'm reminded that we oftentimes vote here in this body on matters in which numbers of votes alone do not constitute the so-called 'right' decision. There have been issues here relating to death penalty, gambling, abortion, and the differences of what constitutes first amendment rights. These are oftentimes made on the basis of conscience, and not necessarily by tallying votes in the community or finding out which way the wind blows.

"We have a Senator here who is a great follower of former President John Kennedy. Kennedy wrote a book Profiles in Courage, in which he describes the votes of a number of statesmen who made decisions on the basis of conscience. Some of them lost their seats in Congress because of those decisions but did what they thought was right and voted their conscience. Thank you."

Senator A. Kobayashi, rising on a point of personal privilege, then said:

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

"What I would like to comment on is the ad that would be appearing tomorrow. It's not so much what the ad says, but it's more what the ad does not say. It infers that some of us on the list are against traditional marriage and for same-sex marriage. It's all these inferences. It also infers that we are not signing that bill. Maybe we didn't sign today, but maybe with some small

modification we might have signed tomorrow. So the ad is offensive not by what it says, but what it does not say and what it infers. Thank you."

Senator Matsuura rose again and added:

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

"In regards to my previous comments, I am a member of the Judiciary Committee. I am one person who doesn't care if I get re-elected and I don't want anything from government. I know what the chairman of Judiciary has gone through writing draft after draft of that bill. I know the consequences of the bill dying. If the bill dies, the state is going to be at a disadvantage when it goes to the court of law.

"I also agree with the Senator from Manoa. You look at the ad, it gives an impression that all the persons who didn't sign are all for same-sex marriage. That is not true. There are other good reasons for not supporting the bill, such as a person's constitutional rights, etc.

"I agree with the Senator from Maui that one can take out any ad, one can pressure any person, one can say anything, but at least be fair and tell the other side of the story also. What made me stand up to support the chairman of Judiciary is because I don't want the headline to read tomorrow: 'Senator Gaulty killed the same-sex marriage bill.' I have no problem in people taking out ads and saying anything, provided that whatever is written or said is the truth and nothing but the truth and provided it tells two sides of the story.

"Thank you very much, Mr. President."

Senator Matsunaga also rose on a point of personal privilege, as follows:

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

"I too would like to express my support for the chair of the Judiciary Committee. As vice chair, I've seen him grapple with very difficult issues this session. Through it all he's been honest to the members and he's shown his integrity and his fairness to all sides. Thank you."

#### ADJOURNMENT

At 12:07 o'clock p.m., on motion by Senator Chang, seconded by Senator Reed and carried, the Senate adjourned until 11:30 o'clock a.m., Wednesday, March 30, 1994.