

FORTIETH DAY

Thursday, March 31, 1994

The Senate of the Seventeenth Legislature of the State of Hawaii, Regular Session of 1994, convened at 11:34 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by the Reverend Hosen Fukuhara, Higashi Hongwanji Mission, after which the Roll was called showing all Senators present with the exception of Senator Hagino who was excused.

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

The following introductions were made to the members of the Senate:

Senators McCartney and Iwase, with the assistance of Senators Tungpalan and Grauly, introduced Miss Juliette Raymundo, Miss Philippines Hawaii, and Mr. Zack Labez. Miss Raymundo and Mr. Labez were presented leis by Senators McCartney and Ikeda.

Senator Chang then introduced officials from the Pacific and Asian Affairs Council, which celebrated its 40th anniversary. The officials were presented a Senate congratulatory certificate and leis by various Senators.

At 11:46 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:51 o'clock a.m.

HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 336 to 339) were read by the Clerk and were disposed of as follows:

Hse. Com. No. 336, transmitting H.C.R. No. 39, H.D. 2, which was adopted by the House of Representatives on March 30, 1994, was placed on file.

By unanimous consent, H.C.R. No. 39, H.D. 2, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE CONVENTION CENTER AUTHORITY TO PREPARE A PLAN RECOMMENDING MEASURES TO MITIGATE THE CONVENTION CENTER'S IMPACT ON THE TRANSPORTATION NETWORK OF THE SURROUNDING AREA," was referred jointly to the Committee on Tourism and Recreation and the Committee on Transportation, then to the Committee on Ways and Means.

Hse. Com. No. 337, transmitting H.C.R. No. 100, H.D. 1, which was adopted by the House of Representatives on March 30, 1994, was placed on file.

By unanimous consent, H.C.R. No. 100, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING A STUDY ON THE FEASIBILITY OF TRANSFERRING THE REGULATORY AUTHORITY OF THE DEPARTMENT OF HEALTH REGARDING DECEPTIVE ADVERTISING OF FOOD PRODUCTS TO THE OFFICE OF CONSUMER PROTECTION OF THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS," was referred to the Committee on Consumer Protection.

Hse. Com. No. 338, transmitting H.C.R. No. 127, which was adopted by the House of Representatives on March 30, 1994, was placed on file.

By unanimous consent, H.C.R. No. 127, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES TO EXAMINE THE FEASIBILITY OF IMPLEMENTING 'INCENTIVE BIDDING' OR 'COST-TIME BIDDING' INTO ITS CONSTRUCTION CONTRACTS, WHERE APPROPRIATE AND APPLICABLE," was referred jointly to the Committee on Government Operations, Environmental Protection and Hawaiian Programs and the Committee on Ways and Means.

Hse. Com. No. 339, transmitting H.C.R. No. 55, H.D. 2, which was adopted by the House of Representatives on March 30, 1994, was placed on file.

By unanimous consent, H.C.R. No. 55, H.D. 2, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF HEALTH AND THE DEPARTMENT OF HUMAN SERVICES TO COORDINATE EFFORTS TO ADDRESS THE SHORTAGE OF DENTAL TREATMENT SERVICES IN THE COUNTY OF MAUI FOR THE MEDICALLY INDIGENT," was referred to the Committee on Health.

ORDER OF THE DAY

ADVISE AND CONSENT

Ldr. Com. Rep. No. 2729 (Gov. Msg. No. 200):

Senator A. Kobayashi moved that Ldr. Com. Rep. No. 2729 be received and placed on file, seconded by Senator McCartney and carried.

Senator A. Kobayashi then moved that the Senate advise and consent to the nomination of SHACKLEY F. RAFFETTO for 1st Judge, Circuit Court of the Second Circuit, for a term of ten years, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, seconded by Senator McCartney.

Senator A. Kobayashi rose in support of the nominee, as follows:

"Mr. President, I rise to speak in support of the confirmation.

"To deny confirmation of a nominee would require evidence, documentation, something specifically substantial. As I've said many times, one of the important reasons for Senate confirmation of judges is the ability to hold public hearings at which time citizens can come forward and either testify in support of or against a nominee. At the public hearing for Shackley Raffetto, we did defer decision-making because concerns were raised by some of the members of the Maui Bar Association. However, we've made inquiries in an attempt to substantiate the concerns that were expressed, some of them in a confidential manner, and in the absence of any evidence that Shackley Raffetto does not meet the qualifications, the committee does unanimously recommend confirmation.

"Thank you."

Senator Baker also rose in support of the nominee and said:

"Mr. President, I rise to speak in support of this confirmation.

"I know Mr. Raffetto mainly by reputation and recommendation from people on Maui that I know well and whose judgment I respect. Mr. Raffetto is considered to be a fair man and one with integrity. In a conversation I had with him when he was making his rounds meeting Senators prior to his confirmation hearing, I was impressed with his candor, with his frankness, and his strong commitment to public service.

"Mr. President, I'm pleased to vote for this confirmation and I encourage my colleagues to do likewise. Thank you."

Senator Reed, rising in support of the nominee, then said:

"Mr. President, I join my colleagues in support of this nomination.

"I don't know Shackley Raffetto personally, although I met him when he was touring the halls to meet with the Senators recently, but I have heard of his name and his works on Maui over the years frequently. He has been serving admirably as a per diem judge and I have never heard anything but positive comments about his character and professionalism. I think, perhaps, we should in the future expect, perhaps a ten percent objection from other attorneys. It may well indeed be human nature, and we might want to call it the 'ten percent envy factor.'

"I wish him well and urge his support. Thank you."

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

Ayes, 23. Noes, none. Excused, 2 (Hagino, Nakasato).

At this time, Senator A. Kobayashi introduced Judge Shackley Raffetto, who was seated in the gallery with a group of supporters. (Judge Raffetto and his supporters rose to be recognized.)

At 11:49 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:52 o'clock a.m.

THIRD READING

H.B. No. 3187:

On motion by Senator Ikeda, seconded by Senator Fernandes Salling and carried, H.B. No. 3187, entitled: "A BILL FOR AN ACT RELATING TO THE PAYMENT OF INTEREST ON TAXES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Hagino, Nakasato).

H.B. No. 3192:

On motion by Senator Ikeda, seconded by Senator Fernandes Salling and carried, H.B. No. 3192, entitled: "A BILL FOR AN ACT RELATING TO A TAX ADMINISTRATION FUND," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Hagino, Nakasato).

H.B. No. 3350, H.D. 1:

On motion by Senator Ikeda, seconded by Senator Fernandes Salling and carried, H.B. No. 3350, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO DISASTER RELIEF," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Hagino, Nakasato).

H.B. No. 3417:

On motion by Senator Ikeda, seconded by Senator Fernandes Salling and carried, H.B. No. 3417, entitled: "A BILL FOR AN ACT RELATING TO CERTAIN REVOCABLE TRUSTS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Hagino, Nakasato).

H.B. No. 3675, H.D. 1:

On motion by Senator Ikeda, seconded by Senator Fernandes Salling and carried, H.B. No. 3675, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO RECOVERY COSTS ASSOCIATED WITH HURRICANE INIKI," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Hagino, Nakasato).

H.B. No. 2949, S.D. 1:

On motion by Senator Levin, seconded by Senator Aki and carried, H.B. No. 2949, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CHILDREN," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Hagino, Nakasato).

RE-REFERRAL OF HOUSE BILLS

The President re-referred the following House bills that were received:

House Bill Referred to:

No. 3194, H.D. 2 Committee on Ways and Means

No. 3426, H.D. 1 Jointly to the Committee on Consumer Protection and the Committee on Ways and Means

Senator Koki, on a point of personal privilege, stated:

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

"Mr. President, I would like to ask the chairman of the Judiciary Committee to yield to some questions."

The President asked the chairman of the Judiciary Committee if he would yield to questions by the Senator from the 24th District, and the chairman having answered in the affirmative, Senator Koki inquired:

"Mr. Chairman, I understand that five Senators have indicated they support H.B. 2312. Is that correct?"

Senator Gaulty answered:

"I understand that five Senators have indicated that they support H.B. 2312. Yes."

Senator Koki continued:

"I also understand that you believe that the situation is hopelessly deadlocked."

Senator Gaulty responded:

"That's what I said, that the situation was deadlocked. Yes."

Senator Koki further inquired:

"If a sixth Senator would support H.B. 2312 in your final draft form, would you pass it out of committee?"

Senator Gaulty answered:

"If a sixth Senator came to my office wanting to sign the committee report, I would not show him the door. Yes."

Senator Koki continued:

"So then H.B. 2312 is not technically dead?"

Senator Gaulty responded:

"As I indicated in my remarks the other day, the deadline is April 8th. I was not going to engage in any further discussions on the bill. The deadline is April 8th and if somebody should come to me before then and sign the committee report, then the bill moves."

Senator Koki concluded:

"So in other words, if one or all five of the undecided Senators would sign the final draft of H.B. 2312, the entire Senate would be able to vote on it?"

Senator Gaulty answered:

"That's correct."

Senator Reed then interjected:

"Mr. President, pursuant to Rule 51 of the Rules of the Senate, I move to recall H.B. 2312 from your Committee on Judiciary, to the Committee of the Whole."

The Chair, noting that there was no second to Senator Reed's motion, ruled:

"Members of the Senate, there is no second, the motion dies."

Senator Aki then rose and stated:

"Mr. President, I will second the motion."

The Chair responded:

"I'm sorry, your second is too late."

Senator Reed then said:

"Mr. President, in the first place, Mason's 'Manual of Legislative Procedures' makes it clear that no second is even necessary. The former Senate President had difficulty turning on the intercom system. That certainly is not an excuse to justify the second not being allowed."

At 12:01 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:02 o'clock p.m.

Senator Reed then rose and stated:

"Mr. President, I rise to appeal the ruling of the Chair."

The Chair responded:

"There has been a motion to appeal the ruling of the Chair. An aye vote will sustain the ruling of the Chair."

The motion to appeal the ruling of the Chair was then put by the Chair and, Roll Call vote having been requested, failed on the following showing of Ayes and Noes:

Ayes, 19. Noes, 4 (Aki, George, Koki, Reed). Excused, 2 (Hagino, Nakasato).

Senator Reed then rose on a point of personal privilege and stated:

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

"This is a total 'shibai.' It isn't that there was no second, the second was simply slow in coming."

"Members of this body pretend to be in favor of openness. This is simply an effort to discuss a bill and get a bill onto the floor of the Senate. To use as an excuse a delayed second is totally outrageous and I hope that it is clearly exposed to the media for what it is. This is an outrageous affront to democracy."

The Chair responded:

"Mr. Minority Floor Leader, you have eight days before the deadline to move a bill back to its original house. You may use your time or your efforts or your good politicking to talk to the chair. You do have that right. You do have that privilege."

Senator Reed then responded:

"Mr. President, in response. This is an issue that deserves to be before the entire body. I will use the next eight days, every single day, to re-make this motion, and I suspect those willing to make a second will be quicker on the draw in order to second the motion to combat this nonsense."

Senator Solomon, rising on a point of personal privilege, then stated:

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

"Mr. President, the Advertiser's cartoon and characterization of the Senate Judiciary Committee members as wimps, won't stand up to scrutiny."

"The Senators did not run for cover. Judiciary Committee members routinely make tough decisions. The Judiciary chairman routinely counts votes on tough bills. None of that was new when the committee confronted the same-sex marriage issue. The new element was media coverage that focused on one decision among many."

"When Chairman Gaulty acted, he was not expressing members' reluctance to vote; he was simply reporting a fact: the votes weren't there for passage."

"Senate committees have returned several measures this session without exciting controversy over lack of support."

"The Advertiser and its cartoonist have a right to free expression, but although cartoonists have a right to free

expression, it is equally well established that with free speech comes responsibility. The paper's presentation of the Senate Committee is unfair and wrong and should be corrected.

"Thank you."

Senator Aki then stated:

"Mr. President, I just want to make it clear that my second was not delayed or in any way late, as implied by some members in this Senate. I immediately stood up and made my second and it was done in less than a minute after the motion was made. I just wanted to make that point clear. Thank you."

ADJOURNMENT

At 12:08 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., Monday, April 4, 1994.