

March
2020

PARLIAMENTARY SITTING SUMMARY

DISCLAIMER

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Wednesday 18th March 2020

9:11

Day 2

I. GOVERNMENT ORDERS OF THE DAY – Reading of Bills

1. CONSTITUTION AMENDMENT BILL 2020 – second reading debate (cont.)

I. Afioga ALIIMALEMANU Alofa Tuuau, Member for Alataua West

The member acknowledged with gratitude the amendment made to the Constitution as it has great value and importance reflecting Samoan culture 'Tu ma Aga FaaSamoa'. ALIIMALEMANU commended Government on its efforts to amend the constitution for the betterment of Samoa. She was also pleased to note the independence of the Land and Titles Court as this was one of the desires of Samoas forefathers. The Member then raised 3 issues on the Bill; (i) to incorporate the age restrictions of 'under 75years' for Judges seated on the Land and Titles High Court and Land and Titles Court of Appeal and Final Review; (ii) to give retired Judges or Directors of the Lands and Titles Court the opportunity to be seated in its Court of Appeal and Final Review, rather than seeking retired Judges from the Supreme Court; and (iii) not to use lawyers to argue land and titles matters as they will apply the law to things that may not be applicable to matters pertaining to land and titles.

II. Afioga FAAULUSAU Rosa Duffy-Stowers, Member for Gagaifomauga No.3

The member acknowledged the amendment to the Constitution and stated that such amendments reflect a diligent government working to ensure laws are applicable to current circumstances – and therefore expressed gratitude for the Bill and requested another amendment to increase the percentage of women representation from 10% to 15%; and to add reserved seats for women in Cabinet.

INTERJECTION – Hon Prime Minister

The Hon Prime Minister interjected on a point of clarification to explain that the quota percentage does not restrict more women from entering Parliament rather to ensure the

number of women representation does not fall below 10% or 5 members. Hon PM therefore challenged the Member for Gagaifomauga No.3 to 'do the job' to attract more women into Parliament.

III. Afioga NAMULAUULU Sami Leota, Member for Faasaleleaga No.3

The Member recalled a conference he attended whereby he was proud to represent our nation as foreign dignitaries highly praised Samoa's legislation developments and progress with amendments to the Constitution to better reflect the FaaSamoa in its laws specifically in its Supreme law. NAMULAUULU continued by noting his appreciation for the amendment as it reflects good governance. In his attempt to further clarify the explanation given by the Hon PM in regards to the definition of 'epidemic' and 'pandemic'. The Member simply stated that 'endemic – refers to one country affected' whilst 'pandemic – more than one country with great impact'

- **LAAULI Leuatea Polataivao Fosi - interjection**

The Member requested to Mr Speaker to permit the omission of words spoken by the Member for Faasaleleaga No.2 - translating Pandemic and Epidemic in Samoan as it sounded offensive and showed the Member being disrespectful to the Legislative members.

INTERJECTION – Hon Prime Minister

The Hon Prime Minister interjected that the English terms used are complicated and therefore in order to better understand the issue the translation to simple Samoan terms is used for easier understanding of our people with the current situation of corona virus.

- **LAAULI Leuatea Polataivao Fosi - interjection**

The Member continued to interject and persistently reasserted his request to omit the terms used by the Member.

Deliberations take a sour turn when the Hon Prime Minister and the Member for Gagaifomauga No.3 engage in a heated disagreement which therefore led to the Hon Speaker ruling to have the Member for Gagaifomauga No.3 removed from his seat.

- **LAAULI Leuatea Polataivao Fosi - Apology**

The Member sought forgiveness from the Hon Speaker, the Hon PM and Parliament for his behaviour as it was his only intention to uphold the dignity of Parliament.

SPEAKERS RULING (overruled)

Mr Speaker overruled his decision to be removed from Chambers and cautioned the Member for Gagaifomauga No.3 of his actions. Hon Speaker advised the Member and the House in general that one must not seek self-righteousness as this leads to disappointment which in turn results to anger and quarrel. 'One's views are right in one's eyes' not everyone interprets and responds to situations the same. *'e tonu lava le tagata i lona lava manatu'*

IV. Afioga SULAMANAIA Fetaiai Tuiliili Tuivasa, Member for Vaimauga East

The Member expressed his sincere thanks to the Leader of the House for his patience and forbearance during deliberations on the Constitution Amendment Bill and expressed full support for the Bill and its importance to the people of Samoa. SULAMANAIA commended the efforts by Government in executing its roles in challenging times. The Member stated that the respond of the nation to the measles epidemic and its control plans for corona virus is a reflection of the tireless and diligent effort by Government to ensure a safe Samoa.

SULAMANAIA noted his support for the increase in Cabinet Ministers and suggested that there be a Minister assigned for all Government ministries. He added that Members who serve more than one parliamentary term are the only candidates qualified for a ministerial post.

INTERJECTION - Hon Prime Minister

The Hon PM interjected on a point of order to clarify that the election of Cabinet Ministers is not based on the years of service one has in Parliament, noting that the name of the Party is the 'Human Rights Protection Party' and asserted that all Members are eligible to be Ministers; the selection does not discriminate on the years of service.

Afioga SULAMANAIA Fetaiai Tuiliili Tuivasa, Member for Vaimauga East (cont.)

The Member continued by suggesting that matai's with limited academic knowledge (those who dropped out of school due to limited financial status to help families with sustainable living) to be considered as Land and Titles Judges – as they may not be academically versed, but they possess wealth of cultural background and upbringing which is appropriate for the Land and Titles Court.

INTERJECTION - Hon Prime Minister

The Hon PM interjected to clarify the difference between matters heard in the Land and Titles Court and the Supreme Court; with Supreme Court matters, when an individual is charged it only affects the individual, however in the Lands and Titles Court, matters have greater impact as families, villages or constituencies are affected. The Hon PM stated that he is well aware of such situations as most grieved families seek his office for assistance for an alternative to change unjust decisions.

Afioga SULAMANAIA Fetaiai Tuiliili Tuivasa (cont.)

The Member queried whether the Bill will give him and his constituency the opportunity to retrieve the lands of his constituency which have been taken by Government in the past.

INTERJECTION - Hon Prime Minister

The PM stood on a point of order to inform the Member that currently there are boundaries which identify land owned by Government. Furthermore, the Bill will be referred to Committee in due time where concerns and queries may be raised on the matter.

V. Afioga PESETA VAIFOU TEVAGAENA, Member for Faasaleleaga No.4

The Member conveyed appreciation for the changes proposed by the Bill and expressed full support for the Bill. The only request made by the Member was to incorporate village fines and penalties currently practiced in most villages to abide with current cultural practices and advised Members and the village council to refrain from inflicting harsh/extreme fines as these result to families resorting to Land and Titles Court to voice grievances.

VI. Afioga SALAUSA JOHN AH CHING, Member for Faleata East

The Member expressed full support on the Constitution Amendment, then suggested that Government continues amending legislation accordingly to suit current practises as well as to better reflect Samoa's customs and culture as most legislation/ordinance were taken from European laws. On the issue of corona virus, the member expressed gratitude to the Government of New Zealand for taking precautionary measures to ensure the safety of all passengers travelling from New Zealand to the Pacific.

Hon Prime Minister - response to issues raised during second reading debate on the Constitution Amendment Bill 2020.

The Hon Prime Minister conveyed sincere apologies to all the Members and stated that it is important to know and admit when one is at fault. He then summed up the intents of the Constitution amendment Bill:

- To recognise "tu ma aga" FaaSamoa in the decision making for Land and Titles Court (LTC);
- grant the independence of the LTC for their final decisions;
- Leave to Appeal will only be granted by the President of the LTC for a decision to be referred to Court of Appeal and Final Review;
- England/common law will not apply in LTC jurisdiction;
- LTC will not consider cases of Res Judicata; and
- The 'palagi' courts will not be used for any final decision on matters pertaining to LTC.

The Hon PM stated that the Bill will be referred to a Special Committee for further consideration.

In regards to the issue of ownership of government of 'Land below Water Level' - the rationale behind this is so government can preserve these assets so as to ensure its sustainability and availability for future generations to come. He then acknowledged issues raised by members particularly in age limit for Judges LTC;

On the issue of quota percentage for women, this issue will be considered by the Special Committee in which the Bill will be referred to. In regards to postponing General Elections, the Hon PM clarified that the path will be crossed when we get there (if the corona virus enters Samoa) – He then acknowledged Members and their valuable contribution. The Hon Prime Minister mentioned the Constitutional Convention 1960- forefathers anticipation for changes of the Articles of the Constitution pertaining to the LTC will be changed thus today's amendments.

Mr. Speaker put forth the question for the Bill to be second read; approved

MOTION - Hon Prime Minister

The Hon PM moved the following:

1. To set aside S.O so as to make available the establishment of Special Parliamentary Committee to consider the three Bills (Constitution Amendment Bill 2020, Lands and Titles Bill 2020 & Judicature Bill 2020)
2. The Election of the Special Committee Members:
 1. Afioga GATOLOAIFAANA Amataga Alesana Gidlow (Chairperson)
 2. Afioga NAMULAUULU Sami Leota (Deputy Chairperson)
 3. Afioga SULAMANAIA Fetaiai Tauiliili Tuivasa (Member)
 4. Afioga FAAULUSAU Rosa Duffy Stowers (Member)
 5. Afioga LEANA Ronnie Posini (Member)
 6. Afioga FUIMAONO Teo Samuelu Teo (Member)
 7. Tofa Ili Setefano Taateo (Member)

Motion seconded and approved.

The Bill was second read and referred to the 'Special Parliamentary Committee'.

2. JUDICATURE BILL 2020 – second reading

The Hon Minister of Justice and Courts Administration moved the second reading of the Bill and spoke to clarify the purpose of the Bill.

Afioga Hon FAAOLESA Katopau Ainuu – Minister for Justice and Courts Administration

The Hon Minister clarified that the Bill updates laws relating to Civil and Criminal Courts of Samoa in which he then highlighted some of the main changes proposed by the Bill:

- Civil Appeal- increase matters to be dealt with by the Court of Appeal from \$300 to the value of \$3000 or upwards;
- The new Bill (contrast to the Judicature Ordinance 1961) will include only administrative, procedural and civil appeal provisions practices in the Civil and Criminal Courts, all others are now being referred to the Constitution.
- Other matters that were provided by the Judicature Ordinance 1961 has now been inserted into Constitution such as; the election of a Senior District Court Judge to sit in proceedings; localization of the panel for Court of Appeal; and the President of LTC referred to Komisi thus leaving a vacancy in the Judicial Service Commission (JSC) thus the need to appoint another member to occupy the vacancy.

Proceedings were suspended at 10:47am
Proceedings reconvened at 11:41am.

I. Tofa LEALAILEPULE Rimoni Aiafi, Member for Faleata West

The Member reiterated the phrase 'Justice delayed is Justice denied' therefore supporting the Bill as it avoids such delay. The Member then suggested that there be a timeframe incorporated into the Bill to ensure Judges give a ruling and make decisions within a stipulated period (such as 2 to 3 months). He then suggested that severe cases should be given priority. The member also noted his support for local judges to be seated in the Court of Appeal and Final Review for LTC unless expertise is required from overseas.

MOTION

The Hon PM moved a motion to extend sitting hours to ensure businesses in the Order Paper are complete and then the Assembly will adjourn.

Motion seconded and approved.

II. OLO FITI Afoa Vaai, Member for Salega East

The Member spoke on Constitution Amendment Bill

Prime Minister - Interjection

The Hon Prime Minister stated that the Member is referring to the wrong bill.

He asserted that there is a shortage of Judges of the Court which is the reason the Ministry turns to foreign judges to do the work, however due to the absence of understanding the Samoan culture, it is highly encouraged that our local Judges be utilised and work diligently to give rulings and complete cases to avoid bringing in overseas judges. The Hon PM further suggested the use of Samoan language during court proceedings.

• Afioga Hon FAAOLESA Katopau Ainuu – Minister for Justice and Courts Administration

The Hon Minister acknowledged Members who spoke on the Bill and stated that all concerns have been noted and will be taken into consideration.

Mr Speaker put forth the question that the Bill is read a second time; approved.

MOTION

The Hon Prime Minister moved a motion for the Bill to be referred to the Special Parliamentary Committee; motion seconded and approved.

The Judicature Bill 2020 was read a second time and referred to the Special Parliamentary Committee.

3. LAND AND TITLES BILL 2020 - second reading

The Minister of Justice and Courts Administration moved for the second reading of the Bill and spoke to clarify the purpose of the Bill; motion seconded and approved.

Afioga Hon FAAOLESA Katopau Ainuu – Minister for Justice and Courts Administration

The Hon Minister clarified that the Bill essentially replaces the Lands and Titles Bill 2019 that was tabled in Parliament last year as it did not address all issues; and with the changes to the Constitution the Land and Titles Bills was altered accordingly to reflect the Constitution.

1. LTC being independent- Supreme Court will not be involved in any way with LTC matters (e.g. Appeal matters);
2. An independent President for LTC (President will be the head of the LTC and not as last time where the Chief Justice oversaw Supreme Court and LTC)
3. Take into account Tu ma Aga a Samoa as per Article 9 of the Constitution.

The Hon Minister explained that public consultations were held by the Special Inquiry Committee in 2016 and the result stated that 98% of witnesses who appeared before the Committee supported the new changes; therefore Cabinet instructed the Attorney General to draft the Bill inserting recommendations. The Committee appointed by the Cabinet included the Office of the Attorney General, the Ministry of Justice and Courts Administration and the Samoa Law Reform Commission which prepared the Bill for 5 months. Furthermore, other changes include a three tier hierarchy of the LTC: Court of First Instance LTC, LTC High Court and LTC Court of Appeal and Final Review; and the Bill establishes a Commission 'Komisi' similar to the JSC presided by the President of the LTC and two other Judges who will deal with the recruitment and termination of Judges;

I. Tofa OLO FITI Vaai, Member for Salega East

The Member queried whether the new amendment of the Land and Titles Bill can review decisions of matters which have already been decided more than 10 years back.

Afioga Hon FAAOLESA Katopau Ainuu – Minister for Justice and Courts Administration

The Hon Minister stated that the Bill provides the President of the LTC and other Judges the opportunity to review cases that have already been decided upon - whether it is worth reconsidering.

Tofa OLO Fiti Afoa Vaai (cont.)

The Member voiced his concern in regards to the amount of time and conflict which may possibly be brought about if such matters can be revisited and therefore sought clarification by the Minister.

II. Susuga Hon LAAULI Polataivao Leuatea, Member for Gagaifomauga No.3

The Member raised concern on the limit of five (5) chiefly titles (Matai Sa’o) within a family to be registered; and the age restrictions for one to be eligible for a matai title (25 years), the Member suggested that these issues should be reconsidered.

III. Tofa NAFOITOA Talaimanu Ketu, Member for Gagaemauga No.3

The Member queried the application for Leave to Appeal to review cases by the President of the LTC and advised the Minister to include other Judges to assist the President with his review. The Member sought further clarification on the difference between the Vice President and the Deputy.

Afioga Hon FAAOLESA Katopau Ainuu – Minister for Justice and Courts Administration

The Hon Minister informed Members that all concerns have been duly noted.

Hon Prime Minister

The Hon PM concluded the second reading debates by assuring Members and Samoa that there have been various difficulties noted by the Land and Titles Court hence the termination of some LTC Judges. The Bill attempts to give the opportunity to address some of the concerns that have been faced by families and villages due to unjust decisions on matters pertaining to Lands and Titles.

Mr Speaker put forth the question that the Bill is read a second time; approved.

MOTION

The Hon Prime Minister moved a motion for the Bill to be referred to the Special Parliamentary Committee; motion seconded and approved.

The Land and Titles Bill 2020 was read a second time and referred to the Special Parliamentary Committee.

4. Energy Management Bill 2020 - second reading

Afioga Hon SILI Epa Tuiofi – Minister of Finance

The Hon Minister moved the second reading of the Bill and spoke to clarify the purpose of the Energy Management Bill 2020.

The Hon Minister clarified that the Bill is for the purpose of improving the management and monitoring of all matters in regards to energy; energy efficiency and renewable energy (The Bill seeks to address all issues regarding the energy sector- seeks to include all provisions that were under the Energy Efficiency Act 2017, Oil Fuel Supply Act 1974 and the Petroleum Act 1984 (now repealed). Furthermore, the Bill excludes the electricity sector (Electricity Act 2010) as this continues to be administered by the Office of the Regulator because of complexities of administering electricity.

I. Afioga SULAMANAIA Fetaiai Tauiliili Tuivasa, Member for Vaimauga East

The Member expressed concern with the changes in climatic conditions and numerous diseases going around, it is important to have contingency plans; and therefore suggested to have reserved full tanks of fuel for dark times as she deals with the impacts of the global health crisis.

Hon Prime Minister

The Petroleum Act 1984 was discussed at the time whereby foreign reserves were low, and petroleum supply was tendered first to the Shell Company then later on to the Mobile Company. The Petroleum Act 1984 enabled the government to construct their own tanks to store petroleum instead of relying on foreign companies to store them as it was an added cost to Government; The Hon Prime Minister stressed on the importance of having tank fuels stored at a safe location instead of the current process whereby fuel is being pumped from the sea pipes to the tanks on the wharf.

Hon SILI Epa Tuioti, Minister of Finance

The Hon Minister elaborated on the statements made by the Hon Prime Minister by adding that donors continue to express their willingness to assist with building more tanks for fuel storage. At the moment, tank storage can suffice 3 months however the government is willing to build more tanks. The Hon Minister explained that one of Government's priority to continue vessels coming in especially petroleum vessels so we can have sufficient supply especially during times of Corona virus

Mr Speaker put forth the question that the Bill is read a second time; Approved.

The Energy Management Bill 2020 was read a second time and referred to the Finance and Expenditure Committee

5. Teachers Amendment Bill 2019 - Consideration in detail

Chairperson for Social Sector Committee put forth motion for the Assembly to consider its report on the Teachers Amendment Bill 2019 with amendments

Clause 2- approved

Clause 3- approved

Clause 4- approved

Clause 1 and Short Title- approved with amendments (now Teachers Amendment Bill 2020)

Teachers Amendment Bill 2020 proceeded with amendments

6. Tax Administration Amendment Bill 2019 - Consideration in detail

Chairperson of the Economic Sector Committee put forth motion for the Assembly to consider its report on the Tax Administration Amendment Bill 2019 with amendments.

Clause 2- approved

Clause 3- approved

Clause 4- approved

Clause 1 and Short Title- approved with amendments (Tax Administration Amendment Act 2020)

Tax Administration Bill 2020 progressed with amendments

7. ROAD TRAFFIC AMENDMENT BILL 2019 - Consideration in detail

The Chairperson of the Infrastructure Committee moved a motion for the Assembly to consider its report on the Road Traffic Amendment Bill 2019 with amendments.

Clause 2 - approved with amendments

Clause 3 - approved with amendments

Clause 4 - approved with amendments

Clause 5 - approved with amendments

New Clause 6 - approved with amendments

New Clause 7- inserted by Committee- approved

Short Title and Clause 1 - approved with amendments (now Road Traffic Amendment Bill 2020)

The Road Traffic Amendment Bill 2020 proceeded with amendments

MOTION – Hon Prime Minister

The Hon Prime Minister moved a motion to set aside SO 108(4) for the third reading of the bills that were considered in detail.

8. TEACHERS AMENDMENT BILL 2020 - third reading

The Hon Minister for Education, Sports and Culture, LOAU Solamalemalo Keneti Sio moved a motion for the Teachers Amendment Bill 2020 to be third read; motion seconded and approved

The Teachers Amendment Bill 2020 was third read and passed the Assembly

9. TAX ADMINISTRATION AMENDMENT BILL 2020 - third reading

Hon Minister for Custom and Revenue moved a motion for the third reading of the Tax Administration Amendment Bill 2020; motion seconded and approved

The Tax Administration Amendment Bill 2020 was third read and passed the Assembly

10. ROAD TRAFFIC AMENDMENT BILL 2020 - third reading

The Hon Minister for Works, Transport and Infrastructure, PAPALIITELE Niko Lee Hang moved a motion for the Bill to be third read; motion seconded and approved

Road Traffic Amendment Bill 2020 was third read and passed the Assembly

CONSIDERATION OF PARLIAMENTARY COMMITTEES REPORTS AND GOVERNMENT RESPONSES

P.P. 2019/2020 No.190, Report of the Finance and Expenditure Committee on the Assembly Resolution as at January sitting on the Member for Gagaifomauga No.3

Afioga ALIIMALEMANU Alofa Tuuau, Chairperson Finance and Expenditure Committee

The Chairperson for the Finance and Expenditure Committee presented the findings of the Committee during its investigation on the Member for Gagaifomauga No.3 LAAULI Leuatea Polataivao Fosi Schmidt.

The documents presented in Parliament by the Member for Gagaifomauga No.3 were different to those which the Committee sought first hand by the Ministry for Customs and Revenue and the freight company involved. The differences in the names of those provided in the 2 separate Bills of Lading (Bill of Lading No.1 and Bill of Lading No.2) The Chairperson stated that the Committee conclude by noting the Member's false documentation provided to the Assembly which was an indication that he deceived Parliament.

Papers referred to Committee indicated the following:

- Standby Generator cost- NZD 13,500 (equivalent to 22,950 SAT) not SAT\$100,000 as stated by the member
- Standby Generator strength: 30KVA and not 200 KVA as stated by the Member (EPC confirmed that the strength of the 30kva generator is only sufficient to cover one family/household)

- Duty paid for the generator- NONE
- Standby Generator was purchased in 2017 and not 2019 as stated by the Member (The Committee noted that the Standby generator was brought into the country in an illegal manner).

The Recommendation made by the Finance and Expenditure Committee was to 'disprove the documents tabled by the Member'.

LAAULI Leuatea Polataivao Fosi, Member for Gagaifomauga No.3

The Member argued that the matter be referred to an independent Committee as there was a conflict of interest between himself and the Committee and stated that he was never asked by the Committee to give his statement on the matter. He also stated that the Ministry of Customs and Revenue have written a letter of apology in regards to the matter.

SPEAKERS RULING:

The Hon Speaker ruled and advised the member that the Motion put forth by the Prime Minister was for the Finance and Expenditure Committee to deliberate on the issue based on the documents he tabled.

MOTION:

The PM stated that based on the motion moved on the 24th January and the FEC's Report being tabled, he puts forth a motion to refer the report tabled by the FEC Committee to the Privileges and Ethics Committee for further consideration (pursuant to S.O181(2)).

MEMBERS OF THE PRIVILEGES AND ETHICS COMMITTEE:

1. NAFOITOA Talaimanu Ketu (Chairperson)
2. TUILAEPALUPESOLIAI Neioti Sailele Malielegaoi (or representative) (Member)
3. LAUOFO Fonotoe Pierre Lauofo (Member)
4. TAEFU Lemi (Member)
5. TAFUA Maluelue Tafua (Member)
6. AUMUA Isaia Lameko (Member)
7. TOFA Foleni Lio Tama Galu (Member)
8. ALAIASA Sepulona Moananu (Member)

TERMS OF REFERENCE:

1. To deliberate on FEC's report pursuant to S.O 186 and report back to Parliament.
Motion seconded and Approved.

MOTION Hon Prime Minister:

Hon Prime Minister moved a motion to set aside S.O 30(2) to allow Parliamentary Sitting to recommence in April 28, 2020 to consider other matters presented in Parliament.

**Proceedings were adjourned at 2:11 pm;
and will reconvene on Tuesday 28 April 2020 at 9am.**