

FORTY-SEVENTH DAY

Monday, April 2, 1979

The Senate of the Tenth Legislature of the State of Hawaii, Regular Session of 1979, convened at 11:00 o'clock a.m., with the President in the Chair.

The Divine Blessing was invoked by the Reverend Robert Shuler, III, of the Aiea United Methodist Church, after which the Roll was called showing all Senators present.

The President announced that he had read and approved the Journal of the Forty-Sixth Day.

Senator Anderson introduced to the members of the Senate 52 members of the McCully Senior Citizens Club.

MESSAGE FROM THE GOVERNOR

A message from the Governor (Gov. Msg. No. 113), transmitting the technical background report on the Aloha Tower Plaza and the Hawaii World Trade Center, noting that this volume supplements the September 1978 summary report which was sent earlier and outlines the studies leading to the recommendations contained in the summary; commending this background technical report to the Legislature for consideration and adding that the report was prepared by the State Department of Planning and Economic Development's consultants, Charles R. Sutton and Associates, Inc., and Hastings, Martin, Hallstrom & Chew, Ltd., was read by the Clerk and was referred to the Committee on Economic Development.

HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 339 to 342) were read by the Clerk and were disposed of as follows:

A communication from the House (Hse. Com. No. 339), returning Senate Bill No. 621, S.D. 1, which passed Third Reading in the House of Representatives on March 30, 1979, was placed on file.

A communication from the House (Hse. Com. No. 340), returning Senate Bill No. 625, S.D. 1, which passed Third Reading in the House of Representatives on March 30, 1979, was placed on file.

A communication from the House (Hse. Com. No. 341), returning Senate Bill No. 626, S.D. 1, which

passed Third Reading in the House of Representatives on March 30, 1979, was placed on file.

A communication from the House (Hse. Com. No. 342), returning Senate Bill No. 627, S.D. 1, which passed Third Reading in the House of Representatives on March 30, 1979, was placed on file.

SENATE CONCURRENT RESOLUTIONS

The following concurrent resolutions (S.C.R. Nos. 76 and 77) were read by the Clerk and were disposed of as follows:

A concurrent resolution (S.C.R. No. 76), entitled: "SENATE CONCURRENT RESOLUTION REQUESTING CONGRESS TO PROMOTE THE EFFICIENCY OF AND PROVIDE ADEQUATE REIMBURSEMENT TO HAWAII'S MULTI-LEVEL HEALTH CARE FACILITIES", was jointly offered by Senators Toyofuku, Abercrombie, Anderson, Yamasaki, O'Connor, Soares, Campbell, Hara, Yee, Kawasaki, Carroll, Carpenter and Cobb.

By unanimous consent, S.C.R. No. 76 was referred to the Committee on Health.

A concurrent resolution (S.C.R. No. 77), entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE PRESIDENT, CONGRESS, MEMBERS OF HAWAII'S CONGRESSIONAL DELEGATION, AND APPROPRIATE FEDERAL AGENCIES TO PROVIDE ALL NECESSARY SUPPORT TO GENERAL LYMAN FIELD OF HILO, HAWAII", was jointly offered by Senators Hara, Carpenter, Ushijima, Young, Kuroda, Campbell, Cayetano, George, Toyofuku, Cobb, Takitani, Saiki, Yee, Mizuguchi, Chong, Yamasaki, O'Connor, Soares and Yim.

By unanimous consent, S.C.R. No. 77 was referred to the Committee on Transportation.

SENATE RESOLUTIONS

The following resolutions (S.R. Nos. 327 to 332) were read by the Clerk and were disposed of as follows:

A resolution (S.R. No. 327), entitled: "SENATE RESOLUTION REQUESTING CONGRESS TO PROMOTE THE EFFICIENCY OF AND PROVIDE ADEQUATE REIMBURSEMENT TO HAWAII'S MULTI-LEVEL HEALTH CARE FACILITIES", was jointly offered by Senators Toyofuku, Abercrombie, Anderson, Yamasaki, O'Connor, Soares, Hara, Yee, Kawasaki, Carroll, Carpenter, Cobb and Campbell.

By unanimous consent, S.R. No. 327 was referred to the Committee on Health.

A resolution (S.R. No. 328), entitled: "SENATE RESOLUTION REQUESTING THE PRESIDENT, CONGRESS, MEMBERS OF HAWAII'S CONGRESSIONAL DELEGATION, AND APPROPRIATE FEDERAL AGENCIES TO PROVIDE ALL NECESSARY SUPPORT TO GENERAL LYMAN FIELD OF HILO, HAWAII", was jointly offered by Senators Hara, Carpenter, Ushijima, Young, Kuroda, Campbell, Cayetano, George, Toyofuku, Cobb, Takitani, Saiki, Yee, Mizuguchi, Chong, Yamasaki, Soares, O'Connor and Yim.

By unanimous consent, S.R. No. 328 was referred to the Committee on Transportation.

A resolution (S.R. No. 329), entitled: "SENATE RESOLUTION COMMENDING BRUCE CARTER FOR HIS EFFORTS TO MAKE HAWAII THE SPORT FISHING CAPITOL OF THE WORLD", was jointly offered by Senators Kuroda, Yee, Carroll, Mizuguchi, Young, Cayetano, Kawasaki, Yamasaki, Campbell, Carpenter, Cobb, Ajifu, Takitani, Hara, Abercrombie, Yim, George, Soares, Saiki, Anderson, Wong, Toyofuku and Chong.

On motion by Senator Yee, seconded by Senator Carroll and carried, S.R. No. 329 was adopted.

Senator Kuroda then introduced to the members of the Senate Mr. Bruce Carter and his wife, Mrs. Carter. Senator Young presented a certified copy of the resolution and a lei to Mr. Carter, while Senator Yee presented a certified copy of the resolution and a lei to Mrs. Carter.

At 11:17 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:20 o'clock a.m.

A resolution (S.R. No. 330), entitled: "SENATE RESOLUTION REQUESTING THE SUPERINTENDENT OF EDUCATION TO CONTINUE THE 3-ON-2 PROGRAM AT THE CURRENT LEVEL OF IMPLEMENTATION", was offered by Senator Campbell.

By unanimous consent, S.R. No. 330 was referred to the Committee on Ways and Means.

A resolution (S.R. No. 331), entitled: "SENATE RESOLUTION REQUESTING THE SENATE COMMITTEE ON WAYS AND MEANS TO CONDUCT EVENING PUBLIC HEARINGS ON THE STATUS OF HAWAII BIOGENICS", was jointly

offered by Senators Anderson and Soares.

By unanimous consent, S.R. No. 331 was referred to the Committee on Ways and Means, then to the Committee on Legislative Management.

A resolution (S.R. No. 332), entitled: "SENATE RESOLUTION RELATING TO THE IMPLICIT DANGERS OF STORED NUCLEAR MATERIALS RECOMMENDING THE DEVELOPMENT OF AN ADEQUATE RADIOLOGICAL MONITORING PROGRAM AND EMERGENCY RESPONSE SYSTEM FOR NUCLEAR INCIDENTS", was offered by Senator Chong.

By unanimous consent, S.R. No. 332 was referred to the Committee on Health, then to the Committee on Intergovernmental Relations.

STANDING COMMITTEE REPORTS

Senator Yamasaki, for the Committee on Legislative Management, presented a report (Stand. Com. Rep. No. 950), informing the Senate that Senate Concurrent Resolution Nos. 73 to 75, Senate Resolution Nos. 323 to 326 and Standing Committee Report Nos. 819 to 949 have been printed and are ready for distribution.

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

Senator Toyofuku, for the Committee on Human Resources, presented a report (Stand. Com. Rep. No. 951), recommending that Senate Concurrent Resolution No. 52 be adopted.

On motion by Senator Toyofuku, seconded by Senator Yamasaki and carried, the report of the Committee was adopted and S.C.R. No. 52, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING A REVIEW BY THE STATE AND COUNTY GOVERNMENTS OF CERTAIN EMPLOYMENT PRACTICES AND PROCEDURES", was adopted.

At 11:25 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:37 o'clock a.m.

ORDER OF THE DAY

THIRD READING

House Bill No. 1322, H.D. 1, S.D. 1:

On motion by Senator Carpenter, seconded by Senator Campbell and carried, H.B. No. 1322, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT

RELATING TO THE STATE HEALTH PLANNING AND DEVELOPMENT AGENCY", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 598:

On motion by Senator Cobb, seconded by Senator Chong and carried, H.B. No. 598, entitled: "A BILL FOR AN ACT RELATING TO THE UNIFORM SECURITIES ACT (MODIFIED)", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 1640:

On motion by Senator Cobb, seconded by Senator Chong and carried, H.B. No. 1640, entitled: "A BILL FOR AN ACT RELATING TO THE IMPORTATION OF LIQUOR FOR TRADE SHOWS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 797 (H.B. No. 4):

By unanimous consent, consideration of Stand. Com. Rep. No. 797 and H.B. No. 4 was deferred to the end of the calendar.

Standing Committee Report No. 798 (H.B. No. 286, H.D. 1):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 798 was adopted and H.B. No. 286, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ADULT CARE HOMES, FAMILY BOARDING HOMES, AND OTHER SIMILAR INSTITUTIONS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 799 (H.B. No. 455, H.D. 1, S.D. 2):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 799 was adopted and H.B. No. 455, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAIIAN HOMES COMMISSION ACT", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 800 (H.B. No. 577, S.D. 1):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 800 was adopted and H.B. No. 577, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO SERVICES FOR INDIGENT CRIMINAL DEFENDANTS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 801 (H.B. No. 588, S.D. 1):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 801 was adopted and H.B. No. 588, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII EMPLOYMENT SECURITY LAW", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Abercrombie).

Standing Committee Report No. 802 (H.B. No. 600, H.D. 1, S.D. 1):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 802 was adopted and H.B. No. 600, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PARTNERSHIP FEES", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Anderson).

Standing Committee Report No. 803 (H.B. No. 602, S.D. 2):

Senator Cayetano moved that Stand. Com. Rep. No. 803 be adopted and H.B. No. 602, S.D. 2, having been read throughout, pass Third Reading, seconded by Senator Kawasaki.

Senator Yee then asked for a ruling of the Chair regarding a conflict of interest as follows:

"Mr. President, I would ask to be excused from voting on this bill and some others because of my position as an executive officer of some of these institutions. If I were just a mere employee, I would not be so concerned, but I serve as director and as a member of the executive committee for some of these institutions, and I feel that a conflict of interest does exist and would

ask that I be excused from voting."

The President ruled that Senator Yee is in conflict and would be excused from voting on this measure.

The motion was then put by the Chair and carried, and Stand. Com. Rep. No. 803 was adopted and H.B. No. 602, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO FINANCIAL INSTITUTIONS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, 1 (Anderson).
Excused, 1 (Yee).

Standing Committee Report No. 804 (H.B. No. 603, H.D. 1):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 804 was adopted and H.B. No. 603, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE BOARD OF PHARMACY", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Anderson).

Standing Committee Report No. 805 (H.B. No. 616, S.D. 2):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 805 was adopted and H.B. No. 616, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE HIGHWAY SUPPLIES AND EQUIPMENT ACCOUNT", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 806 (H.B. No. 732, S.D. 2):

By unanimous consent, consideration of Stand. Com. Rep. No. 806 and H.B. No. 732, S.D. 2, was deferred to the end of the calendar.

House Bill No. 737, S.D. 1:

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, H.B. No. 737, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE CONFIDENTIALITY OF TAX RETURNS AND INFORMATION IN TAX RETURNS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 738, S.D. 1:

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, H.B. No. 738, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INHERITANCE AND ESTATE TAXES", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 809 (H.B. No. 739, S.D. 1):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 809 was adopted and H.B. No. 739, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO STATE HIGHWAY CLEARING ACCOUNTS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 810 (H.B. No. 1200, H.D. 1, S.D. 2):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 810 was adopted and H.B. No. 1200, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO TAXATION", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 811 (H.B. No. 1338, H.D. 2, S.D. 2):

By unanimous consent, consideration of Stand. Com. Rep. No. 811 and H.B. No. 1338, H.D. 2, S.D. 2, was deferred to the end of the calendar.

Standing Committee Report No. 812 (H.B. No. 1473, H.D. 1, S.D. 1):

By unanimous consent, consideration of Stand. Com. Rep. No. 812 and H.B. No. 1473, H.D. 1, S.D. 1, was deferred to the end of the calendar.

Standing Committee Report No. 813 (H.B. No. 1645, S.D. 2):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 813 was adopted and H.B. No. 1645, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO ABANDONED VESSELS", having been

read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 1649, S.D. 1:

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, H.B. No. 1649, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO AUDIT AND ACCOUNTING", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 815 (H.B. No. 1647, H.D. 2, S.D. 1):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 815 was adopted and H.B. No. 1647, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ADDITIONAL SUPPORT TO THE UNIVERSITY OF HAWAII FROM EXTRAMURAL FUNDS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 1673, S.D. 1:

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, H.B. No. 1673, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE INSTITUTE FOR MANAGEMENT AND ANALYSIS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 817 (H.B. No. 1687, S.D. 1):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, H.B. No. 1687, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CONVEYANCE TAX", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 820 (H.B. No. 3, H.D. 1, S.D. 1):

Senator Cayetano moved that Stand. Com. Rep. No. 820 be adopted

and H.B. No. 3, H.D. 1, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Kawasaki.

Senator Carroll then asked to be excused from voting on the measure as his law firm represents one of the claimants in the measure.

The President announced that Senator Carroll would be excused from voting.

The motion was put by the Chair and carried, and Stand. Com. Rep. No. 820 was adopted and H.B. No. 3, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE RELIEF OF CERTAIN CLAIMS AGAINST THE STATE AND PROVIDING APPROPRIATIONS THEREFOR", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Carroll).

Standing Committee Report No. 821 (H.B. No. 638, H.D. 2):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 821 was adopted and H.B. No. 638, H.D. 2, entitled: "A BILL FOR AN ACT RELATING TO AN OKINAWAN CELEBRATION COMMISSION", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 822 (H.B. No. 740, S.D. 1):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 822 was adopted and H.B. No. 740, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO STATE HIGHWAY FUND", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 823 (H.B. No. 866, S.D. 1):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 823 was adopted and H.B. No. 866, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO REVENUE BONDS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 824
(H.B. No. 1127, H.D. 1):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 824 was adopted and H.B. No. 1127, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE USE OF CREDIT CARDS FOR HOSPITAL CHARGES", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Hara).

Standing Committee Report No. 825
(H.B. No. 1654, S.D. 1):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 825 was adopted and H.B. No. 1654, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO AQUACULTURE LOANS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 826
(H.B. No. 1695, H.D. 1):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 826 was adopted and H.B. No. 1695, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE ESTABLISHMENT OF A CENTENNIAL COMMISSION ON SCANDINAVIANS COMING TO HAWAII", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 158, H.D. 1:

On motion by Senator Cobb, seconded by Senator Chong and carried, H.B. No. 158, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE PRACTICE OF BARBERING", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 828
(H.B. No. 160, H.D. 1):

By unanimous consent, consideration of Stand. Com. Rep. No. 828 and H.B. No. 160, H.D. 1, was deferred to the end of the calendar.

House Bill No. 511, S.D. 1:

On motion by Senator Cobb, seconded by Senator Chong and carried, H.B.

No. 511, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MOTOR VEHICLE INDUSTRY LICENSING", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 531, S.D. 1:

On motion by Senator Cobb, seconded by Senator Chong and carried, H.B. No. 531, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PROFESSIONAL ENGINEERS, ARCHITECTS, SURVEYORS, AND LANDSCAPE ARCHITECTS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 595, S.D. 1:

On motion by Senator Cobb, seconded by Senator Chong and carried, H.B. No. 595, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII MOTOR VEHICLE ACCIDENT REPAIRATIONS ACT", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 596, S.D. 1:

On motion by Senator Cobb, seconded by Senator Chong and carried, H.B. No. 596, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MOTOR BIKES", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 599:

On motion by Senator Cobb, seconded by Senator Chong and carried, H.B. No. 599, entitled: "A BILL FOR AN ACT RELATING TO THE BOARD OF REGISTRATION OF PROFESSIONAL ENGINEERS, ARCHITECTS, SURVEYORS AND LANDSCAPE ARCHITECTS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 601, S.D. 1:

On motion by Senator Cobb, seconded by Senator Chong and carried, H.B. No. 601, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO DISPENSING OPTICIANS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 604, S.D. 1:

By unanimous consent, consideration of H.B. No. 604, S.D. 1, was deferred to the end of the calendar.

House Bill No. 734:

By unanimous consent, consideration of H.B. No. 734 was deferred to the end of the calendar.

House Bill No. 931:

By unanimous consent, consideration of H.B. No. 931 was deferred to the end of the calendar.

House Bill No. 936:

On motion by Senator Cobb, seconded by Senator Chong and carried, H.B. No. 936, entitled: "A BILL FOR AN ACT RELATING TO NO-FAULT INSURANCE", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 961, H.D. 1:

By unanimous consent, consideration of H.B. No. 961, H.D. 1, was deferred to the end of the calendar.

House Bill No. 986, S.D. 1:

By unanimous consent, consideration of H.B. No. 986, S.D. 1, was deferred to the end of the calendar.

House Bill No. 1039, S.D. 1:

By unanimous consent, consideration of H.B. No. 1039, S.D. 1, was deferred to the end of the calendar.

House Bill No. 1186:

By unanimous consent, consideration of H.B. No. 1186 was deferred to the end of the calendar.

House Bill No. 1206, H.D. 1, S.D. 1:

On motion by Senator Cobb, seconded by Senator Chong and carried, H.B. No. 1206, H.D.1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE LANDLORD-TENANT CODE", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 1576:

By unanimous consent, consideration of H.B. No. 1576 was deferred to the end of the calendar.

At 11:50 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.

House Bill No. 1589, H.D. 1, S.D. 1:

On motion by Senator Cobb, seconded by Senator Chong and carried, H.B. No. 1589, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ROOFING CONTRACTOR GUARANTEE BONDS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, 1 (Anderson).
Excused, 1 (O'Connor).

House Bill No. 1661, S.D. 1:

On motion by Senator Cobb, seconded by Senator Chong and carried, H.B. No. 1661, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CORPORATIONS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (O'Connor).

House Bill No. 580:

On motion by Senator Campbell, seconded by Senator Young and carried, H.B. No. 580, entitled: "A BILL FOR AN ACT RELATING TO ADULT EDUCATION PROGRAM", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 581, S.D. 1:

On motion by Senator Campbell, seconded by Senator Young and carried, H.B. No. 581, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE STATE LIBRARIAN", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

At 11:53 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:54 o'clock a.m.

House Bill No. 21, H.D. 1:

On motion by Senator O'Connor, seconded by Senator Cobb and carried, H.B. No. 21, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE AUDITOR", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 100, S.D. 1:

On motion by Senator O'Connor, seconded by Senator Cobb and carried, H.B. No. 100, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE STATE MOTTO", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 421, H.D. 1, S.D. 1:

By unanimous consent, consideration of H.B. No. 421, H.D. 1, S.D. 1, was deferred to the end of the calendar.

House Bill No. 435, S.D. 1:

On motion by Senator O'Connor, seconded by Senator Cobb and carried, H.B. No. 435, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO OFFENSES AFFECTING OCCUPATIONS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 438, S.D. 1:

On motion by Senator O'Connor, seconded by Senator Cobb and carried, H.B. No. 438, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO SEXUAL OFFENSES", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 925, H.D. 2, S.D. 1:

By unanimous consent, consideration of H.B. No. 925, H.D. 2, S.D. 1, was deferred to the end of the calendar.

House Bill No. 1140, H.D. 1, S.D. 1:

By unanimous consent, consideration of H.B. No. 1140, H.D. 1, S.D. 1, was deferred to the end of the calendar.

House Bill No. 1386, H.D. 1, S.D. 1:

By unanimous consent, consideration of H.B. No. 1386, H.D. 1, S.D. 1, was deferred to the end of the calendar.

House Bill No. 1634, H.D. 1, S.D. 1:

By unanimous consent, consideration of H.B. No. 1634, H.D. 1, S.D. 1, was deferred to the end of the calendar.

House Bill No. 1716, S.D. 1:

On motion by Senator O'Connor, seconded by Senator Cobb and carried, H.B. No. 1716, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EMBLEMS AND SYMBOLS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 863 (H.B. No. 14, H.D. 1, S.D. 1):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 863 was adopted and H.B. No. 14, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE TAX REVIEW COMMISSION", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 864 (H.B. No. 22, H.D. 1, S.D. 1):

By unanimous consent, consideration of Stand. Com. Rep. No. 864 and H.B. No. 22, H.D. 1, S.D. 1, was deferred to the end of the calendar.

Standing Committee Report No. 865 (H.B. No. 38, H.D. 2, S.D. 3):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 865 was adopted and H.B. No. 38, H.D. 2, S.D. 3, entitled: "A BILL FOR AN ACT RELATING TO THE BOARD OF EDUCATION", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 866 (H.B. No. 287, H.D. 1, S.D. 2):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 866 was adopted and H.B. No. 287, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO VITAL STATISTICS REGISTRATION", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, 2 (Anderson and Saiki).

Standing Committee Report No. 867 (H.B. No. 606, H.D. 1, S.D. 1):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 867 was adopted and H.B. No. 606, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC ASSISTANCE", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 868 (H.B. No. 643, H.D. 1, S.D. 2):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 868 was adopted and H.B. No. 643, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO ELECTIONS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 982:

By unanimous consent, consideration of H.B. No. 982 was deferred to the end of the calendar.

Standing Committee Report No. 870 (H.B. No. 1531, H.D. 1):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 870 and H.B. No. 1531, H.D. 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION TO ALU LIKE INC. FOR THE NATIVE HAWAIIAN PROGRAM UNDER THE NATIVE AMERICANS ACT OF 1978", were recommitted to the Committee on Ways and Means.

Standing Committee Report No. 871 (H.B. No. 1633, S.D. 1):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 871 was adopted and H.B. No. 1633, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE MANUFACTURING AND DISTRIBUTION OF COMMERCIAL FEEDS IN THE STATE OF HAWAII", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 872 (H.B. No. 1648, S.D. 1):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 872 was adopted and H.B. No. 1648, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE EXEMPTION OF NUTRITION PROGRAM ASSISTANTS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 873 (H.B. No. 1653, S.D. 1):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 873 was adopted and H.B. No. 1653, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE SALE OF AGRICULTURAL AND VEGETABLE SEEDS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Anderson).

Standing Committee Report No. 874 (H.B. No. 1663, H.D. 1, S.D. 2):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 874 was adopted and H.B. No. 1663, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO VOCATIONAL REHABILITATION", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 1666, H.D. 1:

By unanimous consent, consideration of H.B. No. 1666, H.D. 1, was deferred to the end of the calendar.

Standing Committee Report No. 876 (H.B. No. 1680, H.D. 2, S.D. 2):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 876 was adopted and H.B. No. 1680, H.D. 2, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE NATURAL ENERGY LABORATORY OF HAWAII AND MAKING AN APPROPRIATION THEREFOR", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

At 11: 59 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

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

House Bill No. 79, H.D. 1, S.D. 1:

On motion by Senator O'Connor, seconded by Senator Cobb and carried, H.B. No. 79, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CHILD ABUSE", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 398, S.D. 1:

By unanimous consent, consideration of H.B. No. 398, S.D. 1, was deferred to the end of the calendar.

House Bill No. 405, S.D. 1:

By unanimous consent, consideration of H.B. No. 405, S.D. 1, was deferred to the end of the calendar.

Standing Committee Report No. 880 (H.B. No. 520, H.D. 1, S.D. 2):

By unanimous consent, consideration of Stand. Com. Rep. No. 880 and H.B. No. 520, H.D. 1, S.D. 2, was deferred to the end of the calendar.

Standing Committee Report No. 881 (H.B. No. 608, S.D. 1):

On motion by Senator O'Connor, seconded by Senator Cobb and carried, Stand. Com. Rep. No. 881 was adopted and H.B. No. 608, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INVESTIGATORS OF THE DEPARTMENT OF SOCIAL SERVICES AND HOUSING", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 882 (H.B. No. 696, H.D. 1, S.D. 2):

On motion by Senator O'Connor, seconded by Senator Cobb and carried, Stand. Com. Rep. No. 882 was adopted and H.B. No. 696, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE PREPARATION OF CERTIFICATES OF BIRTH FOR ADOPTED CHILDREN BORN IN A FOREIGN COUNTRY", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 1004, S.D. 1:

By unanimous consent, consideration of H.B. No. 1004, S.D. 1, was deferred to the end of the calendar.

Standing Committee Report No. 884 (H.B. No. 1341, S.D. 1):

Senator O'Connor moved that Stand. Com. Rep. No. 884 be adopted and H.B. No. 1341, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Cobb.

Senator O'Connor then asked to be excused from voting on this measure, even though the bill was processed through his committee, he noted that he represents several people who might be affected by this bill.

The President announced that Senator O'Connor would be excused from voting on this measure.

The motion was then put by the Chair and carried, and Stand. Com. Rep. No. 884 was adopted and H.B. No. 1341, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO RESIDENTIAL LEASEHOLD", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, 1 (Hara). Excused, 1 (O'Connor).

At 12: 04 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12: 08 o'clock p.m.

At 12: 09 o'clock p.m., on motion by Senator Mizuguchi, seconded by Senator Anderson and carried, the Senate stood in recess until 3: 00 o'clock p.m., this afternoon.

AFTERNOON SESSION

The Senate reconvened at 3: 14 o'clock

p.m., with all Senators present with the exception of Senators Carroll and Hara, who were excused.

Standing Committee Report No. 885 (H.B. No. 1449, S.D. 1):

On motion by Senator O'Connor, seconded by Senator Cobb and carried, Stand. Com. Rep. No. 885 was adopted and H.B. No. 1449, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO UNION LABELS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Carroll and Hara).

House Bill No. 1499, H.D. 1, S.D. 1:

On motion by Senator O'Connor, seconded by Senator Cobb and carried, H.B. No. 1499, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE UNIFORM PROBATE CODE AND TRUSTS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Carroll and Hara).

The Chair then directed the Clerk to note the presence of Senators Carroll and Hara.

Standing Committee Report No. 887 (H.B. No. 1658, H.D. 1, S.D. 1):

By unanimous consent, consideration of Stand. Com. Rep. No. 887 and H.B. No. 1658, H.D. 1, S.D. 1, was deferred to the end of the calendar.

House Bill No. 189, H.D. 1, S.D. 1:

Senator Mizuguchi moved that H.B. No. 189, H.D. 1, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Yim.

Senator Abercrombie then spoke against the measure as follows:

"Mr. President, this bill allows the Department of Transportation to appoint volunteer boating enforcement officers to enforce the state boating law including the power to stop, board, investigate and inspect vessels.

"I have no quarrel with the bill as such, but I'm puzzled by the statement in the committee report, and perhaps my demur can be relieved if I can have an answer on this. The report

states, 'Your Committee believes that the enforcement officers should not be considered state employees and that the state should not be held liable for their actions.'

"I think that state appointed officers boarding and inspecting vessels will certainly be regarded as agents of the state by the courts; and so I guess I really have a question, as opposed to my saying that I am against it as such.

"If the Chairman of the Judiciary Committee might be able to give me an answer about the state's liability as a result of this bill should it pass. Maybe that's what I should do rather than say, 'I'm against the bill.' "

At 3:17 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 3:20 o'clock p.m.

Senator Abercrombie continued,

"Mr. President, despite the efforts of Senator Carroll to get me to continue to vote 'no', I withdraw my objection. It has been explained to me."

Senator Carroll then stated as follows:

"Mr. President, I am intending to vote 'aye' on this measure, but there is one portion of an explanation that was given to my learned colleague from Manoa, with respect to the state's liability, and that is that the state, by exempting itself from liability, will never be liable.

"There is a body of constitutional law in which there is a creature which is described as a constitutional tort in which even though we have so-called 'state immunity', we still may be liable and the state still may be sued. Now I think in the matter before this Body that that is a risk that is well worth taking.

"I would urge that we vote 'aye'."

The motion was put by the Chair and carried, and H.B. No. 189, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO BOATING", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 1143, H.D. 1, S.D. 1:

On motion by Senator Mizuguchi, seconded by Senator Yim and carried,

H.B. No. 1143, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE METROPOLITAN PLANNING ORGANIZATION", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, 2 (Abercrombie and Cobb).

House Bill No. 1432, H.D. 1, S.D. 1:

On motion by Senator Mizuguchi, seconded by Senator Yim and carried, H.B. No. 1432, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MOPEDES", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Abercrombie).

House Bill No. 181, H.D. 1, S.D. 1:

On motion by Senator Chong, seconded by Senator Mizuguchi and carried, H.B. No. 181, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MOTOR CARRIER LAW", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Soares).

House Bill No. 428, H.D. 1, S.D. 1:

By unanimous consent, consideration of H.B. No. 428, H.D. 1, S.D. 1, was deferred to the end of the calendar.

House Bill No. 102, H.D. 1, S.D. 1:

Senator O'Connor moved that H.B. No. 102, H.D. 1, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Cobb.

Senator Kawasaki then spoke against the measure as follows:

"Mr. President, I wish to speak against this bill. I came across a rather interesting observation which I have experienced in this particular session. There are three bills that I will be voting against and I deem it necessary to speak out against them because I feel that perhaps many of the members here will be voting 'aye' not realizing the impact of this vote and the final enactment into law.

"This is one of those bills where we don't quite respect the requirement of the Fourteenth Amendment of our federal constitution--the equal rights,

equal protection clause. I don't know why we're allowing landowners of less than five acres, that said land can be possessed by what is known as adverse possession; while those owners of lands in excess of five acres will be exempted from their lands being taken over by a person who has possession of that land for a prescribed number of years.

"This is to me clearly a violation of the equal treatment clause and I think some good lawyer taking this up before a higher court--Supreme Court of the United States possibly--is going to find that the court is going to invalidate this provision that we hope to enact into statute.

"I have a concern about this as this is not treating every category of landowners fairly or equally. I believe this is patently a violation of the equal protection clause of the federal constitution and for that reason, I urge a 'no' vote on this."

Senator O'Connor then spoke in favor of the bill as follows:

"Mr. President, I rise to speak in favor of the bill, with my tongue in cheek. Unfortunately, I find myself making this same argument again and again as this session goes forward, and I respect the comments made by the Senator earlier.

"However, we again are faced with a situation where the voters of this state have voted an amendment to the constitution which precisely says that in an adverse possession situation, it shall only apply to properties which are five acres or less and shall not be applicable to properties which are greater than five acres; which means that a person from now on or from last November 7th on in this state, cannot utilize the claim of adverse possession for property which is greater than five acres in size because it is in our constitution.

"Until such time that someone strikes down that constitutional amendment, if it is ever struck down, then it is necessary for us to have an enabling statute which explains what that means. And that's precisely what House Bill No. 102, H.D. 1, S.D. 1, does.

"It lays out essentially on the face of what the law of adverse possession as it has existed in Hawaii outlining what periods of time were necessary for adverse possession during certain parts of our history, and indicating that after November 7, 1978, adverse possession for parcels which are greater

than five acres cannot be used because that was the day that the voters of this state passed into enactment the amendment to our constitution.

"Therefore, I would urge that all vote in favor of this bill to clarify the constitutional amendment and, of course, if some learned attorney, as the good Senator indicates, someday strikes down the constitutional amendment, this bill will go with it. Thank you."

Senator Anderson then spoke in opposition to the measure as follows:

"Mr. President, I didn't plan to get involved in this, but I'd like to request a 'no' vote on this bill.

"I have sat here now for some forty some-odd days and listened to arguments that we have to pass legislation because the Con-Con so specified. Maybe a couple of these bills should not be passed and let the court step in.

"It would have scared me to have seen the Con-Con pass a mandate that chickens will lay square eggs after 1980 and then have one of you pass a bill out to conform to that.

"Those people across the street weren't the wisest things in the world. They're apt to make mistakes like we do, and we seem to... I guess to conform. If we don't pass some of these, it would be equally as responsible than just trying to pass one and then put the burden on some legislator or some politician some day in the future to challenge this."

The motion was put by the Chair and carried, and H.B. No. 102, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO QUIETING TITLE", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 18. Noes, 7 (Abercrombie, Anderson, Carpenter, Carroll, Chong, Kawasaki and Yee).

House Bill No. 424, H.D. 1, S.D. 1:

On motion by Senator O'Connor, seconded by Senator Cobb and carried, H.B. No. 424, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CRIMINAL TAMPERING", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 895 (H.B. No. 556, S.D. 2):

On motion by Senator O'Connor, seconded by Senator Cobb and carried, Stand. Com. Rep. No. 895 was adopted and H.B. No. 556, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO MONOPOLIES; RESTRAINT OF TRADE", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 896 (H.B. No. 583, H.D. 2, S.D. 2):

On motion by Senator O'Connor, seconded by Senator Cobb and carried, Stand. Com. Rep. No. 896 was adopted and H.B. No. 583, H.D. 2, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO ENVIRONMENTAL QUALITY AND LITTER CONTROL", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 723, H.D. 1, S.D. 1:

On motion by Senator O'Connor, seconded by Senator Cobb and carried, H.B. No. 723, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO FRAUDULENT CLAIMS SUBMITTED AGAINST THE STATE", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 921, H.D. 1, S.D. 1:

On motion by Senator O'Connor, seconded by Senator Cobb and carried, H.B. No. 921, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF TEMPORARY RESTRAINING ORDERS IN CASES OF SPOUSE ABUSE AND OTHER DOMESTIC VIOLENCE", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 899 (H.B. No. 923, H.D. 1, S.D. 1):

On motion by Senator O'Connor, seconded by Senator Cobb and carried, Stand. Com. Rep. No. 899 was adopted and H.B. No. 923, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO OFFENSES AGAINST PROPERTY RIGHTS",

having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 900
(H.B. No. 988, S.D. 1):

On motion by Senator O'Connor, seconded by Senator Cobb and carried, Stand. Com. Rep. No. 900 was adopted and H.B. No. 988, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ARSON INVESTIGATION", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 1216, H.D. 1, S.D. 1:

On motion by Senator O'Connor, seconded by Senator Cobb and carried, H.B. No. 1216, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE UNIFORM COMMERCIAL CODE", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 1382, H.D. 1, S.D. 1:

By unanimous consent, consideration of H.B. No. 1382, H.D. 1, S.D. 1, was deferred to the end of the calendar.

Standing Committee Report No. 903
(H.B. No. 1494, H.D. 1, S.D. 2):

On motion by Senator O'Connor, seconded by Senator Cobb and carried, Stand. Com. Rep. No. 903 was adopted and H.B. No. 1494, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC EMPLOYMENT", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 1528, H.D. 1, S.D. 1:

On motion by Senator Hara, seconded by Senator Abercrombie and carried, H.B. No. 1528, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE DISPOSAL OF SOLID WASTES", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 905
(H.B. No. 1557, H.D. 1, S.D. 1):

On motion by Senator O'Connor, seconded by Senator Cobb and carried, Stand. Com. Rep. No. 905 was adopted and H.B. No. 1557, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO COUNTY COMMITTEES ON THE STATUS OF WOMEN", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 906
(H.B. No. 1646, H.D. 1, S.D. 1):

On motion by Senator O'Connor, seconded by Senator Cobb and carried, Stand. Com. Rep. No. 906 was adopted and H.B. No. 1646, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HIGHWAY SAFETY", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 907
(H.B. No. 1657, H.D. 1, S.D. 2):

Senator O'Connor moved that Stand. Com. Rep. No. 907 be adopted and H.B. No. 1657, H.D. 1, S.D. 2, having been read throughout, pass Third Reading, seconded by Senator Cobb.

Senator Chong then spoke against the measure as follows:

"Mr. President, the purpose of this bill is to water down existing legislation we passed a few years ago which, in my opinion, was very good. It was very protective of the issue of when and under what circumstances a health facility can unplug a person whose vital signs are still going; namely, breathing and heart.

"We followed the recommendations of a one-year study conducted by the Legislative Reference Bureau, which was very conservative in its approach. To protect the public, we made it mandatory for a practicing neurosurgeon, a specialist in the art of interpreting brain waves to be present to interpret whether or not those brain waves that were going across the scanner were in fact registering a dead brain. That neurosurgeon, specialist, would be responsible for signing off the person as being 'dead' and therefore this action would allow the health facility to unplug the heart machine or the breathing machine.

"I would like to cite a case which happened on the island of Kauai, I believe, where there was a serious accident and where a person's brains had been left at the scene of the accident. That person was brought to the hospital in Kauai as he was still breathing and his heart was functioning. At the same time, another auto accident took place and they rushed that man over to the hospital, and he needed use of the machine.

"Of course, under those circumstances, the doctors on Kauai, because there were no neurosurgeons there, had to make a decision on the spot. They decided to disconnect the first patient and the put the latest one on the machine.

"The doctors were not sued and I think that any court of law would have protected the attending physicians at that point.

"Now what this bill does is, because of that one incident, make it possible for the attending physicians under the circumstances to determine whether the person is dead. In hearings we held on this issue, it was pointed out that statistically, under very rare, rare circumstances, would that decision be needed--maybe one or two every three or four years. For that reason, I am adamantly against this bill and I urge my colleagues to vote against it because I don't think that the statistical situations would warrant watering down something which deals with such an important matter. Thank you."

The motion was put by the Chair and carried, and Stand. Com. Rep. No. 907 was adopted and H.B. No. 1657, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE DEFINITION OF DEATH", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, 4 (Abercrombie, Campbell, Cayetano and Chong).

House Bill No. 82, H.D. 1, S.D. 1:

On motion by Senator Cobb, seconded by Senator Chong and carried, H.B. No. 82, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII REGULATORY LICENSING REFORM ACT", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 909 (H.B. No. 166, H.D. 1, S.D. 2):

By unanimous consent, consideration of Stand. Com. Rep. No. 909 and H.B. No. 166, H.D. 1, S.D. 2, was deferred to the end of the calendar.

House Bill No. 173, H.D. 1, S.D. 1:

Senator Cobb moved that H.B. No. 173, H.D. 1, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Chong.

Senator Kawasaki then spoke for the measure as follows:

"Mr. President, I just want to comment briefly. I am voting for this bill, but this is a case of a statute we've had on the books for years.

"We all knew that it was sort of a price fixing arrangement that was not quite beneficial to the consuming public in this state, but because of lobbies that used to frequent these halls in past sessions, it only took a court ruling invalid such price fixing legislation that gave the legislature the courage to repeal this law. This is perhaps a glaring example of some of the statutes that we have jaundiced views about for years.

"We didn't have the 'guts' to vote it down and since the court decision, we are now pretty brave and are repealing this law--but this is the kind of situation we would like to avoid if we can at all possible do. Thank you."

Senator Anderson then spoke in opposition to the measure as follows:

"Mr. President, I rise to speak against this measure. This bill goes beyond what the prior speaker has spoken about. While I have been opposed to retail price fixing for many years, I talked to the Chairman before the meeting this afternoon and I am satisfied that what he's trying to do is somewhat legitimate, but it still continues or allows the wholesalers to continue price fixing.

"If we're going to allow the free market to take care of competition--and I don't believe the wholesalers of this town should be allowed to fix prices...and what this does, the section where it still allows posting among wholesalers, it disallows the wholesaler, once his price is posted from further discounting if competition gets keen.

"In other words, if I were to post my wholesale prices, once those prices are posted, they are locked in and once you post yours, you're locked in; and it disallows free competition among wholesalers.

"If you disallow competition among wholesalers to pass it on to retailers to pass it on to consumers, you are in fact still allowing some kind of price fixing.

"While I would hope that free competition would reign from the manufacturer right on up to the retailer, because that's really what it is going to dictate prices to the market; and, while this is for one year, and I understand the effort here, I really believe that the whole thing should be repealed and not just portions of it. Thank you."

Senator Cobb then spoke in rebuttal for the measure as follows:

"Mr. President, the original court decision attached itself to retail price posting only; and inadvertently, the wholesale was also included.

"We had communication from the Antitrust Division of the Attorney General's office, that if the present practice of wholesale price posting and switching before the posting period continued to occur, there would be further litigation on that.

"This allows the parties involved with the concurrence of the Antitrust Division of the Attorney General's office a one-year period only in which to correct this situation which apparently has already been done to the satisfaction of the Liquor Commission.

"I would further point out that the restriction on the changing of prices applies only for the posting period and, at any time there is a new posting period or new prices, then competition may reign in the next posting period.

"Up to now, the problem has been a collusion or price fixing even among wholesale levels, when the prices are available before the posting period goes into effect. By making the wholesale appeal effective July 1, 1980, it gives all parties involved one year only in which to prove their case, and to come before this legislature in 1980 with a separate measure which we must pass affirmatively. If we do nothing, the repeal takes effect automatically on July 1, 1980."

The motion was put by the Chair and carried, and House Bill No. 173, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INTOXICATING LIQUOR", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Anderson).

House Bill No. 177, S.D. 1:

By unanimous consent, consideration of H.B. No. 177, S.D. 1, was deferred to the end of the calendar.

House Bill No. 479, H.D. 1, S.D. 1:

On motion by Senator Cobb, seconded by Senator Chong and carried, H.B. No. 479, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ADVERTISING BY OPTOMETRISTS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 1459, H.D. 1, S.D. 1:

On motion by Senator Cobb, seconded by Senator Chong and carried, H.B. No. 1459, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TOWING COMPANIES OR REPAIR BUSINESSES", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 1581, S.D. 1:

By unanimous consent, consideration of H.B. No. 1581, S.D. 1, was deferred to the end of the calendar.

Standing Committee Report No. 915 (H.B. No. 1588, S.D. 2):

On motion by Senator Cobb, seconded by Senator Chong and carried, Stand. Com. Rep. No. 915 was adopted and H.B. No. 1588, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO DEGREE GRANTING INSTITUTIONS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 916 (H.B. No. 1674):

On motion by Senator Cobb, seconded by Senator Chong and carried, Stand. Com. Rep. No. 916 was adopted and H.B. No. 1674, entitled: "A BILL FOR AN ACT RELATING TO DRUGS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 57, H.D. 1, S.D. 1:

By unanimous consent, consideration of H.B. No. 57, H.D. 1, S.D. 1, was deferred to the end of the calendar.

At 3:40 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 3:45 o'clock p.m.

House Bill No. 417, H.D. 2, S.D. 1:

On motion by Senator Hara, seconded by Senator Abercrombie and carried, H.B. No. 417, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PLASTIC BOTTLES", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 748, S.D. 1:

On motion by Senator Young, seconded by Senator Cayetano and carried, H.B. No. 748, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HORIZONTAL PROPERTY REGIMES", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 1665:

On motion by Senator Young, seconded by Senator Cayetano and carried, H.B. No. 1665, entitled: "A BILL FOR AN ACT RELATING TO HOUSING", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 925 (H.B. No. 2, H.D. 1, S.D. 2):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 925 was adopted and H.B. No. 2, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE JUDICIARY BUDGET", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, 4 (Ajifu, Cobb, Hara and Yee).

Standing Committee Report No. 926 (H.B. No. 48, H.D. 2, S.D. 2):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried,

Stand. Com. Rep. No. 926 was adopted and H.B. No. 48, H.D. 2, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE STATE PROGRAM FOR THE UNEMPLOYED", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 927 (H.B. No. 98, H.D. 2, S.D. 2):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 927 was adopted and H.B. No. 98, H.D. 2, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE JUDICIAL SALARY COMMISSION", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, 3 (Carpenter, Cobb and Yim).

Standing Committee Report No. 928 (H.B. No. 99, H.D. 1, S.D. 2):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 928 was adopted and H.B. No. 99, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE JUDICIARY", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 929 (H.B. No. 281, H.D. 2, S.D. 2):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 929 was adopted and H.B. No. 281, H.D. 2, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE EXPENDITURE OF PUBLIC MONEY AND PUBLIC CONTRACTS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 930 (H.B. No. 282, H.D. 1, S.D. 2):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 930 was adopted and H.B. No. 282, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO CRIMINAL HISTORY RECORD INFORMATION", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No.
931 (H.B. No. 722, S.D. 1):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 931 was adopted and H.B. No. 722, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO AGRICULTURAL LOANS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No.
932 (H.B. No. 1627, S.D. 1):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 932 was adopted and H.B. No. 1627, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ELDERLY AFFAIRS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No.
933 (H.B. No. 1668, S.D. 1):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 933 was adopted and H.B. No. 1668, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE SALE AND USE OF PESTICIDES", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No.
934 (H.B. No. 1526, H.D. 1):

On motion by Senator Cobb, seconded by Senator Chong and carried, Stand. Com. Rep. No. 934 was adopted and H.B. No. 1526, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO BEVERAGE CONTAINER REQUIREMENTS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 1, H.D. 1, S.D. 1:

By unanimous consent, consideration of H.B. No. 1, H.D. 1, S.D. 1, was deferred to the end of the calendar.

House Bill No. 1642, H.D. 1, S.D. 1:

On motion by Senator Hara, seconded

by Senator Abercrombie and carried, H.B. No. 1642, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO COASTAL ZONE MANAGEMENT", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 19. Noes, 6 (Anderson, Carpenter, Carroll, Cayetano, Kuroda and Soares).

Standing Committee Report No. 937
(H.B. No. 188, H.D. 1, S.D. 1):

On motion by Senator O'Connor, seconded by Senator Cobb and carried, Stand. Com. Rep. No. 937 was adopted and H.B. No. 188, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CORPORATIONS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 938
(H.B. No. 20, H.D. 1, S.D. 2):

By unanimous consent, consideration of Stand. Com. Rep. No. 938 and H.B. No. 20, H.D. 1, S.D. 2, was deferred to the end of the calendar.

Standing Committee Report No. 939
(H.B. No. 23, H.D. 1, S.D. 1):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 939 was adopted and H.B. No. 23, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO STATE BONDS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 940
(H.B. No. 80, H.D. 2, S.D. 1):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 940 was adopted and H.B. No. 80, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO NURSING HOMES", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 941
(H.B. No. 92, H.D. 2, S.D. 2):

Senator Cayetano moved that Stand. Com. Rep. No. 941 be adopted and H.B. No. 92, H.D. 2, S.D. 2, having been read throughout, pass Third Reading,

seconded by Senator Carpenter.

Senator Kawasaki then spoke against the measure as follows:

"Mr. President, I'm voting 'no' on this particular bill. I fully realize that it's a mandate by the Constitutional Convention which I claim had no particular cartel on wisdom, but I think there is no compelling need right now for us to create these positions. I think it could wait a year or two and I had wished that we would. I just wanted to comment on that."

Senator Abercrombie then spoke in opposition of the measure as follows:

"Mr. President, I don't think there is any need to put this to the end of the calendar. I think we can vote up or down. I think that, for the life of me, and I have read through this very carefully, I cannot understand why there's a necessity, any compelling interest at all in establishing this intermediate appellate court unless a lot of people want to retire from here a bit earlier than they either had anticipated, or perhaps they are not enjoying things here as much as they used to.

"I expect that whoever the people are who will be doing the appointing or making the recommendations and so on, will have a fine time with it, but the cost to the state is going to be enormous, and I hope everyone realizes that.

"It's one of the reasons I'm voting 'no' on this. The costs are going to be stupendous because it's going to prolong court proceedings.

"I think this is a selfish measure; I think it's a cynical measure; I think that the people in the courts who desire to have this, have done damage to public judgment... judgment by the public, in terms of what would be accomplished and what is expected of our court system with this intermediate appellate court.

"The very phrase itself indicates to anybody who can read English, that it is an in-between step, that means, there are steps to come further. And if that is in fact the case, that simply means that it's going to be dragged out further. It's going to cost us a great deal of money, a great deal of time and provide the citizenry with a great deal more cynicism than they already have in respect of the court system, if that's possible.

"I think that, well under no circumstances then could I... and I would really be delighted to hear a solid argument in favor of this court, before we blindly vote 'yes'."

Senator Cobb spoke against the measure as follows:

"Mr. President, one observation against the bill, which I will be voting 'no' on, is the fact that rather recent historical irony took place.

"We note that the Rules of the House of Representatives have the strictest provisions that exist there against 'piggybacking' measures.

"I note that this appellate court, when it was passed by the Constitutional Convention, was piggybacked with a provision calling for the merit selection of judges. Unless the voters of this state in deciding on this question had absolutely no opportunity to decide on the merits alone of an intermediate appellate court of appeals, but instead were asked to buy a 'pig in a poke'.

"This measure piggybacked on top of something that almost everyone favored; namely, merit selection of judges.

"The irony I'd like to note is that subsequent to that fact, thirty members of the Con-Con ran for the House of Representatives, to a Body whose strictest Rule is an absolute prohibition on piggybacking-- the Rule to date violated in varied process on over two-thirds of the amendments they passed and submitted to the voters of this state.

"Accordingly, Mr. President, I don't consider this bill to have been passed upon by the voters of this state on its merits, but instead it is nothing less than a dubious sneak attack by which the Judiciary was able to piggyback this measure with something that was far more meritorious; namely, the merit selection of judges.

"The fact that this legislature had twice in both houses said 'no' to this proposal, I believe lends credence to that idea, and that's one of the reasons why I cannot accept this, now being given an individual opportunity to vote on it. Thank you."

Senator Cayetano then spoke for the bill as follows:

"Mr. President, I have heard throughout the course of the floor discussion here on all of the bills relating to the Constitutional Convention and the amendments which were ratified by the voters on November

7, 1978, much criticism, much talk about their lack of wisdom, etc. However, I think it's a little late for us to speak in these tones because certainly the Constitutional Convention could have used some of the wisdom in these halls. I doubt if anyone here who was very critical or who has been critical of the Convention, went there to testify and to give those delegates the benefit of the wisdom of the years that they spent here.

"So, I think it's a little bit late to complain about the cynicism of the Judiciary, etc., and all of that. If the Senators here have any 'hang-ups' on these bills, then I suggest that perhaps the proper way would be to address the matter in court, hire your lawyer and challenge them."

Senator O'Connor rose to speak in favor of the bill as follows:

"Mr. President, the voters of this state made for us an intermediate appellate court by amending the Constitution. What this bill does is simply flesh out the jurisdiction of that court and answers a criticism raised by the learned Senator from Manoa, which I think is a very valid criticism; and that is to ensure that this court does not become an added piece of bureaucratic red tape between the trial court and the Supreme Court through which years of appellate procedures can be used as delaying tactics by people utilizing that trade.

"To wit, it is in the intent of both your Judiciary Committee and your Ways and Means Committee in handling this particular measure, to insure that appeals will be taken to one court or the other and that the appellant will only get one bite of the apple. It will be only under the framework of this bill and other bills which have been considered on this matter, the extremely unusual case would ever be heard in total by both courts.

"It has been our intent throughout to insure that, and that is one of the reasons why we did not simply say at the beginning when handling this measure that we would turn the entire thing over to the Supreme Court to be handled by rules of court, because we strongly believe and felt and still do that this is a measure which should be handled by the legislature in order to insure that it does not turn into a bureaucratic situation which the Senator from Manoa earlier indicated.

"I will go along with many of the comments made by my learned colleague from the Seventh District. However,

the time is not now to argue over whether or not we're going to have this court; the time is now to attempt to flesh out the matter so the court can operate to the benefit of this state and not to its detriment.

"That, I believe, is what I've done with this bill which is before us and I urge all members to vote 'aye' on this matter. Thank you."

Senator Abercrombie then remarked as follows:

"Mr. President, when I first rose, I neglected to explain why I had signed this bill. I did so because I thought it deserved to have the floor debate and should come out. I have always regarded, when I was in the House and I regard here, that Third Reading is the time for debate in the Halls and not a checkout counter, and I'm pleased to see that other people have the same attitude in the Senate. That was not always the case in my experience in the past. I do appreciate as well the comments delivered by the previous two speakers.

"I, myself, did happen to go and testify at the Constitutional Convention, but that doesn't give me any special privilege to speak about it or its results now.

"The last thing is that I also appreciate the intentions of the Chairman of the Judiciary Committee in this. I think that Committee has labored long and hard not only on this bill but on other bills to try to accomplish what was set.

"But when I consider this before I rose to speak against it, I do not believe that we can keep these cases from going on to another court.

"Now I'm not sufficiently learned in the law. Maybe this bill does in fact, prevent the kind of thing that Senator O'Connor indicates some people feel is going to occur. But my reading of it is, I do not believe by a state's constitution that you can violate what I would consider an overriding constitutional privilege that exists in the federal constitution which is that one is allowed to exhaust all resources that are available in the Judiciary and that despite what the writing in this bill states, that would still be available to anybody who is in court. Therefore, I can't vote 'yes'."

The motion was put by the Chair and carried, and Stand. Com. Rep. No. 941 was adopted and H.B. No. 92, H.D. 2, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE JUDICIARY", having been read throughout, passed Third Reading on the following showing

of Ayes and Noes:

Ayes, 19. Noes, 6 (Abercrombie, Anderson, Cobb, Kawasaki, Soares and Yim).

Standing Committee Report No. 942
(H.B. No. 95, H.D. 2, S.D. 2):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 942 was adopted and H.B. No. 95, H.D. 2, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE GRAND JURY", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 943
(H.B. No. 605, H.D. 1, S.D. 2):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 943 was adopted and H.B. No. 605, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC ASSISTANCE", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 944
(H.B. No. 890, H.D. 1, S.D. 3):

Senator Cayetano moved that Stand. Com. Rep. No. 944 be adopted and H.B. No. 890, H.D. 1, S.D. 3, having been read throughout, pass Third Reading, seconded by Senator Abercrombie.

Senator Kawasaki then spoke against the measure as follows:

"Mr. President, I've signed the committee report emanating from the Committee on Ways and Means 'no' on this particular measure. I am voting 'no' on this measure because this is another one of those bills that I mentioned as being in violation of the Fourteenth Amendment of our federal constitution.

"That document, notwithstanding the onslaughts made upon it in the past decades, have still withstood the test of time. I think it's the basic tenet in the federal constitution and the Fourteenth Amendment clause that no particular group would be treated differently--favored treatment, different treatment in the way of protection or favors.

"I think this is one of those patently bad bills that will someday be taken to the United States Supreme Court

and then judged unconstitutional at that level.

"I think it's wrong for us in the state constitution, notwithstanding a judgment made by the Constitutional Convention, that one ethnic group will be treated differently from any other ethnic group in this society like ours.

"As I said, I think this is a patently bad violation of a provision wisely put by our forefathers in the federal constitution. I cannot support this bill and will vote 'no' on it."

The motion was put by the Chair and carried, and Stand. Com. Rep. No. 944 was adopted and H.B. No. 890, H.D. 1, S.D. 3, entitled: "A BILL FOR AN ACT RELATING TO AN OFFICE ON HAWAIIAN AFFAIRS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Kawasaki).

Standing Committee Report No. 945 (H.B. No. 1252, H.D. 2, S.D. 1):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 945 was adopted and H.B. No. 1252, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO FARM LOANS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 1639, H.D. 1, S.D. 1:

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, H.B. No. 1639, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR ADJUSTMENT AUTHORIZED BY CHAPTER 89C, HAWAII REVISED STATUTES", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 947
(H.B. No. 1671, H.D. 1, S.D. 2):

By unanimous consent, consideration of Stand. Com. Rep. No. 947 and H.B. No. 1671, H.D. 1, S.D. 2, was deferred to the end of the calendar.

At 4:07 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 4:12 o'clock p.m.

Standing Committee Report No. 949
(H.B. No. 1686, H.D. 2, S.D. 3):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 949 was adopted and H.B. No. 1686, H.D. 2, S.D. 3, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII HOUSING AUTHORITY", having been read throughout, passed Third Reading by not less than two-thirds vote of all the members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 1215, H.D. 1, S.D. 3:

Senator Yim moved that H.B. No. 1215, H.D. 1, S.D. 3, having been read throughout, pass Third Reading, seconded by Senator Carpenter.

Senator Kawasaki then spoke against the measure as follows:

"Mr. President, this is another one of those bills that provides special treatment for a special category...in this case, counties.

"This is a bill that requires the County of Oahu through its county government to mandate the dedication of a certain amount of land in a new subdivision to be set aside for parks--that in a county where suitable land is quite limited. The bill with its amendment provides that neighbor island counties where land is plentiful are not mandated. They have the choice of whether they want to mandate their county governments to require the subdividers to set aside a certain amount of land for parks or put up money if they're not going to put up land. This kind of treatment I think, again smacks of special legislation favoring a segment of our population again, very unpalatable I think to fair-minded people.

"If there's any place, there's any county that should have the right to have its county government decide at its best judgment with all information available to it, whether they should require of subdividers that land be set aside, depending on the type of subdivision and where it's located...

"I could cite a number of subdivisions where a bill like this would have worked a hardship. Dowsett Highlands is a case. Most of those lands there are on sloping lands. It's a beautiful subdivision--no particular park there, because it is not land conducive to a flat area that could be made into a park.

"Waialae-Iki, the Bishop Estate's subdivision--there is another case where most of the land is a gentle slope. There's no flat land conducive to being set aside for a good sized park for the enjoyment of its residents in that area. So these are the kinds of considerations that we have to leave before the County of Oahu to decide whether they're going to mandate the setting aside of land for a park or whether they're going to require the subdivider to put up a certain amount of money in lieu thereof.

"We don't give this choice to the County of Oahu with its limited land availability, but we do give this choice to each of the neighbor island counties where land is plentiful. I feel that the neighbor island counties should be mandated to set aside certain amount of land for park purposes.

"So, Mr. President, I am at a loss to understand the logic back of this particular bill with its new amendment, and I think that if we do this, this also may be subject to a court adjudication someday.

"I feel this is a bad precedent we're setting. If we're going to treat one county one way (Oahu County), then let's treat all counties the same.

"I understand this is called a compromise measure...and that's the trouble with this Body--we compromise too much. I am voting 'no'."

The motion was put by the Chair and carried, and H.B. No. 1215, H.D. 1, S.D. 3, entitled: "A BILL FOR AN ACT TO AMEND SECTION 46-6, HAWAII REVISED STATUTES, RELATING TO PARKS AND PLAYGROUNDS FOR SUBDIVISIONS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, 2 (Ajifu and Kawasaki).

House Bill No. 1667, S.D. 1:

On motion by Senator Chong, seconded by Senator Mizuguchi and carried, H.B. No. 1667, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MOTOR CARRIER SAFETY LAW", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

At 4:17 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 4:18 o'clock p.m.

MATTERS DEFERRED FROM
EARLIER ON THE CALENDAR

Standing Committee Report No. 797
(H.B. No. 4):

By unanimous consent, consideration of Stand. Com. Rep. No. 797 and H.B. No. 4, entitled: "A BILL FOR AN ACT RELATING TO THE COMPENSATION OF CERTAIN PERSONS UNDER THE CRIMINAL INJURIES COMPENSATION ACT AND PROVIDING APPROPRIATIONS THEREFOR", was deferred until Tuesday, April 17, 1979.

Standing Committee Report No. 806
(H.B. No. 732, S.D. 2):

Senator Cayetano moved that Stand. Com. Rep. No. 806 be adopted and H.B. No. 732, S.D. 2, having been read throughout, pass Third Reading, seconded by Senator Carpenter.

Senator Kawasaki then spoke against the measure as follows:

"Mr. President, I'm voting 'no' on this particular bill because this bill has a line here that raises the ceiling of the amount of loans available to private entrepreneurs from \$50,000 to \$75,000.

"Now this is a category of loans where no requirement is made of the borrower, that he put up a certain amount of his capital--10% or whatever you want to have him put up, as his good faith participation in a loan.

"There is no requirement as such and of course our government agencies, including the Department of Agriculture and the Department of Land and Natural Resources, and I can't say the same of the Department of Planning and Economic Development, fortunately, don't have a brilliant record of administering their loan program with economy and efficiency. As a matter of fact, I think if some of these loan officers on these respective agencies were hired by private banks, they would be fired.

"But lifting our loan ceiling at a time when we've received several critical reports by the Legislative Auditor whom we hire, whom we mandated to go into these studies--and these reports have been critical of the administration of our loan programs in the aforementioned departments--at a time like that for us to be lifting the ceiling on these loans from \$50,000 to \$75,000 requiring no equity contribution on the part of the borrowers, the entrepreneurs, I think is not contributing to promoting more efficiency in the administration and

in the monitoring of these loans. For that reason, I will vote 'no' on this."

The motion was put by the Chair and carried, and Stand. Com. Rep. No. 806 was adopted and H.B. No. 732, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII CAPITAL LOAN PROGRAM", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, 2 (Abercrombie and Kawasaki).

Standing Committee Report No. 811
(H.B. No. 1338, H.D. 2, S.D. 2):

Senator Cayetano moved that Stand. Com. Rep. No. 811 be adopted and H.B. No. 1338, H.D. 2, S.D. 2, having been read throughout, pass Third Reading, seconded by Senator Abercrombie.

Senator Carroll then spoke in favor of the measure with certain reservations:

"Mr. President, the basic thrust of this bill, or one of the thrusts of this bill is to reduce or in fact eliminate the twenty-five cent charge at the Waikiki Aquarium.

"According to testimony which was given by the University and by a member of the Friends of Waikiki Aquarium, I can understand very much their frustration with the situation at the Aquarium. I blame the University of Hawaii and their administration because of the fact that we have a really second-rate aquarium and the personnel there, the whole gamut of persons working there who are paid, as well as the Friends of the Aquarium, are really doing the best they can.

"I'm sure everyone knows the Waikiki Aquarium has been a stepchild all along the way and nobody ever seems to really want to give it the kind of care and nurture that it needs. Now the Friends of the Aquarium and, I guess in some concert with the University, have proposed this particular measure.

"What they're trying to do essentially is to eliminate the 25¢ charge and allow the people coming in to make a donation of 25¢ which they will then have effectively, without having to pay for the cost of accounting, etc., and it will not go to the general fund of the state.

"It's incredible to me that this state which is a marine state, with the magnificent fish life that we have here, has to do this kind of thing.

"If they took the 25¢ fee that we have now, for instance, and raise that to a dollar, instead of having \$25,000, they'd have approximately \$125,000 which can be generated by fees.

"This Aquarium really suffers a kind of a tragic position. I must confess I haven't done nearly as much as I should have and I'll try to make up for that in the coming year, but I think we have to vote for this measure with an eye to charging a really significant fee for entry into that Aquarium and then giving them the funds to make it what everybody who is involved with it want it to be. They've done a really tremendous job with extremely limited resources. On that basis, I ask that we vote for the measure."

Senator Kawasaki then spoke against the measure:

"Mr. President, I'm at a loss to understand why the elimination of a very nominal fee like 25¢ to see this exhibit is going to contribute to more people contributing privately to this fund to make up the elimination. I think 25¢ is perfectly reasonable--as a matter of fact, I'd prefer 50¢. Have that money available to expand the resources of and expand the collection of the Aquarium and hence you make it more attractive for people to want to take their children to see the exhibit; for tourists to want to spend half an hour there to see the fauna and the fish life of the Pacific Ocean here.

"I think this is the way to have the collection extended and the improvements made over there so that it be a very attractive tourist attraction. God only knows, after the tourist has been here for a week, what else does he want to see. He has seen Sea Life Park, etc., but I think the Aquarium, like the Shed Aquarium and the Steinhart Aquarium on the mainland could be a major attraction bringing about good income. This can only be done by expanding its services. And how do you expand services? By having more monies available not by eliminating a very reasonable figure like 25¢ admission."

Senator Carroll then responded:

"Mr. President, I agree precisely with what the good Senator is saying. I think the problem that we have before us today is that the approach that's being taken by this measure is a 'band-aid' approach, and I hate to use that trite term, but the aquarium in Copenhagen, for instance, in Paris, in Bergen, Norway, in Washington--they charge significant amounts of money in terms of the going rate. Back in 1966 and

1967, it was 75¢ in Denmark.

"We can also have provisions at the Aquarium where adults accompanied by children are allowed in free, where our students can be allowed in free.

"I really think the people who have proposed this bill are trying to get this little 25¢ fee which amounts to \$35,000 that was collected last year, and get that amount diverted into their non-profit corporations, so that they can use the money without having it come into the state.

"I think a far more practical way to do this, is as the Senator from Kalihi has suggested."

The motion was put by the Chair and carried, and Stand. Com. Rep. No. 811 was adopted and H.B. No. 1338, H.D. 2, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE AQUARIUM", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Kawasaki).

Standing Committee Report No. 812 (H.B. No. 1473, H.D. 1, S.D. 1):

Senator Cayetano moved that Stand. Com. Rep. No. 812 be adopted and H.B. No. 1473, H.D. 1, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Kawasaki.

Senator Kuroda then spoke against the measure as follows:

"Mr. President, I'm voting 'no' on this bill.

"This bill was offered with good intention to provide funding for the Oahu units as can be seen by the deletion of a statement in the first paragraph of the bill. However, the Civil Air Patrol people submitted certain information to both houses of the legislature which have gone without the proper attention. Therefore, I think this bill should go into conference and that the correction be made. Thank you."

The motion was put by the Chair and carried, and Stand. Com. Rep. No. 812 was adopted and H.B. No. 1473, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII WING, CIVIL AIR PATROL", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, 3 (Chong, Kuroda and Saiki).

Standing Committee Report No. 828
(H.B. No. 160, H.D. 1):

Senator Cobb moved that Stand.
Com. Rep. No. 828 be adopted and
H.B. No. 160, H.D. 1, having been
read throughout, pass Third Reading,
seconded by Senator Chong.

Senator Cayetano then spoke in
favor of the measure as follows:

"Mr. President, I rise to speak in
favor of this bill but with some reservations.

"I favor this bill but I think it's
interesting to note from the committee
report that the doctors cite the differences
in the situation between doctors here
in Hawaii and doctors in California.

"It is my recollection when the medical
society pushed for the medical malpractice
bill into law a few years ago, they
cited California as living proof for
their case. My recollection further
is that no differences were noticeable
then. I ask why cite them now.

"In any event, I think it is a good
bill but I just want some consistency
here from the medical society."

Senator Kawasaki then spoke in
opposition to the measure:

"Mr. President, this sounds like
a litany. I spoke against this bill
when it emerged from the Senate Committee
reducing the amount set aside from
\$5 million to \$3 million, which I think
places this fund in jeopardy. I understand
one of the cases pending right now
on a malpractice litigation involves \$1
million. Theoretically, if we had
three of these cases, then the fund
would be completely depleted.

"It just seems to me having about
1200 physicians duly registered and
practicing here, in a profession that
was cited in Fortune Magazine as being
the highest paid profession in the nation
today, that these doctors could raise
\$5 million as a minimum figure to set
aside for this particular fund. I think
reducing it to \$3 million might place
this fund in a jeopardy situation."

Senator Abercrombie then spoke
against the measure as follows:

"Mr. President, I wish to speak against
the bill on the grounds that I once
watched a TV show called 'Maude'
and on that show, one of the characters
was a doctor.

"The doctor had very stringent standards
concerning free enterprise and ethics
and the capacity of the government

to interfere with his life and business,
and I recall very clearly during that program
that a discussion was had on malpractice.

"The doctor said to the lady who was
playing Maude, 'Do you realize, do
you really realize what the rise in malpractice
insurance rate means?' and she said
'No'. He then said, 'It means I have
to be more careful.'

"Mr. President, I think everyone
should vote 'no'."

Senator Cobb spoke in favor of the
measure:

"Mr. President, speaking in favor
of the bill, I'd like to note several things
in passing. One, the requirement of
\$3 million is a continuing requirement
in that if there is a suit for any amount,
even \$1 million as alluded to by a previous
speaker, the amount of the corpus must
be made up in that amount immediately
by an assessment to all the participating
physicians.

"Secondly, out of the 1200 physicians
in Honolulu, only about 240 have elected
to go with this particular option as a form
of malpractice insurance. Others have
elected to 'go bare' meaning no insurance.
Others have elected to continue to pay
insurance rates to various carriers,
among them Argonaut Insurance Co.

"But, Mr. President, the critical
factor here is found in the bill with the
Senate draft at the bottom of page one
where it states, 'The director of regulatory
agencies shall have the power to investigate
and verify the amounts specified by law.'

"Your Committee, Mr. President, felt
this was an essential safeguard and
requirement to insure that the corpus
would always remain fully funded and
that the amounts on deposit could be
verified at all times upon spot-check
by the Department of Regulatory Agencies.

"I think that with these provisions,
there are more than sufficient safeguards
in the bill and I would ask the members
of the Senate to support it."

Senator O'Connor spoke for the measure
as follows:

"Mr. President, I might just add in support
of the bill that at the same time we passed
this measure two years ago, we also
passed the measure which has to do with
the state-operated malpractice fund to
which all doctors and, of course the doctors
in this particular cooperative may subscribe
and I understand they intend to, which
picks up coverage for them over \$100,000
so that at any time if one of them happens
to get hit with a big judgment in excess

of \$100,000, the portion of that amount which will be covered under this particular cooperative coverage, will only be the first \$100,000. Therefore, it would never be rated at any time for an excessive amount and it would take an awful lot of cases to deplete the \$3 million, if there were only a \$100,000 per case."

The motion was put by the Chair and carried, and Stand. Com. Rep. No. 828 was adopted and H.B. No. 160, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PHYSICIANS COOPERATIVE", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, 2 (Abercrombie and Kawasaki).

House Bill No. 604, S.D. 1:

On motion by Senator Cobb, seconded by Senator Chong and carried, H.B. No. 604, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII MEDICAL MALPRACTICE UNDERWRITING PLAN", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 734:

Senator Cobb moved that H.B. No. 734, having been read throughout, pass Third Reading, seconded by Senator Chong.

Senator Yee asked to be excused from voting on this measure due to his position as an executive officer in various financial and insurance institutions.

The President ruled that Senator Yee is in conflict and would be excused from voting on this measure.

The motion was put by the Chair and carried, and H.B. No. 734, entitled: "A BILL FOR AN ACT RELATING TO LIFE AND DISABILITY INSURANCE", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 20. Noes, 4 (Anderson, Carroll, Cayetano and Soares). Excused, 1 (Yee).

House Bill No. 931:

On motion by Senator Cobb, seconded by Senator Chong and carried, H.B. No. 931, entitled: "A BILL FOR AN ACT RELATING TO THE BOXING COMMISSION", having been read throughout, passed Third Reading on the following showing

of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 961, H.D. 1:

Senator Cobb moved that H.B. No. 961, H.D. 1, having been read throughout, pass Third Reading, seconded by Senator Kuroda.

Senator O'Connor then spoke against the measure as follows:

"Mr. President, this bill increases the amount of percentage on insurance loans in this jurisdiction from 6% to 8%. It seems to me that when you're borrowing your own money, you shouldn't have to pay an excessive percentage on that borrowing.

"Historically in America, borrowing on your own insurance has been at a very low rate and I can remember a day when you could do it for 3% or 4% simply to cover the cost of handling the loan on your own insurance company.

"Now to raise this to 8% to me is tremendously excessive, when you're borrowing your own money which you have to pay back in order to continue with the total utilization of your insurance policy. I'm going to vote 'no' on this bill."

Senator Abercrombie then stated that he would like to have the comments of Senator O'Connor represent his own views as he will be voting 'no'.

Senator Cobb then responded as follows:

"Mr. President, your Committee at first killed the bill under my recommendation until we had a chance to verify the claims made by some of the various carriers relative to what the effect of the increase from 6% to 8% on a permissive basis would be.

"We were able to verify through receipt of records as to what is happening in forty-six of the the states, that it does lower the cost of insurance to the consuming public through the increased dividends. This is caused by the higher rate of return. They were able to verify this by receipt of the premium breakdowns in forty-two of those forty-six states. Therefore we decided to move on the bill.

"In addition, the Department of Regulatory Agencies through its Insurance Commissioner is entitled to verify this, and it's something we're going to be looking at as well.

"I would point out further that the

reduction in rates or the increase in the amount of borrowing power reflects the reality of the increase in interest rates plus the fact that it's permissive, not mandatory; and that in most cases it goes to approximately 7% to 7½%. We find this to be the common practice in about forty of the forty-six jurisdictions mentioned.

"Accordingly, Mr. President, it's a permissive rather than a mandatory measure in this regard."

Senator Yim then inquired if the Chairman of the Committee on Consumer Protection and Commerce would yield to several questions, to which Senator Cobb replied in the affirmative.

Senator Yim then asked, "Is it true that the amount of money that we're talking about is coming from the cash value of an insurance policy and therefore that cash value that we're borrowing on is actually the money belonging to the insured?"

Senator Cobb answered, "It's partially correct."

Senator Yim continued, "We're not borrowing a loan as we generally understand a loan. This is an unusual circumstance where the money borrowed is on the cash value."

Senator Cobb replied, "There are... we find a number of cases where loans actually exceed the cash value. The cash value of your own premium can in effect be used as partial collateral on the loan. This is by no means limited to the fact that you are limited to, say if you have \$10,000 cash value, that you are limited to a \$10,000 loan. There are a number of cases where loans are considerably larger than the cash value of an individual's insurance policy."

Senator Cayetano then inquired if the Chairman of the Committee on Consumer Protection and Commerce would yield to a question, to which Senator Cobb said that he would.

Senator Cayetano then asked, "If the remarks of the Senator from the Fifth District are true, why is it limited to 8%. Why not take off the ceiling?"

Senator Cobb replied, "8% is a compromise between what is the prevailing prime rate and what is the lowest possible floor and is the common practice in forty-six other jurisdictions of the United States.

"At the present time, I don't believe it exceeds 8% any place. All this measure would do in that respect is conform Hawaii's practice with what is the practice in many other states and would make it easier for both a local as well as a national insurance carrier, instead of having to print separate forms and separate rates, to conform their practice to what is happening nationally."

Senator Yee then asked to be excused from voting on this measure due to his position as an executive officer in various financial and insurance institutions.

The President ruled that Senator Yee is in conflict and would be excused from voting on the measure.

The motion was put by the Chair and H.B. No. 961, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INSURANCE", having been read throughout, failed to pass Third Reading on the following showing of Ayes and Noes:

Ayes. 4. Noes, 20 (Abercrombie, Anderson, Campbell, Carpenter, Carroll, Cayetano, Chong, George, Hara, Kawasaki, Mizuguchi, O'Connor, Saiki, Soares, Takitani, Toyofuku, Ushijima, Yamasaki, Yim and Young). Excused, 1 (Yee).

House Bill No. 986, S.D. 1:

Senator Cobb moved that H.B. No. 986, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Chong.

Senator Carroll then spoke against the measure as follows:

"Mr. President, this appears to be an innocuous measure in the way it is worded. It appears not to have too much impact, but the actual fact of the matter is here--that those injured persons who are probably least able to pay back the money that's being asked for under this particular measure, are going to be taxed by this law to do so.

"It's difficult to explain without a blackboard what's really happening in this case, but in the event that a person who is injured sues or somehow effects settlement with the insurance company or with the defendant for a specific amount, thinking perhaps that he has completely healed or is healed enough to where there will be no significant expenses incurred in connection with the injury, and accepts a certain amount of money.

"Under this particular measure, if,

for some reason and I have seen this in my own personal experience, he should have a turn for the worse subsequent to this settlement, then he is going to have to pay back to his medical carrier for the amount that they extend on his behalf, because of the fact that this treatment can be tied to that original injury.

"The net impact of this could be that a person could take a relatively modest settlement within the purview of the canons of ethics, trying to settle litigation and let the defendant go his way, and then effectively, be denuded of the entire amount of his award, the bulk of which would probably have been based on the pain and suffering or potentially even some permanent injury.

"I think this is really a scurrilous bill to be before this Body and I know there's not too much feeling about it because people have not witnessed individuals who are in this kind of a situation. But I think it's a very, very bad bill and I would ask that those of you who are thinking of people in this condition, vote against it."

Senator Abercrombie then inquired if the Chairman of the Committee on Consumer Protection and Commerce would yield to several questions, to which Senator Cobb replied in the affirmative.

Senator Abercrombie stated, "If I can elucidate a little more as a result, that's the object. Now, is it true that under the present law, the injured person must pay back 50% of all the medical bills that should have been paid by the insurance company prior to the date of judgment or settlement?"

Senator Cobb replied, "It depends on the conditions of the settlement. Conditions are always subject to negotiations in any settlement."

Senator Abercrombie continued, "Well, perhaps we have a different understanding..."

At 4:47 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 4:50 o'clock p.m.

Senator Abercrombie continued, "Mr. President, I think I've been given a way to deal with this question expeditiously. It has been suggested to me by people who are learned in the profession of insurance that I put it to the Body in the following fashion and we can vote up or down.

"If you are for the insurance companies, against the consumer, vote 'yes'. If you are for the consumer, against the insurance company, vote 'no'.

"Now this was put to me quite seriously and this is where the rest of my questions were directed. Rather than carry it all out, I suggest that the members of the press get your pencils ready... everyone who is in favor of the consumer, against the insurance company will vote 'no'; everyone who is in favor of the insurance company, against the consumer will vote 'yes'. Thank you, Mr. President."

Senators Cayetano and Anderson then stated for the record that they had made their decisions to vote 'no' long before the speech offered by the previous speaker.

At 4:51 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 4:52 o'clock p.m.

Senator O'Connor then spoke for the measure:

"Mr. President, since I am never one to leave the pot boiling on the stove, I would like to speak briefly on this measure.

"This measure started out as a pure little technical bill which would have included not only those items of hospitalization and medical expenses actually paid to an insured by an insurance company after there had been an accident that was covered by no-fault, but would also include those items of medical expenses, hospital bills, which were incurred by the injured person which the insurance company still had to pay and yet were outstanding at the time of settlement or judgment.

"The little technical issue which was attempted to be resolved by this bill was that anything which had been incurred, which the insurance company was still responsible to pay, either the hospital or the doctor for, would be totaled up with everything else when the settlement was entered into because for sure, the attorney for the injured person would total it up as part of the claim against the insurance company or against the wrongdoer. At the time of settlement, a subrogation right would then vest in the insurance company for not only the amounts that they had actually paid but the other amounts which had been incurred and for which they were legally responsible to pay.

"Now to categorize this bill as being one which is either pro-insurance company or anti-consumer, is dead wrong, because at the time of settlement or judgment, the consumer, namely the injured insured, is certainly going to take advantage of every single item of special damage which he has incurred; namely, all of the hospitalization, all the medical bills, all the psychiatrist bills, everything else he can add up in order to get the best possible settlement or judgment that he can render under the circumstances. Therefore, to say that those items which the insurance company is responsible to pay, should not be included in the subrogation right is just ridiculous.

"Therefore, I would suggest, Mr. President, that this is not a pro-consumer or anti-consumer or a pro-insurance company or anti-insurance company measure. It was simply a housekeeping measure. But I understand that the good Chairman of the Consumer Protection and Commerce Committee, in his wisdom, is going to take other action on the matter."

Senator Cobb then remarked as follows:

"Mr. President, I just want to make one observation in moving for the recommittal of this bill and that's what I think is an erroneous argument, perhaps even political argument, as to whether this thing is pro-consumer or anti-consumer; and that is with an example.

"If a consumer incurs a bill or incurs some rather expensive treatment at a hospital and does not receive that bill or pay for it, then under the provisions of the law that exists now, he cannot make claim for that. Under the provisions of this bill, he would be able to do so. Let's say he receives a \$5,000 psychiatric bill. It's incurred, but he can't make claim for it until it is paid. That's the difference for the consumer.

"But now with an argument of consumerism versus insurance company over what is basically a technical housekeeping amendment, we'll recommit the bill."

On motion by Senator Cobb, seconded by Senator Chong and carried, H.B. No. 986, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII MOTOR VEHICLE ACCIDENT REPARATIONS ACT", was recommitted to the Committee on Consumer Protection and Commerce.

House Bill No. 1039, S.D. 1:

Senator Cobb moved that H.B. No. 1039, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Chong.

Senator Cobb then stated as follows:

"Mr. President, I would like to call the attention of the members to page 2, lines 1 through 3. We inadvertently did not underscore those three lines. It was clearly the intent of the Committee that lines 1 through 3 on page 2 of the bill be underlined according to the Ramseyer method. We will be communicating this to the Revisor of Statutes and we've also checked with him in person. He has indicated that a floor remark would be adequate. We will follow up with a memo as well as advising the House of Representatives."

The motion was put by the Chair and carried, and H.B. No. 1039, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE STANDARD FORM FIRE INSURANCE POLICY", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 1186:

On motion by Senator Cobb, seconded by Senator Chong and carried, H.B. No. 1186, entitled: "A BILL FOR AN ACT RELATING TO THE BANK EXAMINER", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 1576:

Senator Cobb moved that H.B. No. 1576, having been read throughout, pass Third Reading, seconded by Senator Chong.

Senator Yee then asked to be excused from voting on this measure due to his position as an executive officer in various financial and insurance institutions.

The President ruled that Senator Yee is in conflict and would be excused from voting on this measure.

The motion was put by the Chair and carried, and H.B. No. 1576, entitled: "A BILL FOR AN ACT RELATING TO SPECIFIC POWERS OF INDUSTRIAL LOAN COMPANIES", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Yee).

House Bill No. 421, H.D. 1, S.D. 1:

Senator O'Connor moved that H.B.

No. 421, H.D. 1, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Cobb.

Senator Abercrombie spoke against the measure as follows:

"Mr. President, I'd like to speak against the bill on the following basis. This bill would make a motion for deferred acceptance of the guilty plea allowable only prior to trial. The bill ignores the fact that in some trials, the defendant may be surprised by a witness who lies on the stand thus suddenly reducing the chances of acquittal.

"Many defendants who rely on the services of the public defender do not have the opportunity to discuss their case with counsel until the day of trial. I believe the deadline for availability for the deferred acceptance plea would be more properly set at the termination of testimony of the last prosecution witness.

"The bill also makes it more difficult for a deferred acceptance plea defendant to obtain expungement of his record after the final discharge. This discriminates against those defendants who should have the greatest chance of rehabilitation. For that reason alone, I would feel that one should vote against the bill having had some experience with people for whom expungement was an extremely important step in the rehabilitative process, a kind of cap, if you will, to a successful rehabilitation process.

"The other point in relation to what I have said is that, if one accepts the philosophy of the deferred acceptance, then it seems to me that it should be carried through to the termination of testimony of the last prosecution witness.

"If one is against the idea of the deferred acceptance which I think also has some merit as a defensible argument, then it seems to me that it shouldn't be instituted of course in the first place. But if you're going to have it, if you do accept the philosophy as transposed into law, that there be a deferred acceptance of guilty plea, then it seems to me that you should go all the way with it and give the maximum opportunity for the dynamics of the trial to produce the circumstances in which a judgment will be rendered as to whether it's an appropriate thing to do.

The motion was put by the Chair and carried, and H.B. No. 421, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CRIMINAL PROCEDURE: DEFERRED ACCEPTANCE OF GUILTY PLEA", having been read throughout,

passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Abercrombie).

House Bill No. 925, H.D. 2, S.D. 1:

Senator O'Connor moved that H.B. No. 925, H.D. 2, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Cobb.

Senator Yee then spoke against the bill as follows:

"Mr. President, I rise to speak against this particular bill. It should not be labeled as the open primary--it still remains a closed primary.

"I think the public has been misled. Whether it's the media's fault or the Con-Con's fault, its reference to open primary indicates that the voter has a wider selection when he goes to the polls, especially for the independent voter and those who wish to cross over.

"All this amendment does is that you don't have to register as a Democrat or selected party preference ticket prior to election. All it does is, when you go to the polls on that day, you may ask for either a Republican ballot or a Democratic ballot. It still is, as far as I am concerned, a closed primary.

"They make a few other changes--we have an earlier primary election, rather than the first Saturday of October, but the other changes are very minor.

"I think the people in this state are due a better explanation and I hope the media picks this up--that we don't have an open primary election. It's still a very closed primary election."

Senator Carroll then stated, "Mr. President, I'd like the remarks of my erudite colleague from the Sixth Senatorial District adopted by reference and made my own for the purpose of the Journal."

The motion was put by the Chair and carried, and H.B. No. 925, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO OPEN PRIMARY", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 18. Noes, 7 (Abercrombie, Ajifu, Anderson, Carroll, Carpenter, Soares and Yee).

House Bill No. 1140, H.D. 1, S.D. 1:

On motion by Senator O'Connor, seconded

by Senator Cobb and carried, H.B. No. 1140, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO STATUTORY REVISION; AMENDING OR REPEALING VARIOUS PROVISIONS OF THE HAWAII REVISED STATUTES FOR THE PURPOSE OF CORRECTING ERRORS, CLARIFYING LANGUAGE, CORRECTING REFERENCES, AND DELETING OBSOLETE OR UNNECESSARY PROVISIONS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 1386, H.D. 1, S.D. 1:

On motion by Senator O'Connor, seconded by Senator Cobb and carried, H.B. No. 1386, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CRIMES", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

At 5:05 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 5:06 o'clock p.m.

House Bill No. 1634, H.D. 1, S.D. 1:

Senator O'Connor moved that H.B. No. 1634, H.D. 1, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Cobb.

Senator Cayetano then spoke against the bill as follows:

"Mr. President, this is a, to put it so simply, an amazing bill.

"This bill, as I read it, would allow the state, in a law suit where a citizen sues the state to ask for a jury trial. On the other hand, if the citizen who is suing the state wants a jury trial, he is denied that privilege.

"Now I understand that the state cannot be sued except with its permission. That is what we call the doctrine of sovereign immunity. However, if the difference is sovereign dispensation, why do we let the attorney general decide on a case by case basis whether a jury should be asked for or not. Why not let the attorney general decide on a case by case basis when in fact a person should be allowed to sue the state? That way you can protect the state's interest better, because this is what this bill does.

"As I read the committee report, I really feel that the attorney general, if the attorney general's testimony as summarized in the committee report is correct, has really insulted our Judiciary.

"Now the committee report states 'that the State Tort Liability Act was originally modeled after the Federal Tort Liability Act'. The report then goes on to say that the Federal Tort Liability Act 'disallow(s) jury trials on the theory that a governmental defendant, by virtue of its impersonal posture and seemingly limitless financial resources, may be vulnerable to manipulation of the passions of juries by skillful counsel for claimants'.

"The report then states that 'the testimony of the attorney general indicates that (its) experience suggests that a jury's judgment (here in Hawaii) is preferred over that of our judges'. What they're saying in effect is that the attorney general has had very bad experience before our judges.

"Now I suspect that that may have been the result of not the passion of our judges, but perhaps the skill of the attorney general's office and also the merit of the plaintiff's claim. That could be possible.

"The committee report then goes on to say that, 'it would be a grave error to open the floodgates of jury passion to all cases under the State Tort Liability Act. Recognizing that claims under that act are essentially allowed as sovereign dispensation, we conclude that jury trials should be availed only when the attorney general should conclude that the general resources of Hawaii's taxpayers would be vulnerable to unfairness without a jury trial.

"Now as a general proposition, attorneys who try law suits in our civil courts will ask for a jury trial if they feel that the facts of their case would be deemed more favorable by a jury. Now this bill would allow the attorney general to do the same.

"In effect, this amazing bill would allow the state to shop for a favorable judge. If the state could not get a favorable judge, it would then demand a jury trial.

"I think this kind of logic is... cannot be explained in terms of fairness to all of the parties involved. If the state is going to allow a citizen to sue the state, then we should have all of the privileges which we allow both parties in any law suit to be available. Therefore, I urge all of my colleagues

to vote against this bill."

Senator O'Connor then spoke for the bill as follows:

"Mr. President, I rise to speak in favor of the bill. Historically, the state could be sued in tort and the State Tort Claims Act fills the same function as the Federal Tort Claims Act in allowing a citizen of the state under certain circumstances within certain prescribed rules to sue the state.

"There's not supposed to be anything fair about the State Tort Claims Act because the state is allowing under very specific rules that citizens to sue itself. And there's nothing fair about the Federal Tort Claims Act in the same philosophy.

"The federal government and the Federal Tort Claims Act are allowing the citizens of the United States to sue the government under certain prescribed situations. The jurisdiction is narrowly drawn and the rules are narrowly drawn, because should the state decide in its wisdom not to allow suits of this nature, all it must do, all we must do is repeal that act and then there would be no suits at all.

"Therefore, the Constitutional Fourteenth Amendment rights which have to do with due process do not apply when you talk about the Federal Tort Claims Act or the State Tort Claims Act. This is an act which we should be extremely jealous of, and we should be jealous in the area to allow recovery within a prescribed boundaries of the act but recovery only for the things that are outlined in the jurisdiction within the guidelines and rules laid down.

"Historically, in both the Federal Tort Claims Act and in our and every other State Tort Claims Acts, there has been a mandate that cases shall be tried to a judge without a jury--no jury. The bill before you enlarges the ability of the state to demand a jury in the circumstances where the state should desire to have a jury in these kinds of cases. Jurisdictionally, this is absolutely appropriate within a framework of this act. It may not be appropriate in some other circumstances where you're talking about the due process necessary under the Fourteenth Amendment.

"However, this is one of those circumstances where we are not talking about such due process. In this particular circumstance, we are enlarging the ability of the state to defend and if we say that under the circumstance where the state demands a jury or does not demand a jury, the defendant gets anything

more or less, then we are decrying the entire system. The attorney general in this state feels that in certain circumstances he should have the right to demand a jury.

"I would take issue with the previous speaker indicating that there is any ability to shop judges or juries under those circumstances, because under our rules the demand for jury trial comes immediately after the filing of the complaint, long before you know who the judge might be that would hear the case. And in those circumstances analyzing the type of case, the attorney general would either have to demand a jury or not demand a jury and thereafter be stuck with his decision. There could be no judge-shopping.

"For all of these reasons, I would urge all to vote 'aye' for this particular measure."

Senator Cayetano rose in rebuttal and stated as follows:

"Mr. President, I rise to rebut some of the remarks made by the previous speaker.

"The key to this bill is stated in the fourth paragraph of the committee report on the first page, and I quote, 'The testimony of the attorney general indicates that the experience of its office suggests that a jury's judgment is preferred over that of our judges.' What this statement or what this sentence says is that for a period of time, the attorney general has had a very poor batting average before our judges.

"Now let us suppose the situation changes. Shall we then go back and amend this bill and conform to the Federal Tort Liability Act, where cases will then be tried without jury and only by judge? The logic of this bill escapes me. I think we should vote against it."

At 5:15 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 5:18 o'clock p.m.

Senator Abercrombie then spoke against the bill:

"Mr. President, the reason I find myself in disagreement with the reasoning of the Chairman of the Judiciary Committee is that it becomes a non sequitur. He says take the act as it is or repeal the act. That is not an argument, in my judgment.

"If you admit that it is sometimes desirable

for a citizen to sue the state, then the mechanisms invoked by Senator Cayetano follow. It's as simple as that. I can imagine circumstances right now in which the federal government might find itself in such a situation having to make certain decisions in this area in respect of the...in Harrisburg, Pennsylvania environs. So I would say that the committee report is in itself testimony in respect of backing up Senator Cayetano's contention."

The motion was put by the Chair and carried, and H.B. No. 1634, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO COSTS, ATTORNEY'S FEES AND JURY TRIALS UNDER THE STATE TORT LIABILITY ACT", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 20. Noes, 5 (Abercrombie, Carpenter, Cayetano, Chong and Kawasaki).

Standing Committee Report No. 864 (H.B. No. 22, H.D. 1, S.D. 1):

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, Stand. Com. Rep. No. 864 was adopted and H.B. No. 22, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO COUNTY BONDS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 982:

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, H.B. No. 982, entitled: "A BILL FOR AN ACT RELATING TO THE BUDGET", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Cobb).

House Bill No. 1666, H.D. 1:

On motion by Senator Cayetano, seconded by Senator Kawasaki and carried, H.B. No. 1666, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 398, S.D. 1:

Senator O'Connor moved that H.B. No. 398, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Ushijima.

Senator Abercrombie then spoke against the measure as follows:

"Mr. President, I'd like to speak against this bill and also to make my remarks with relation to House Bill No. 405, S.D. 1, and House Bill No. 1004, S.D. 1, because I think they are all connected.

"I have sent a memo to the members of the Senate here and I'd like to highlight it if I may, as it refers to all three measures I have cited.

"These measures would modify the statutes governing criminal court proceedings by shifting the burden of proof from the prosecution to the defense in cases in which the defense seeks acquittal on the grounds of: (1) 'choice of evils' (conduct which the actor believes necessary to avoid imminent harm or evil to himself or another); (2) self defense; and (3) duress. That refers to those bills in order, Mr. President. This doctrine in which the burden of proof is shifted is known as the 'affirmative defense'.

"The committee reports accompanying these bills are substantially identical, and they fail to make a convincing argument for enactment in my judgment. They ignore the fact that the nature of these defenses already requires the defense to make a convincing case for the existence of duress, self defense or 'choice of evils'. Any defendant who admits to the commission of the act with which he is charged, is by that very fact, faced with the practical and very urgent necessity of justifying that act to the judge or jury.

"I think that is extremely important, Mr. President, in this instance. I am not trying to say that this should enable a person to deny that the activity took place in respect of being charged under these various areas...on the contrary. You admit to the act for which you are charged and as a result, you must justify it.

"The principal argument put forth by the committee reports for requiring the 'affirmative defense' is that the evidence of the mitigating factors is somehow more 'accessible' to the defense than it is to the prosecution. This I really fail to understand at all. If anything, I would judge that unless there's rare circumstances where the defendant is very well fixed financially the power of the prosecutor to discover mitigating factors...excuse me, to discover factors working against that defense are infinitely greater.

"Therefore, the assertion is highly questionable I believe. In a self defense

case, particularly, the principals with the most intimate knowledge of the relevant factors may very well be prosecution witnesses, who are far more 'accessible' to the prosecuting attorney than to the defense counsel. Even in the cases of 'choice of evils' or duress, there is nothing inherent in the nature of the situations which would make the evidence supporting the arguments of the accused more 'accessible' to him than to the prosecution.

"Even if it were conceded that retaining the burden of proof on the prosecution for these types of cases placed an unreasonable strain on the administration of justice, we should still be loathe to shift the burden of proof to the defense on the grounds of more convenient 'access' to evidence. Should our criminal justice system operate on the principle that, in all cases where the evidence is more 'accessible' to the defendant, he should bear the responsibility of proving his innocence? It's questionable.

"Neither the committee reports nor the bills offer any working definition of 'accessibility'. This is not surprising, since it is an extremely subjective concept (inviting endless argument and problems of interpretation), which will no doubt if these bills are debated, come up on the floor. The circumstances of every criminal trial vary so widely from case to case that evidence which is more 'accessible' to one side in one trial might be more 'accessible' to the other side in another trial (or even, at a different stage, the same trial!). One need only think of some of the trials that have taken place in this state within the last two years to find examples of that kind of situation occurring.

"In embracing the principle of 'accessibility' for these particular defenses we are opening a Pandora's box which exposes us to the probability--or I should say, the inevitability--of confusion, wrangling and increasing the chances of success for future attacks on the principle that the prosecution, not the defense, bears the burden of proving its case.

"A secondary argument put forth in the committee reports is that these defenses are 'interpositions' of the accused--i.e., that while the defense concedes some of the facts and arguments stipulated by the prosecution, the accused is bringing up ('interposing') additional facts or arguments, and that because the defense is 'interposing' these facts or arguments, it bears the burden of proving them. The nature of criminal proceedings already make it necessary for the accused to make

a case for the 'interposed' arguments. What competent defense lawyer will offer an alibi without attempting to offer the strongest possible proof of its truthfulness to a judge or jury? Conversely, judges and juries do not generally 'swallow whole' an alibi for which no corroboration is presented.

"The 'interposition' argument is as subversive to established American principles of jurisprudence as is the argument of 'accessibility'. Is every argument and counter-argument submitted by the defense to be subject to a greater burden of credibility than is the prosecution's case? The notion of a fair trial is better served by far if we continue to maintain the burden of proof on the prosecutor, and leave the judge and jury to weigh the comparative believability and doubts generated by each side. Again we have had recent examples in our state, whether people like the results or not.

"The legislation before us was doubtless inspired by growing public concern over rising crime rates and in response to urgent calls for the legislature to 'do something' about it. These concerns are legitimate, and we do have an obligation to address them. The committee reports accompanying these bills, however, give no indication that these bills will, in fact, serve to reduce crime or make it easier to incarcerate criminals whose continued liberty constitutes a danger to society. The reports give no statistics on the numbers of cases in which these defenses are used, much less any quantifiable proof that they constitute legal loopholes through which significant numbers of dangerous criminals are escaping retribution.

"The case made for these bills by the committee reports is weak and highly questionable. The enactment of these measures would seriously undermine the fundamental American principle that it is the duty of the prosecution to establish the defendant's guilt, not the duty of the defendant to prove himself innocent. History and current events overflow with examples--from Caligula to Idi Amin--of the ease to which the latter principle (where the burden of proof is on the defendant) lends itself to abuse, injustice and ultimately to tyranny. The motives of these bills' proponents may be the best, but let us not delude ourselves that we can preserve our personal freedom and security by destroying the legal and constitutional guarantees upon which that freedom and security is founded.

"Mr. President, in conclusion on House Bill No. 398, S.D. 1, and those that follow, I ask that each member put

himself or herself in the shoes of such a defendant and think very, very deeply, very soberly on whether one might, but for the grace of God, find oneself in exactly the position of claiming a choice of evil defense, self defense, or claiming duress, in respect of what is acknowledged in activity which brings someone before a court of law. Thank you."

Senator Carroll then spoke against this measure:

"Mr. President, I'd like to speak against this measure and rather than take up much time, I'd like to ask that the remarks of Senator Abercrombie be adopted as my own by reference.

"I would like to say that it is quite tempting to vote for these three measures because of the fact that they are excellent prosecutorial tools, but I think in terms of the basic, of our constitution and the presumption of the innocence of all defendants, that we're doing an unwise thing here. I ask that we vote 'no'."

Senator Cobb then spoke against the measure as follows:

"Mr. President, I had intended to speak at considerable length on these measures but I'd like to shorten my remarks somewhat, read some excerpts from small amount of research that's been done against the three measures.

"The affirmative defense is not a new concept in the law. It relates to the justification for an action otherwise in conflict with the law. It may run to the mental state of the doer and how we interpret it, the circumstances which preceded his or her doing of the act.

"This kind of defense is to be found in the laws of many states and it is to be balanced against the constitutional cornerstone of American criminal justice, well stated by Mr. Justice Brennan in the case 'In Re Winship,' and I quote, 'Least there remain any doubt, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.'

"The accused does appear to bear the 'burden of persuasion,' when he utilizes a defense of justification. If he were to remain mute, as is his constitutional prerogative in any given case, he would thereby elect not to use that defense by not 'going forward' to present evidence in his own behalf.

By that decision, of course, he risks conviction. But if he chooses to assert that defense, he must persuade the court of the validity of his justification for having so acted.

"To add to his burden the need to present a preponderance of evidence, as these bills would do, would appear to fly in the face of the essential protection of the accused, and would seem to shift the burden to him from the state. This constitutes a move into a questionable area of jurisprudence. Without the opportunity for our extensive consideration, I must oppose it.

"Nothing should be of more concern to us than to prevent the erosion of the rights of the accused, in this case through our own legislative action.

"If I may, I'd like to address briefly the Hawaii Penal Code which provides for two types of defense to a criminal charge: one, the defenses which negate the penal liability and secondly, affirmative defenses.

"In both instances, the Penal Code places the initial burden of presenting some evidence of the particular defense with the defendants. However, where an affirmative defense is raised, the defendant is given an additional burden of persuasion.

"Presently, the defenses of choice of evils, use of force and duress are not affirmative defense and only require the defendant to bring the issues into focus. Majority of states follow this position.

"The underlying reasons for this position are: one, by the constitution, the defendant is presumed innocent unless and until proven guilty beyond a reasonable doubt. Furthermore the burden of proof to determine guilt is always on the state and never on the defendant; and secondly, the state should bear this burden for they have the manpower, evidence and expertise to assist them in the prosecution.

"I would ask in particular, Mr. President, that in relation to House Bill No. 1004, S.D. 1, how a defendant would prove duress by a preponderance of the proof, particularly if that defendant were reacting to a series of threatening phone calls.

"I have to concur sadly with the comments of the previous speaker and ask, put ourselves in the shoes of the defendant when we consider these measures. I don't see the evidence that this would help law and order, if he were to use that as a phraseology. I do see the evidence that this would

be a fundamental change in our constitutional rights of the prosecution and the rights of the defense."

Senator Cayetano then spoke in opposition to the measure as follows:

"Mr. President, I oppose this bill because I consider it still one more example of how government has steadily chipped away at the rights guaranteed to our citizens under the Constitution of the United States.

"It is a basic tenet of our system of government that every person is guaranteed equal protection of the law; that any person who is accused and tried of a crime shall be accorded due process and that each such person shall be deemed innocent until proven by the state to be guilty beyond a reasonable doubt.

"Indeed the Fifth Amendment to the Constitution holds that no person shall be forced to be a witness against himself, that it is the state, not the individual which has the burden of proving guilt. The guarantees of the rights of an individual set forth in the Constitution were wisely placed there to protect the individual from the excesses of government.

"We call these guarantees the Bill of Rights and they have proved to be so profoundly, statement on individual rights that they have been copied in one fashion or another in constitutions and charters throughout the world. This bill, Mr. President, does violence to the principles set forth in the Bill of Rights.

"Mr. President, our nation's history is replete with examples of government oppressing the individual. If we all think back, examples are easy to find. I want to cite a couple of examples which should be close to the members of this Body.

"In labor, Mr. President, we need not go back too many years when we find that men in this state who were struggling to organize themselves and to obtain a better standard of living, were prosecuted by the government for their beliefs. These people were armed only with their lawyers and the rights guaranteed to them in our Constitution.

"Perhaps a better example, an example which certainly is a chapter of shame in our country's history, goes back to the years of World War II, when our government relocated a small but significant part of our citizens to relocation camps. And these citizens

again were armed only with their attorneys and with their rights guaranteed under the Constitution.

"This bill and all the other bills which shift the burden of defense of proof to the defendant is still but one more example, as I said earlier, of how we are stacking the deck in favor of government. The pressures of our society, the increasing population all is beginning to make, create an atmosphere that's conducive to a fascist state. I, for one, will not be a part of this and I don't think that we here in the legislature should contribute to that eventuality happening any sooner than it should."

Senator Abercrombie then stated as follows:

"Mr. President, in my statement, I'm sorry but I neglected to make a final point that I had intended. I believe that if we pass House Bill No. 398, S.D. 1, House Bill No. 405, S.D. 1, and House Bill No. 1004, S.D. 1, it would be an invitation to those who could commit assaults against women to do so with virtual impunity.

"I believe that a vote, a positive vote, on these bills will increase the circumstances under which women will find themselves virtually without a defense, not only in rape cases, but it will also probably apply to muggings, apply to other crimes of violence, but most especially in respect of sexual assault. For some time in the legislature, we moved in the other direction of trying to take the victim into account in such cases and I think we made good progress.

"I think with literally a stroke of the pen, with the approval of these bills, that the women in our state will find themselves in an extremely precarious legally in the area of sexual assault."

Senator O'Connor then spoke in favor of these bills as follows:

"Mr. President, I rise to speak in favor of this bill, House Bill No. 398, S.D. 1, which is before us, but my remarks also go to House Bill No. 405, S.D. 1, and House Bill No. 1004, S.D. 1, which are going to come right behind.

"Mr. President, if these affirmative defenses were something brand new that we were embarking upon today, many of the remarks prior to my speech would be absolutely germane and would be very interesting to take and dissect, both constitutionally and otherwise, in this particular state. However, such is not the case.

"In 1972 when we passed the Penal Code, we passed a provision which allowed for affirmative defenses and simultaneously we passed about fifteen affirmative defenses, some of which I will go into in a minute, which pertained to many different crimes, some of which had been alluded to by the earlier speakers of things which would be reprehensible under these circumstances.

"These three bills which are before us originated with the prosecuting attorneys of the counties of this state. They were drafted originally by the prosecuting attorney for the County of Maui and have been espoused by all of the other prosecuting attorneys. The reason for them is that when we passed the Penal Code in 1972, we divided the defenses up between the defense which was just called a defense, which had certain rules pertaining to it, and an affirmative defense.

"The affirmative defense went to these kinds of crimes and I'll recite some of them, and these are actually defenses to crimes: the defense of attempt, the defense of compounding, conspiracy, entrapment, extortion, military orders, mistake of law, preventing commission and court offenses, unauthorized control of propelled vehicles, renunciation, sexual abuse and solicitation; and then two years later, because of the tremendous attack by the then U.S. attorney on our gambling statute, we enacted in this legislature the defense of social gambling, the entire defense being in fact an affirmative defense by its denomination.

"That defense of social gambling has been used time and time again in our courts and has yet to be struck down as unconstitutional, despite the woe taking of some of the speakers in this Body that spoke earlier than I did.

"I would like to draw the attention of the Body primarily to the affirmative defense of entrapment, because I think entrapment most closely follows choice of evil, self defense and duress.

"Entrapment was enacted in the Penal Code in 1972 as a defense. For those of us who have been involved in the ongoing debate on prostitution in this Body, in the prostitution situation, the defense of entrapment is most ordinarily brought up, because invariably the defense is that the police officer or officers entrapped the individual who is charged with the crime, by standing there and being solicited. And this always happens. Well, that defense is an affirmative defense.

"And in the Penal Code commentary, both in our commentary and in the model code commentary, that commentary states for entrapment. The code makes entrapment an affirmative defense.

"It is not unfair to require a defendant who desires to escape from penal liability not on the basis of his own lack of culpability, but rather on the basis of the additional culpability of law enforcement officials with respect to their official conduct, to bear the burden of proving by preponderance of the evidence, the excusing condition. And that's the key note in the affirmative defense.

"In the affirmative defense, in order to raise it, the defendant must show enough facts to carry it by preponderance of evidence. This doesn't change the burden of proof in the criminal action. The burden of proof is still on the prosecutor, to prove the entire crime as against the defendant beyond a reasonable doubt.

"It is simply a burden placed upon the defendant if he wants to raise that defense, and that same burden goes to every defense in one degree or another because no defense can be raised in a criminal case unless there is sufficient evidence which the judge finds is enough to allow the defense, whether it be affirmative defense or otherwise.

"For a regular defense that is enough evidence to raise a reasonable doubt for an affirmative defense that is enough evidence so that the affirmative defense can be raised by preponderance... there is always a burden on the defendant to show sufficient facts to talk about any defense and to get the judge to instruct the jury concerning that defense.

"But this defense of entrapment and many of the others that I read off, mistake of law, military orders, and all the others that are presently incorporated in the Penal Code are there for a purpose. They're there because the defendant in raising them creates a situation which makes it incumbent upon him to prove some facts, something more than simply talking about this defense; and that's the situation on all of these.

"Now for the three that the prosecuting attorneys want; namely, choice of evils, which is what we are debating, self defense and duress; each of them have exactly the same philosophy. Each of them fall in the same category and the prosecuting attorneys are saying to us, in order to handle your law and order problems in this state, we want these defenses changed from regular defenses to affirmative defenses.

"In order that there is more proof presented by the defendant in each case, the prosecutors acknowledge that they have the overall burden to prove the crime beyond a reasonable doubt. And they will continue to do that. Because of their request and because it is so closely aligned to everything that is presently in the Penal Code, I would urge that all vote 'aye' on House Bill No. 398, S.D. 1, and then later on House Bill No. 405, S.D. 1, and House Bill No. 1004, S.D. 1, which I will not talk about."

Senator Carroll then spoke in rebuttal:

"Mr. President, it's quite clear that the area of law that we're talking about is controversial and there's much written on both sides.

"I think that in the climate of our times when particularly your Senate Republicans have led in the field of fighting crime and putting forth potential legislation to do these kinds of things, we can understand the compulsion on the part of other members of our Senate to put forth this type of legislation which gives a ring of doing something for the prosecutor.

"Mr. President, it's tempting as I said earlier to go ahead and vote for this, but the difference between the affirmative defense and the defense which we have had and which our prosecutors have had available, I mean which have been available under the terms of the Penal Code all this time, is this: in order for the person to assert one of these defenses, he accepts with the privilege of asserting the defense, the full burden of proof as to what he is saying. At the same time, he has to admit in effect to everything that is charged by the prosecutor. So right off the bat, the entire corpus delicti of the crime for which the defendant is charged is admitted.

"Now, I mean a child can understand that the prosecutor's job is greatly lessened by this. But the real issue here is not are we fighting crime; not are we helping the prosecutor; not are we going to get more convictions, but really what are we doing philosophically in this state with this kind of a provision.

"I submit, Mr. President, in spite of the very eloquent defense for these three measures which the Senator from Hawaii Kai has presented that the comments of Senators Abercrombie and Cayetano are more in order and that we should, particularly in this climate of compulsion to do something about crime, accept these types of things.

"It's similar in effect to the FAA after this San Diego crash, running in with all types of regulations so that they appear to be doing something, when in effect they may be exacerbating a problem and, in this case, if we adopt these, I think we are moving, as Senator Cayetano said, towards a, potentially a more fascistic type of approach to law. I think it's one that we should reject."

Senator Chong then stated, "Mr. President, the hour is getting late and I'd just like the record to show that I agree with the people who have spoken against this bill."

Senator Abercrombie then remarked:

"Mr. President, there's one final point that needs to be made. In the committee report, in all three committee reports, the only case law that is cited in respect of trying to convince us to vote for this bill... the paragraph which does that rather cites a case called Mode v. State, (1959). The Arkansas Supreme Court ruled against, I want to emphasize, ruled against--and this is in the committee report, ruled against what is proposed here. What the committee report goes on to say is it prefers an argument made in the Ohio State Law Journal."

At 5:50 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 5:55 o'clock p.m.

Senator O'Connor then stated:

"Mr. President, a brief summation following the tactic of my colleague from Manoa: he who votes in favor of this measure, votes for the prosecution; and he who votes against it, votes for organized crime and the criminal element."

Senator Cobb then rose on a point of personal privilege and stated: "Mr. President, on a point of personal privilege, I'd like to comment that's just about as accurate as the last summation."

The motion was put by the Chair and H.B. No. 398, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CHOICE OF EVILS", having been read throughout, failed to pass Third Reading on the following showing of Ayes and Noes:

Ayes, 12. Noes, 13 (Abercrombie, Campbell, Carpenter, Carroll, Cayetano, Chong, Cobb, Kawasaki, Kuroda, Mizuguchi, Yamasaki, Young and Wong).

House Bill No. 405, S.D. 1:

Senator O'Connor moved that H.B. No. 405, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Ushijima.

The motion was put by the Chair and H.B. No. 405, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO USE OF FORCE", having been read throughout, failed to pass Third Reading on the following showing of Ayes and Noes:

Ayes, 12. Noes, 13 (Abercrombie, Campbell, Carpenter, Carroll, Cayetano, Chong, Cobb, Kawasaki, Kuroda, Mizuguchi, Yamasaki, Young and Wong).

Standing Committee Report No. 880 (H.B. No. 520, H.D. 1, S.D. 2):

Senator O'Connor moved that Stand. Com. Rep. No. 880 be adopted and H.B. No. 520, H.D. 1, S.D. 2, having been read throughout, pass Third Reading, seconded by Senator Cobb.

Senator Campbell then spoke against the bill as follows:

"Mr. President, I intend to vote 'no' on this bill and I would like to state some reasons why I take that position.

"This bill allows a minor to seek medical care and services relating to pregnancy and family planning without the consent of the parents.

"Now, contrary to this position, there is a long list of laws enacted by the legislature which refer to the wrongdoings of minors where the legislature has made the parents responsible or partly responsible for the acts of their minor children.

"The sense of making the parents responsible for the conduct and well-being of their children is based primarily on the principle that minors cannot carry this responsibility themselves. Therefore, the logical place where this responsibility should reside is with the parents and the family unit.

"If this important function of the family is to continue, we, as a law-making body, should do everything in our power to strengthen the family unit. To tell minors that they do not have to share with their parents certain social problems and that there will be provided counseling services outside of the family unit for them and, at the same time, mandating that parents be responsible for their minor children, in my judgment, has the effect of

undermining the family unit as a positive force in dealing with the problems of minors who belong to that family group.

"The Committee attempted to come to grips with this problem when it stated, 'There has been nothing so sacred in the lives of the people of Hawaii than the cherished relationship between children and their parents.'

"The primary objective of this bill is, I somewhat indicated earlier, laudatory, namely, to prevent unwanted pregnancies and provide family counseling.

"Mr. President, I feel very strongly that while the objective of this measure is to be applauded, the damage done to the family will be much greater than the dubious accomplishments which will follow if this bill is enacted into law.

"May I conclude by simply saying this: in the turbulent society in which we live, the family has emerged as the most outstanding single force for stability. Let us not do anything knowingly to weaken the effectiveness of this important segment of our society.

"So, Mr. President, I urge a 'no' vote on this bill. Thank you."

Senator O'Connor then spoke for the measure as follows:

"Mr. President, I rise to speak for the measure and to briefly explain the bill.

"This measure has gone through several amendments. The original bill called for very precise anti-contraceptive devices, mechanical type things and turned it back entirely on counseling as being the keynote for family planning services.

"As indicated in the committee report and as the members of our committee will recall, this brought tremendous controversy in the committee with all sorts of testimony on both sides of the measure. The committee, in looking at this, decided that counseling was in fact a keynote to family planning services as opposed to the mechanical side of things and therefore, amended it to emphasize counseling as the primary function for family planning services, believing that young people, if they're in trouble, if they have difficulties with the problems of modern day society as far as adapting to it from a sexual standpoint, should have adequate counseling and that that counseling might be counseling that they need in some respects outside the scope of the family.

"Therefore, the emphasis is on that. It was an attempt by the committee to drive in at what we felt was a central point in this overall problem and a central lack as opposed to the other. And therefore, there has been that significant amendment and I would urge that all vote for the bill in its amended form."

Senator Kuroda then spoke in favor of the bill as follows:

"Mr. President, I rise to speak in favor of this bill. It is true that this bill splits the thinking between the parents and the youngsters. However, I think it's important that when we get to talk to the young people, and I've had that opportunity to do so, and I'm talking about the young people who are very responsible and the young people who are 'not in trouble'--these are the people who constantly keep telling us that it's very important that the young people's expressions are considered.

"Before I sit down, Mr. President, it's a little strange in these halls this year that the man who sits on my left side is different because every year when this matter has come up, the former Senator (John) Hulten continuously spoke against the measure. So I just want to say, 'everybody vote for it!'"

Senator Cobb then spoke for the measure as follows:

"Mr. President, I rise to speak in favor of this measure, although I had not intended to do so.

"I think the remarks of the Chairman of the Judiciary Committee need to be amplified somewhat, in that this bill has been amended specifically so that it does not include abortion. But more importantly, I want to speak in favor of this measure as a parent.

"It's important to me speaking personally, to have the option of medical care particularly for such a thing as venereal disease, available to my son or to any other child that might have it, for the simple reason that their well-being, their medical care, the health of our children is more important than whether or not I be notified as a parent; and that I should not let my own parental pride interfere with that kind of treatment, that kind of health when its needed.

"Mr. President, I think we have to recognize a cruel reality that exists in our society today, and that is that almost 40% of our homes in the state and in the nation are broken homes, where one or more parents are absent.

Where a link does not exist--the close family tie that has been alluded to between parent and child--and sometimes there's a guardian, sometimes only a counselor or a school or a big brother or a big sister to turn to.

"I think when we consider this bill, Mr. President, we have to bear in mind the legislation applies not only to the families that are secure, but to so many thousands or even millions that are not."

The motion was put by the Chair and carried, and Stand. Com. Rep. No. 880 was adopted and H.B. No. 520, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO MINORS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 17. Noes, 8 (Ajifu, Anderson, Campbell, Hara, Kawasaki, Soares, Takitani and Toyofuku).

House Bill No. 1004, S.D. 1:

On motion by Senator O'Connor, seconded by Senator Ushijima and carried, H.B. No. 1004, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO DURESS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 13. Noes, 12 (Abercrombie, Campbell, Carpenter, Carroll, Cayetano, Chong, Cobb, Kuroda, Mizuguchi, Yamasaki, Young and Wong).

Senator Kawasaki, on a point of personal privilege, stated as follows:

"Mr. President, I just want to point out to Senator O'Connor that analogous to the saying 'every man has his day in court', 'every Senator has his day in this Body!'"

Standing Committee Report No. 887 (H.B. No. 1658, H.D. 1, S.D. 1):

On motion by Senator O'Connor, seconded by Senator Cobb and carried, Stand. Com. Rep. No. 887 was adopted and H.B. No. 1658, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CONTROLLED SUBSTANCES", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Abercrombie).

House Bill No. 428, H.D. 1, S.D. 1:

Senator O'Connor moved that H.B. No. 428, H.D. 1, S.D. 1, having been

read throughout, pass Third Reading, seconded by Senator Cobb.

Senator Abercrombie then spoke against the measure as follows:

"Mr. President, I wish to speak against this--the so-called nuisance abatement, this would make display, so-called indecent matter in pornography subject to a suit for abatement of a public or private nuisance--any citizen may bring such suits. If the suit establishes a nuisance, the clerk may close down the place for up to one year.

"If the owner disobeys the injunction to obey, he will be guilty of criminal contempt and subject to a fine of not less than \$400 nor more than \$5,000 or imprisonment for not less than one month nor more than six months or both. Further, if one has the power to obey the order or injunction and does not do so, he can be held in civil contempt which means he can be imprisoned until he obeys--Hal Hansen notwithstanding.

"The bill is a direct response, I believe to the hysteria surrounding pornography and should be denounced as such. Mr. President, I offer for, as evidence of my claim, selected at random, the Honolulu Star-Bulletin for Friday, March 30, 1979...and I'm quite serious about this. I believe that if this bill passes, we may have the possibility, and I expect Senator Kawasaki to follow close upon me with his remarks, of shutting down the Hawaii Newspaper Agency.

"Unless the contention here is that certain people will be prosecuted, certain people will be found to be a nuisance and thus in requirement of abating and that others who are also making money out of the display of what might be termed as indecent matter but who are making money under some so-called respectable circumstances, will be allowed to go free.

"I refer you to an ad on page B-7 where a woman is in a bed hovering over a man. The indication is that 'The whole country is waiting to see Jacqueline Bisset as you've never seen her before!'. Not knowing the lady personally, I'm not sure I'm pronouncing her last name correctly. The Varsity Theater probably doesn't care whether I do or not. 'Jacqueline Bisset is more stunning in "Secrets" than in the "Greek Tycoon" which hardly seems possible. Not only is La Bisset ravishing in "Secrets", she is also nude.'

"I want to indicate as well there is an ad on page B-8 showing a woman stating 'Lolita Teased...Candy Tempted...now, I believe there is a circumstance here

Lilly Delivers!!--'Dirty Lilly' plus 'French Teen'. We have the movie here proudly presented at the Yuclan Theatre chain--at the Queen 'Sensations--Your wildest dreams never went so far!' 'Sensations is a sensually pulsating sextravanganza! It is the best bet of all for outright voyeurs!', this is a quote from the eminent critic Bruce Williamson in Playboy. It is 'what good porno should be about' from Bob Salmaggi, who to the best of my knowledge, in my research on this subject, is the publisher of Penthouse.

"'Exhibition--most remarkable!'; 'A human triumph!', that is what it was called in New York Times--I haven't the slightest idea where that excerpted from. 'Little Angel Puss.'

"The pictures, the attempts made in the newspaper to induce people to come to these films is clearly based upon their sexual content, is clearly based upon the idea that one would find oneself titillated in some fashion, find oneself in the grip of sexual excitement. The newspapers accept these ads and accept the pictures, accept them for profit.

"Now my question would be, if this bill passes would I be entitled...and it seems to me I would be...to go to the prosecutor and ask that the Honolulu Newspaper Agency be arrested for those persons who are responsible for its existence for creating a nuisance.

"Now I can pick up the paper for reasons other than to see this. I don't always find myself in the position to be able to understand that if I turn the page that I'll be safe with it. I may buy the newspaper in order to find out information or to inform myself in some fashion as to a record review which appears also in here when Helen Reddy is going to perform, what the late shows for the Youth Theater are, 'Jack and the Beanstalk'; if you look very carefully, for when 'Jack and the Beanstalk' is playing, your child may also find an opportunity for when 'Dirty Lilly' is playing. Whether you want to see 'Jack and the Beanstalk' or 'Dirty Lilly' I suppose is up to you. Sometimes it's hard to tell the difference where the porno shows are concerned.

"So what we have here is a means for abating prostitution, what we really have is a means for abating this First Amendment to the Constitution. I myself would be loath to go and prosecute the HNA because I believe in the First Amendment and I believe that they have a right under the Constitution to publish as they please, just as

relative to pornography in which we are not dealing with the substance of the problem as seen by some people, but rather trying to find an end runway to deal with what is conceived of as being a problem, and, in the process, doing violence once again then to the Constitution.

"I can see where someone would not want to have a circumstance in which prostitution is taking place in the building, let's say where you're living and people are coming up at all hours of the night making a lot of noise, etc., for whatever those reasons on a regular basis, that this would, in fact, be a nuisance and one that's easily understood. I recognize that. If that's all that this bill addresses, I think I might find myself in agreement with it. But it says display of indecent matters and promotion of pornography-- this doesn't involve, in my estimation, a nuisance in the same sense that premises for prostitution in which one's a peace of mind, physical peace in the sense of being able to sleep or not to be bothered are interfered with.

"The second you add into it, the display of indecent matters and promotion of pornography, it seems to me that you will have gone beyond the bounds of what can reasonably be expected to come under the aegis of nuisance abatement. Thank you."

Senator Kawasaki then spoke in favor of the bill:

"Mr. President, one of the reasons I speak for the bill is very certainly it may be that we may ask the prosecutor to examine the newspaper ads to which Senator Abercrombie rightfully objects.

"I think if we are not to give credence to a grossly inaccurate statement made a few minutes ago by the good Senator from the Sixth District, to wit, that the Republicans led this fight on crime, which statement accurately should reflect in the Senate Journal as 'the Republicans participated in the Senate's fight against crime.' Less we give credence to his statement in the Senate Journal, I think it behooves us to vote for this bill and if it's tested in the courts, so be it.

"But I think this is one way in which we can bring about a stop to some of the more flagrant violations of the dissemination of pornography in this state which undoubtedly has contributed to the high incidence of behavior on the part of teenagers in this state which is not quite normal, I understand from the sociologists, and the statistic alarms us parents, if you will. I

think this may be the step in the right direction and I'm certainly voting to have it tested in the courts. For this reason, I ask that each member of this Body vote for this."

The motion was put by the Chair and carried, and H.B. No. 428, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO NUISANCE ABATEMENT", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, 2 (Abercrombie and Chong).

House Bill No. 1382, H.D. 1, S.D. 1:

On motion by Senator O'Connor, seconded by Senator Cobb and carried, H.B. No. 1382, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TERRORISTIC THREATENING", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, 2 (Abercrombie and Cayetano).

Standing Committee Report No. 909 (H.B. No. 166, H.D. 1, S.D. 2):

Senator Cobb moved that Stand. Com. Rep. No. 909 be adopted and H.B. No. 166, H.D. 1, S.D. 2, having been read throughout, pass Third Reading, seconded by Senator Chong.

Senator O'Connor then spoke against the bill as follows:

"Mr. President, I'm very concerned about the liability situation on this generic drug bill. This is something we've debated, that I know of, for at least six years. This again is a bill which would allow generic drugs substitutes. Again a formulary is to be used, namely a list that comes from the federal government. That list is going to be adopted by a local organization and is going to be used by individual pharmacists to use generic substitutes for name brands.

"Once again in the bill, we have an escape clause for the pharmacist which allows them out on the liability issue. And my concern as it's been for lots of years with this bill, is what happens to the poor, uninformed consumer that gets a generic substitute, pops it and then falls on the ground dead. That individual is very happily saving money and very unfortunately getting a Long's drug and if so who does the liability go against? Under the framework of this bill, the way I read it, no one is liable. Therefore, I'm going to

vote against it."

The motion was put by the Chair and carried, and Stand. Com. Rep. No. 909 was adopted and H.B. No. 166, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO FOOD, DRUGS, AND COSMETICS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, 3 (Carroll, O'Connor and Yee).

House Bill No. 177, S.D. 1:

On motion by Senator Cobb, seconded by Senator Chong and carried, H.B. No. 177, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CONSUMER PROTECTION", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 1581, S.D. 1:

On motion by Senator Cobb, seconded by Senator Chong and carried, H.B. No. 1581, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MINIMUM FINANCE CHARGES ON RETAIL INSTALLMENT CONTRACTS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, 4 (Abercrombie, Campbell, Carroll and Young).

House Bill No. 57, H.D. 1, S.D. 1:

Senator Young moved that H.B. No. 57, H.D. 1, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Cayetano.

Senator Abercrombie then spoke against the measure as follows:

"Mr. President, this may seem innocuous at first, but this is the infamous Hawaii Community Development Authority. This is the county within a county on Oahu, and I really would ask that Senators most especially from Oahu consider this in that, our friends on the neighbor islands consider our problem here and try to relate to if the same kind of thing existed in your county.

"This allows the HCDA to provide housing for persons of all income groups rather than only for those who are in the low income. At first that sounds good because it gets perhaps the idea of a mix across.

"I disapprove myself of sticking people into so-called projects and labeling them as such as low income people making, forcing them into a situation in which they suffer bad social consequences as a result of their economic circumstances. That's not fair, it's not right.

"But, under that benign guise, we have a situation though that rather than working towards the idea of integrated housing, and I don't mean necessarily from the point of view of race or ethnic background but rather from the possible combinations of incomes specially those who are presently denied housing. I wonder why the bill opens up the development to all income groups.

"As I read it, it's going to do this. This is an extremely important force, because for those of us who do not possess the ability to own or to buy a home right now, for those of us who do not possess the financial ability to get into the investment speculation market or get into the condominium market, even into the condominium conversion market of...where renters...where apartment buildings are now being taken over for condominium conversion, we are looking to Kakaako area...downtown in the Kakaako area for urban housing.

"We're looking especially to that Kakaako area for the kind of mix of housing, apartments, condominiums, etc. that will have both a combination of business opportunity and living for those of us who cannot compete in those other markets, regardless of our desire.

"I'm really very, very concerned. If this bill goes through, it's an invitation for circulation and development in Kakaako which will take out of existence the opportunity for those of us who want to stay in the urban center, to increase the kind of density in a way that is livable and on a human scale that was envisioned when the City Council urged the adoption of development plans.

"I have a complete file on the Kakaako policies adoption here and I can assure you where the principle standards and controls to guide the future development of Kakaako which was put forth, in which extensibly is the guide to us here, that we never envisioned the situation in which we would pass such a bill, in which there would be an invitation in effect to take the kind of, and I'm going to quote here, 'density development on the average floor area ratio all development individuals and structures with large integrated residential commercial land or commercial residential developments may exceed this density provided the overall average for the development

is consistent with this density.'

"This kind of degree of detail is involved already and if we pass this, I can see exactly what's going to happen. The opportunity come whizzing in there. There's only a few landowners there, come whizzing right in there, set up some grandiose scheme of development, another speculative binge takes place, and those of us who are in rental apartments now, those who would be willing and desirous of moving into, at long last, a fully planned area for housing, for those of us who are unable to get into the high housing market, high condominium market, once again find ourselves frozen out.

"Now we know with the water resource research reports that's been made, that we are running into difficulties when we go into the Leeward area where the rise in the salt content of the water is such that the kinds of developments envisioned ten years ago, fifteen years ago, in all likelihood will not take place. We know what the cost of money is in that respect. We know that the Campbell Estate has given up the idea of leasehold to Honouliuli Development City and is now selling its leasehold areas in Makakilo and in other areas recognizing this.

"We know that the industrial development situation may go in that area. We know that there is a concerted effort now to keep open space to keep agricultural land there. So we know also that the City and County of Honolulu is now looking for... and this is why I really beg the attention of our neighbor island friends... they are looking for development of the urban areas in terms of that land which is already zoned for housing.

"If you pass this bill, I fear that we will be denied one of the key areas for that kind of development for our people here who are shut out of these other markets, who are not able now to participate in these other markets and are unlikely in the near future to be able to do so.

"If we can develop the downtown area, the potential down here is terrific. Lay aside for the moment all the political business about Kukui Plaza. The fact of the matter is that the building itself for whatever was involved with the individuals associated with it, is a good building.

"People are finding that the availability of their work downtown and so on is enhanced by it. We have a real opportunity in the center of Honolulu to rebuild here,

to do some urban, not so much redevelopment, but development on an urban scale, in an urban area rather, on a scale which would be commensurate with the kinds of desires that we have. These would be the waterfront, these would be the Kewalo Basin area, and these would be Kakaako and on down through the downtown area, through the capitol district area. We can make this a beautiful area and an area in which we can put our people and have them live under good circumstances.

"Now the reason I'm so passionate about this, I guess, is I'm going through this and I can just see it can get away from us. So, we don't need this right now. We should wait before passing such a bill right now until we have more definitive plan coming forth from this agency. We don't have that right now.

"If this bill passes, this Hawaii Community Development Authority could seize on it as an opportunity to move ahead in areas which could completely undercut everything that's being done now with the development plans that are going on in the county, completely undercut our state plan. I'm not saying that it's necessarily going to happen, but we should not give them the opportunity in law to do that until we have definitive plans from this Authority as to what they want to do, because it just may be that what they want to do is against the best interest of the citizens of Oahu. And it may just be that what they want to do is against the interest as seen by the City Council, as seen by the county.

"Many of the things we've done, my friends, here this session, has been to increase the power of the county to make decisions over their own future, to be in better control of their destiny. We've had philosophical discussions here in our various committees as to whether this is a good idea and if it is a good idea, how to implement it.

"I tell you now, that the existence of this Hawaii Community Development Authority undercuts that proposition of home rule and until we know what they're going to do, to give them this kind of weapon, to utilize at their discretion without the ability to counteract it in the City and County of Honolulu could prove a grave disaster to all of us who want to see that housing and home market opened up for those of us who have not been able to share in it till this time."

The motion was put by the Chair and carried, and H.B. No. 57, H.D. 1, S.D. 1, entitled: "A BILL FOR

AN ACT RELATING TO THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, 2 (Abercrombie and Kawasaki).

House Bill No. 1, H.D. 1, S.D. 1:

By unanimous consent, consideration of H.B. No. 1, H.D. 1, S.D. 1, was deferred to the end of the calendar.

Standing Committee Report No. 938 (H.B. No. 20, H.D. 1, S.D. 2):

Senator Cayetano moved that Stand. Com. Rep. No. 938 be adopted and H.B. No. 20, H.D. 1, S.D. 2, having been read throughout, pass Third Reading, seconded by Senator Kawasaki.

Senator Carroll then stated as follows:

"Mr. President, there's an old saying in foreign service circles that the slogan during Theodore Roosevelt's time was to 'walk softly and carry a big stick', and that as time has rolled on, the American foreign policy is to 'walk stickily and carry a big soft'; and to think that the measure which we have here before us which pretends to be a limitation on spending with a loophole large enough to drive almost anything through it available for the Governor, clearly is not that.

"I think that when this particular constitutional amendment was set forth, it was touted as a really, a campaign spending feeling, and I submit without going into great detail on this subject matter that it is not, and I think the public should know that.

"I think that what's been mandated here, we must vote for, because of the way the bill has been prepared in compliance with that. But to call this a campaign spending, excuse me, to call this a budgetary limitation, is simply not to call this measure what it is."

The motion was put by the Chair and carried, and Stand. Com. Rep. No. 938 was adopted and H.B. No. 20, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE BUDGETARY PROCESS", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 947 (H.B. No. 1671, H.D. 1, S.D. 2):

Senator Cayetano moved that Stand. Com. Rep. No. 947 be adopted and H.B. No. 1671, H.D. 1, S.D. 2, having been read throughout, pass Third Reading, seconded by Senator Kawasaki.

Senator Carroll then spoke against the measure as follows:

"Mr. President, I rise to speak against this measure. The constitutional amendment provided, and I'm referring now to campaign fund and spending limit, in section 5, that the legislature shall establish a campaign fund to be used for partial public financing of campaign for public offices of the state and its political subdivision. The legislature shall provide a limit on the campaign spending of candidates.

"We were required in effect to establish a campaign fund, set the limits and then set up the mechanisms for allowing this money to be given out and spent. The committee report which reports this measure intends that the legislature create a fund to partially finance the campaigns that candidates running for certain offices and leaves it to the discretion of the legislature to decide the races which will be funded. It intends not to fully finance the campaign of a candidate. It intends the public to fund only a portion of the cost, leaving the amount and manner of raising the amounts to the legislature.

"Now, it's very clear to me, Mr. President, that voluntary contributions to this particular fund can very well be made by those members of our citizenry who voted for this measure. Under our particular bill, House Bill No. 1671, S.D. 1, we're talking about the provision for voluntary contributions, but we're also setting up for a huge expenditure to be made with very minimal requirements on the part of the qualifying candidate.

"Now, Mr. President, as far as I'm concerned, I will not vote to force the citizens of this state to fund my political campaign or those of anyone else. I believe that if we have voluntary contributions, whatever fund that results in, is the fund that should be used to fund these types of campaigns, that is the campaigns that are designated for this type of financing. And otherwise, I say that we should not be forcing our citizenry to do this and it is not clear that there's a mandate here to do what is being suggested in this bill. Therefore, I'm voting against it and I urge all others to do the same."

Senator Abercrombie spoke in opposition to the measure as follows:

"Mr. President, it's been said before.

Someone believes this thing to be...anything that comes out of there, to be unconstitutional...to vote 'no', and I believe it to be such.

"This bill...there's a rather incredible part in this bill. What it really says is if you're rich and you're born rich or if you have family that are rich, then it's okay to take money. But if you're poor or you don't have access to family that has money, then you can't have it.

"Now, I can't believe that this actually came out of here and this is supposedly something that is going to make campaigns more equitable. If you refer to page 8, lines 8 through 10, you will find a definition--"Immediate family" means a candidate's spouse, and any child, parent, grandparent, brother, or sister of the candidate, and the spouses of such persons.' They can give more than \$2,000. Your friend cannot.

"Now, apparently, the belief is that we're going back to a feudal system in which patrimony or which the right of birth somehow gives one more of a privilege. Now I notice a lot of WR's (with reservations) on this document. In the respect that those WR's are there, and that this measure is thought by people who might vote for it to be taken up in conference in some fashion, I want to register in the strongest possible terms, that I think that this \$2,000 per election per donor is one of the most invidious kinds of detriment to a candidacy that could be placed.

"I agree that the First Amendment is well served by limiting campaign spending. I have no problem with that. If we're all equal on how much we can spend, then our First Amendment rights are all taken care of because we can decide how we're going to do that.

"Someone wants to buy 40 cases of beer and put it on his lawn and leave it for people to take up as they go by and make that his campaign, that's it, that's fine with me; someone wants to send out brochures, T-shirts, whatever, because we're all in the same group. But to tell me how I can get my money, if I am registering with the campaign spending commission, who I got it from and how much it was so that anybody in the press or here or in the audience can walk in and say, 'Hey, here's where the support came. Here's how it works!' and all that, and tell me I can't do that, if I'm making in public only up to \$2,000.

"My campaign, I'll tell you right now, in the last election, was saved because

someone gave me more than \$2,000 in the last week; and I'm willing to bet that someone like David Trask had something to do with this kind of trash going in there, because he can give all the money. The big companies can work it out; they'll figure out how to do it, but you take somebody who's trying to run an honest campaign and work it, especially get somebody like Trask and see how far you can get. Now I got..."

The President then interrupted Senator Abercrombie and stated, "Senator Abercrombie, would you keep your comments with reference to the bill before this Body."

Senator Abercrombie answered, "I know what I'm talking about. I have reference to the bill. Do you think that David Trask doesn't want to get involved in this campaign spending limitation deal."

The President replied, "Senator Abercrombie, the bill does not direct itself to Mr. Trask..."

Senator Abercrombie retorted, "I'm directing myself to David Trask, and I am a member of this Senate and I know damn well when I stand on this floor that I can refer to anything in the public interest and if there's anybody that isn't in the public interest, it's people like Trask and Walter Kupau...I'll give you another one..."

The President again stated, "Senator Abercrombie, the Chair would appreciate it if you keep your remarks to the bill."

Senator Abercrombie continued, "I am keeping my remarks to the bill. If you try to keep out the kind of people that try to subvert what goes on in this state in terms of democratic process then we can't talk sensibly about any bill that's in front of us.

"When someone tells me that I can't accept a donation made in good faith and report it publicly and record it up to any amount to the campaign spending limits, then they're interfering with my rights under the constitution.

"When somebody tells me that immediate family...that if you're born rich, that you can have all the money given to you for your campaign, and if you're born without it, you can't have it...and that fits to what the constitution is all about, then I say that that person doesn't understand what this country is all about and will bring about the kinds of conditions that will bring about an end or demise to democracy.

"This creates a real situation of inequality for anybody who is born without money or doesn't have access to that kind of thing within their own family. I don't care how much people give from their own family. That is their business. But to tell me that I can't get some and get the equal amounts up to the campaign spending limit, is not only against common sense, it's an opportunity to understand just how pernicious the conduct of most of that work in the Constitutional Convention was. And in the base of it were people like Trask and Kupau."

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

"Mr. President, I rise on a point of personal privilege. I'm not a member of the Committee on Judiciary, but I sat through, I think it was nine hours one Saturday morning and I have been involved in this bill as it moved to the various committees. While the name Trask may draw and grab some headlines for newspaper writing, I believe the Chairman can correct me if I am wrong, but the \$2,000 figure came from Common Cause and I do not believe Common Cause speaks for Trask, talks to Trask, negotiates with Trask or has any saying with Trask, so it's a Common Cause \$2,000 figure and not the unions, Mr. President."

Senator O'Connor then spoke in favor of the measure:

"Mr. President, as indicated by the most previous speaker, this bill is a result of countless hours of staff work and committee work in this Body. There are many measures which individual members of this Body take issues with.

"We have had long wrangles on some of them and Senator Abercrombie is not the only Senator who takes issues with some of the problems having to do with contributions. Senator Carroll is not the only Senator that takes issues with some of the problems having to do with funding. We do have certain constitutional parameters that we had to work within in drafting the bill and they were followed.

"As best the committee work could follow, this bill cleaves to the United States Constitution's parameters and the interpretations of those parameters that have been laid down by the Supreme Court of the United States. I believe that each one of us and that includes me, to take some issue with some of the areas of the bill. However, it is one which has been hammered out by many, many Senators and staff members

and it is a product which has achieved sufficient compromises so that it should go forward into the inevitable conference which it will arrive in, in the House.

"I would urge that all members vote for it--it does represent an awful lot of work!"

Senator Kawasaki then spoke in opposition to the measure as follows:

"Mr. President, I rise to speak against this bill, but I do want to commend the Chairman of the Committee on Judiciary and the Senate for what I consider candidly a very sincere diligent effort to arrive at a bill whose language is reasonably acceptable to this Body.

"However, I find the arguments presented by Senator Carroll as well as Senator Abercrombie, quite logical, quite cogent and notwithstanding the diligent effort expended by the Committee on Judiciary, I think the arguments are overwhelmingly valid. For this reason, I will vote against this bill.

"I see no compelling reason for us even to report this out, notwithstanding the mandate of the Constitutional Convention. It could be held over for another year if necessary, in time for the 1980 elections. I will vote against this bill."

Senator Chong rose on a point of clarification and stated, "Mr. President, one of the previous speakers indicated that he felt that there was a mandatory climate of the taxpayer's of the state to donate money to political campaigns and actually, if you look at the bill, it's a voluntary check off system."

The motion was put by the Chair and carried, and Stand. Com. Rep. No. 947 was adopted, and H.B. No. 1671, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO CAMPAIGN SPENDING", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 17. Noes, 7 (Abercrombie, Ajifu, Anderson, Carpenter, Carroll, Kawasaki and Soares). Excused, 1 (Yee).

MATTER DEFERRED FROM EARLIER ON THE CALENDAR

House Bill No. 1, H.D. 1, S.D. 1:

Senator Cayetano moved that H.B. No. 1, H.D. 1, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Kawasaki.

Senator Cayetano then spoke for the measure as follows:

"Mr. President, I rise to speak in favor of House Bill No. 1, H.D. 1, S.D. 1, relating to the budget. My remarks on this bill are lengthy, but I think they are important and I beg the members' indulgence.

"First, I wish to express my thanks to the members of the Ways and Means Committee and my staff for their tireless efforts in developing this bill. I also wish to thank the subject matter committees for their contributions and recommendations.

"Mr. President, this bill is not just the State Budget. It represents a fundamental change in how government will conduct its business. In a very profound way, I believe this bill represents the sense of the Senate, and with our discussion today, the product of this entire Body.

"In the evolution of government, here and elsewhere, nothing has diluted democracy more than the rise of the executive branch to an almost dictatorial position in making spending decisions. Nothing has undermined representative government more than the Executive's failure to execute the policies of the legislative branch, and nothing has eroded public confidence in government more than the buck-passing which results from conflict between the Executive and the Legislature.

"You yourself, Mr. President, correctly identified all these developments as a dangerous 'usurpation of legislative power.' And my counterpart in the House, the Honorable Chairman of the Committee on Finance, denounced the administration in June, 1976, for rewriting budgets passed by the Legislature. He said, and I quote '...if a Constitutional Convention is called by the people, I will urge the delegates to review how to stop the Governor's assumption of complete authority over the appropriations and the erosion of the Legislature's traditional power of the purse.'

"But even as the House Finance Committee Chairman was sounding the alarm, the Governor was proceeding to curtail legislative programs. In a single year, from the 1976 supplemental appropriations bill, the Governor applied total funding restrictions to 51 legislative programs. And, at the end of the year, the Governor lapsed over \$3 million appropriated from those 51 programs while the general fund accumulated a \$35 million surplus!

"Such arbitrary actions should have given the Constitutional Convention some cause for concern. Unfortunately, the convention did little to correct the

imbalance of government.

"But history has taught us, Mr. President, that where the people's representatives are confronted with the dangerous consolidation of all power in a single office or institution, it is the legislative body which must act.

"This was true of the English Parliament versus the King; this was true of the colonial legislatures versus the royal governors; this was true of the United States Congress versus the impoundments of President Nixon; and it remains true for the State of Hawaii today.

"Nobody but we, the Senate and the House of Representatives, acting in unity, can reassert the basic principles of our form of government: that is, that it is the Legislature which enacts laws and makes appropriations; and it is the Governor and his agents who must execute them faithfully. If the Governor disagrees with any of the Legislature's programs or appropriations, he should exercise his veto powers. Then, the Legislature may respond accordingly.

"Mr. President, through the bill before us, we reassert those principles.

"First, we are recommending a budget which is fiscally responsible. The times dictate that we must respond to the mood of our people who suffer from the double burden of high taxes and crushing inflation.

"Thus, the budget we have developed holds general fund appropriations under the level of the Governor's budget. We intend also to hold this budget, together with all other general fund appropriations, in line with revenue estimates as well as with the constitutional spending limitation which we expect this Legislature to pass.

"Second, we are recommending a budget which requires the Legislature to be fully accountable for its actions and which compels, in turn, the Governor to execute our actions.

"Third, we have developed a system to express the priorities of the people, as we, their elected representatives, perceive them, and we are requiring that those priorities be observed.

"To implement the new system, we have restructured the appropriations for operating programs into two parts, Part A and Part B. Part A includes those programs which we deem indispensable and urgent to the economic well-being, health, safety, and welfare of the State. Part B includes those programs

which are important but are less urgent.

"If, at the start of the next fiscal year, revenue estimates hold up and are equal to or exceed the general fund appropriations made, all programs are to be fully funded, those in Part A as well as those in Part B.

"However, if the revenue estimates at the start of the fiscal year or during the course of the year are less than the general fund appropriations made, then the amounts allotted can be adjusted below appropriations only for those programs included in Part B.

"In this way, Mr. President, we safeguard those programs which we believe to be of the highest order, but at the same time, we accord to the Governor the continuing authority to protect the public treasury if revenues are less than anticipated.

"A good question is how the Administration will react to the new system. Will it observe legislative priorities or will it subvert them?

"At the Constitutional Convention, the Director of Finance declared to the Taxation and Finance Committee, and I quote: 'Give me a consensus of 76 people, and we will follow those priorities.'

"Last Thursday, at a public hearing of our committee, I summarized our proposed system and asked the Director of Finance whether the Administration would follow our priorities. Her answer was unequivocal. She said, 'The Administration will observe legislative priorities.' I ask the members present to remember her words.

"In any event, the system we have structured in this bill and which we expect to institutionalize, has the force of law. Circumvention can take place only by violating the law. I do not expect the Governor or his agents to violate the law.

"In the days ahead, we expect to secure the support, participation and cooperation of the House of Representatives in shaping the final appropriation priorities of the Legislature. We fully expect to succeed in advancing fiscal responsibility, restoring legislative powers and elevating the public accountability of government.

"As for the capital improvements program, we are likewise determined to chart a new direction for it. We have on the books today some one billion dollars of authorized but unissued general obligation bonds, representing hundreds of projects on a wish list

from which the Governor has complete authority to pick and choose. This alone should be reason enough to reorder the public works program.

"But meanwhile, we are also faced with a number of conditions which compel us to revise our approach to capital improvement appropriations, beginning with this bill. We have a new constitutional debt limit which controls the amount the State can spend for debt service. We have a constitutional requirement that limits the duration of appropriations to three years. We have another requirement that all appropriations on the books today which are not encumbered by June 30, 1980 will be cancelled. We have still another constitutional requirement that after July 1, 1980, the Legislature must certify that the bonds which it authorizes will not cause the debt service limitation to be exceeded. For its part, the Administration is constrained by the amount of bonds the market will accept, which at this time appears to be \$150 million annually.

"All of these factors persuade us to proceed cautiously in this session of the Legislature until we can assess what effect old capital improvement appropriations will have on our capacity to make new authorizations.

"Therefore, we are taking some immediate steps to build the system of greater accountability intended by the Constitution. We are appropriating capital improvement funds only for the first year of the forthcoming biennium. This is a position identical to that taken by the House of Representatives, which also wishes to see the capital improvement situation clarified by the 1980 session before making any further authorizations. In addition, we are deferring all legislative projects until we can see where we stand in 1980.

"Mr. President, we have reviewed the executive capital improvement budget carefully. The most significant change that we have made is the deletion of funds recommended by the Governor to build a World Trade Center on the property of the Aloha Tower complex. We do not believe that the executive branch has proven its case that state construction of the Trade Center is the best course of action. Moreover, the Administration has not analyzed the alternatives. In particular, it has not assessed the alternative of private development and how private development would provide a more valid test of the viability and feasibility of the project against private market economics. Government, Mr. President, should not do for private industry what private

industry can do for itself.

"Thus, Mr. President, as with the operating budget, we are taking the initiative to inject rationality and accountability into the capital improvements program.

"There is one other specific observation I wish to share with you, and it concerns the University of Hawaii. As you know, a thorough review was conducted of the University's budget, and there are a number of disturbing situations which affect personal services costs and appear to reflect a disquieting trend. The major mission of the University should be to instruct students. All other aspects should be secondary. Yet, it appears that the administrative and faculty components of the University system and the campuses seem to have taken on a life and emphasis all of their own. This is reflected by the questionable high salaries paid to a large number of administrative and faculty personnel and the kinds of positions which have been created.

"Mr. President, we would be derelict if we did not, on the basis of our budget analysis, make the necessary adjustments to the University's budget. However, where we have made them, we have adjusted the dollar amounts for the program categories and not the positions. We will leave it up to the Board of Regents to decide just what positions are essential to the performance of the University's major mission.

"Meanwhile, what we have seen and heard concerning the University's budget leads us to believe that the University lacks a sound system for management and operational controls, the kinds of controls absolutely essential for the efficient conduct of a large organization. Therefore, we are going to give the University some help and direction by commissioning a management audit. We are requesting that the Legislative Auditor start such an audit and the University has agreed, with the first phase to cover the University's policies and practices in personnel management and administration. We are requesting that the audit be completed and presented to the Legislature prior to the 1981-82 biennium.

"In the days remaining in the session, there are still a number of uncertainties. If collective bargaining agreements are reached, we must consider those agreements in the context of their impact on overall State finances. However, we are prepared to consider any agreements reached, and we will do so by separate bills rather than through the budget. In this way, each Senator will be provided with a better

opportunity to study each collective bargaining agreement, and each agreement will be in full public view.

"Finally, Mr. President, I present this bill as one which is fiscally responsible and one which will open a new chapter in public accountability. I ask each Senator to support this bill so that we can, as a united Body, present our positions reasonably and firmly. By supporting this bill, we also demonstrate to the Executive and the public that we are determined to build a government which is both responsive and responsible. Thank you."

Senator Campbell then spoke in favor of the bill as follows:

"Mr. President, I rise to speak in favor of the budget bill with some observations and some reservations.

"First of all, Mr. President, I would like to commend you and the Chairman and members of the Ways and Means Committee for what I think is a new step in the direction of mandating fiscal accountability on the part of our executive branch.

"Now while my overview of the budget is laudatory, I do have some reservations. One of my concerns, Mr. President, has to do with the funding of the bus aides for the safe transportation of our handicapped children. In the outset, the executive budget would void our funds for bus aides and after appeals by the parents and your Committee on Education, some funds were restored by the Governor. At this point, I would like to express appreciation to the parents who served as volunteer bus aides on those buses for many, many weeks.

"Now your Committee on Education recommended 49 bus aides for the regular school year and 25 for the summer program. These were to be provided at a cost of approximately \$458,000 for the biennium. As a result of a study done by the Department of Education, the number of bus aides we suggested was considered a minimum to provide adequate services to our handicapped children.

"Now in this budget document before us tonight, this number was reduced by 50%. Now, Mr. President, the magnitude of this reduction, in my judgment, threatens the effectiveness of the program, and let us hope that full funding can be restored at conference.

"Another of my concerns relates to the recommendations of the Senate Committee on Education to include a

proviso designed to allow the retention of 3-on-2 teams in those schools where the parents, the teachers and the principals have found that those 3-on-2 teams are effective and working well. This proposal seems to have fallen by the wayside.

"After a thorough look at the 3-on-2 program, its history and its problems, one is forced to conclude that the Legislature has to take at least partial blame for the problems that now plague this program.

"In order to call to the attention of this Body, Mr. President, the mistakes that we have made with the 3-on-2 programs and the monumental mistakes that we're getting ready to commit, allow me to put in perspective the problem that this Legislature faces.

"The 3-on-2 program was a creature of the Legislature. It took millions of dollars to put it into operation. But, in 1976 or somewhat earlier, someone in the DOE got the idea that this program should be phased out. But, there was some need for justifying this action, so, in 1976-1977, the DOE contracted Northwest Regional Educational Laboratory to conduct a comprehensive evaluation of the 3-on-2 program.

"The study concluded that 'there was no significant difference in the learning activity of students in 3-on-2 classes and students in self-contained classes.' Now, Mr. President, this operation in futility cost the taxpayers of Hawaii \$93,437.

"As I indicated earlier, the Legislature cannot escape some responsibility even in this area because we had to fund the study.

"Now, the following is a part of the Ninth Legislature's mandate related to 3-on-2: 'With respect to such 3-on-2 teams as may still be in place in the 1978-79 school year, the Superintendent of Education shall assess such teams and recommend to the Legislature by December 31, 1978 whether or not any such teams should be continued in the year 1979-80, 1980-81 or beyond.'

"Now, Mr. President, the Department of Education assessment study referred to just then was due at the end of last year, but it was not received until somewhat recently. The content of that report should be of considerable interest to this Body.

"Here are some of the central findings of that study:

'The data indicate that some principals

are recommending that their teams continue after June, 1981; some principals state that more opportunities for parents to make choices on behalf of their children and greater flexibility in grouping students and scheduling programs are possible with the 3-on-2 class organization. When it comes to team effectiveness, the principals rated the 3-on-2 teams approximately 87% effective. Now when it comes to test results for children in 3-on-2 classes, the percentage of satisfaction with the test results expressed by the principals was as follows: Reading, 98%; Writing, 88%; Speaking, 97%; Math, 98%; Science, 100%; and Social Studies, 100%.'

"Now, Mr. President and members of this Body, what is amazing about this DOE study is the fact that its findings establish a firm basis for the retention of 3-on-2 teams, but the recommendation of the Department of Education is to phase out the program.

"There is a primary reason for supporting the retention of the 3-on-2 teams now in place beyond 1981. As requested by the Legislature, the findings of a DOE assessment report mandate that these teams be retained.

"Now, Mr. President, in closing, here are some important points which I think this Senate should consider related to the phasing out of the 3-on-2 program, and they are some of the things I mentioned before: (1) it took millions of dollars to put it in place; (2) it has taken over \$93,000 to study it; and (3) it cost a million dollars or more to tear down the walls in order to provide for the 3-on-2 program and if we phase it out, we must honor a request by the Department of Education for over a million dollars to replace these walls so that self-contained classes can be provided for.

"I say to this Legislature, the mistakes that we have made in the past related to the 3-on-2 program need not continue. Let's simply allow the principals, the teachers, and the parents to have the 3-on-2 program if they want it. Thank you."

Senator Cayetano in rebuttal thereof, stated as follows:

"Mr. President, I rise in rebuttal to the remarks of the previous speaker. It is unfortunate that the Senate's cards or a part thereof were made part of the record. In my years as a Committee Chairman, in the House as Chairman of the Committee on Transportation, I always discussed my differences with the Chairman of the Committee on

Finance personally with him, prior to conference, with hopes that first we would reveal the House position and secondly, we would try to make the amends in conference.

"However, since it is a matter of the record, I'd like to respond and explain why the proviso the Senator speaks of was not included in the budget. The good Senator cites a study by the DOE. Unfortunately, he did not cite the last paragraph of the study, which I read in his office; and that paragraph went something like this...and I have to paraphrase it because I don't have it before me...but it said notwithstanding the data gathered above, we find that the facts considered in the DOE were considered in the study done by the Northwest Regional Evaluation group, and that there is no reason to believe to conclude otherwise than that the 3-on-2 should be phased out. Now that paragraph of course, fills a totally different light on the study and the sections of the study that he quoted.

"For the remaining days of the Legislature and until we go to conference on the budget, let me say this, our budget is not enshrined in concrete. It is a proposal to the House and we have many subject matter committee chairmen who have had differences with Ways and Means on the budget. I would hope that we could discuss this and try to see whether we can work this out when we go into conference with the House, rather than putting it here and laying it out for all to see. That's all I have to say on this."

Senator Kawasaki then rose in support of the bill and stated as follows:

"Mr. President, I, too, am not completely satisfied with the provisions of the budget bill. However, as I recall, this is the first time in my twelve years of having the privilege of serving in this Body that I actually stood up to speak in favor of a budget bill. As a matter of fact, I've, on several occasions, spoken against the budget. I voted against the budget bill, if you will recall.

"Now I have had the privilege of also serving as Vice-Chairman of the Ways and Means Committee for the third time, this being my third time, and I must enter into the record of the Senate Journal, my complete appreciation of the intense commitment, the intelligence and the courage with which the Chairman of the Ways and Means Committee, Senator Ben Cayetano, carried on his responsibilities under very difficult circumstances, difficult by virtue of mandates by the Constitutional Convention, difficulty imposed upon him by the constraints

of our understanding amongst us, that we will not exceed the total budget figure submitted by the administration.

"I deeply appreciate it--the very incisive questioning on the part of each member of the Ways and Means Committee during the budget hearings, the fairness with which the Chairman of the Ways and Means Committee conducted these hearings, his complete interest in some minute details and the very intensive and very incisive questioning that was the result of everybody on the Ways and Means Committee, finding it quite refreshing that the entire committee now understands the fiscal constraints and a requirement for us to maintain some fiscal responsible position that is imposed upon us.

"Never have I, in the twelve years I have served here, certainly in the years as I have served as a member of the Ways and Means Committee, have I seen this kind of intense effort. And I...well, I'm not, as I said, completely satisfied to each item. I fully intend to support the Chairman in his position going into conference.

"I have...I express an added satisfaction of knowing that he certainly lived up to my expectations. As you well know, Mr. President, his being assigned as Chairman to Ways and Means Committee was a strong recommendation on my part because I realize the qualities that we require of this chairman and he certainly lived up to the chairman's requirements.

"I therefore, would go into conference with the Chairman fully supporting his position, fully cognizant of the concerns that each subject matter committee chairmen may have, regarding his own budgetary concerns. But I do want to say that I fully appreciated the effort of the Chairman this year and I fully intend to support this measure."

Senator O'Connor then spoke for the measure as follows:

"Mr. President, I rise to speak in favor of the bill and offer congratulations to the Chairman and to the Ways and Means Committee for the effort that is obviously demonstrated by the measure. However, I would like to make some observations and ask some questions of the Chairman in order to vote intelligently on this matter.

"First observation is as a matter of academic interest, I went through the individual items, item by item, and Part A, section 5, which is the major part of the operating budget, and find that on almost every page there are significant changes comparing

our budget bill with the House budget bill and comparing our budget bill with the Governor's budget bill. And coming to Part B which is the portion which is left open for, evidently for work and conference, I find that there is a total amount appropriated in our bill of \$4,000,000 for the Part B section. I wonder if the Chairman of the Ways and Means Committee would yield to a question on these particular situations?"

Senator Cayetano replied that he would yield to questions.

Senator O'Connor then continued, "First of all, of the \$4,000,000 that is denominated in Part B, general fund only or does it also take in special funding and the other funding matters?"

Senator Cayetano answered it was general funding only.

Senator O'Connor then asked, "If we take the items which are contained in the House Bill in a similar section which is not designated the same section, but in the similar section, and subtract the areas that have been cut in general funding which will reflect in our bill, how close does the \$4,000,000 come to the amount that has been cut out of that portion of the budget?"

Senator Cayetano replied, "Mr. President, I'm not certain I understand the question. May we call a short recess and he can ask me that question and explain it to me and I'll be glad to answer it on the floor if he wants me to."

At 7:17 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 7:20 o'clock p.m.

Senator O'Connor then continued with his questioning, "Mr. President, I'll re-phrase my earlier question for greater clarification. I wonder if the Chairman of the Ways and Means Committee would inform us if the deletions which have been made to Part A of part 5 are greater or lesser than the \$4,000,000 in general funds which are reflected for Part B?"

Senator Cayetano answered that the deletions were greater.

Senator O'Connor then queried, "Am I to understand they are substantially greater so as to allow the House to put its own provisions and measures

in to Part B if they so desire?"

Senator Cayetano replied, "That is correct."

Senator Anderson then spoke for the measure:

"Mr. President, in support of the Chairman of the Ways and Means Committee, less there be any question across the hall if they hear of the discussion on the budget--there are fourteen Senators, the majority of the Senate who signed the committee report, that we support the committee position and the Chairman. It's not a solid document, maybe in concrete, but it's a very firm document. I'm sure it is a Senate position--fourteen support it! It's going to be argued as a solid document and it is the Senate position, less Representative Suwa or the Speaker think otherwise. Thank you."

Senator Campbell then responded to remarks made earlier as follows:

"Mr. President, in response to the comments made by the Chairman of the Ways and Means Committee, I'm sorry that he has interpreted my remarks to be an attack on the budget. I think I tried to make clear that I fully support this budget and I fully support the commendable job that the Chairman and the members of the Committee have done.

"I think the tenor of my remarks were primarily directed not only to the Senate but to the entire Legislature as it relates to a program which I think ought to have rather serious attention by this entire Legislature. And I couldn't think of a better time to raise those issues than now, when we're getting ready to pass our budget. Thank you very much."

Senator Mizuguchi then stated as follows:

"Mr. President, on behalf of the majority members of the Senate, I just want to make some brief remarks in support of this bill.

"I believe that the Chairman and members of the Ways and Means Committee are to be commended for the rational and responsible approach that they have taken with this bill.

"The problem of the executive power to execute appropriations overriding the legislative power to make appropriations has long been with us. Prior efforts to correct this imbalance have not succeeded in the past. I believe that this effort will.

"Through the approach taken by

this bill, the Legislature can be a stronger and more effective decision-making body. We also place reasonable limitations to safeguard against abuses of the executive power. This kind of co-equalness must be struck if government is to be more accountable.

"Therefore, I urge all members of this Body to support this bill. Thank you."

Senator Abercrombie then spoke in support of the measure as follows:

"Mr. President, I wish merely to, in support of this budget, to reiterate Senator Anderson's commentary.

"I very seldom have participated in an exercise of responsibility in which there was any more in the way of cooperation and any less in the way of rivalry or part of an interest undertaken.

"This is truly a committee effort, that it will truly be a Senate effort. I think that the kind of mutuality that the Majority Floor Leader just indicated can be most successful if we have, are able to instill attitude in our discussions with the House. I, for one, most certainly intend to pursue that, and I think if we do that as a Legislature and continue this cooperative attitude, we can reassert in the positive fashion,

the goals and outlines of obligations and responsibilities that the Chairman so eloquently uttered."

The motion was put by the Chair and carried, and H.B. No. 1, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE STATE BUDGET", having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Yee).

Senator Chong then introduced to the members of the Senate, Miss Piliialoha Lee Loy, a member of the Commission on the Status of Women.

The President then made the following observation:

"It's been a very long day for most of us. I think the discussion that ensued was kept in a manner of proper decorum of the Senate. I appreciate the participation of all the Senators, and it's on to the conference."

ADJOURNMENT

At 7:30 o'clock p.m., on motion by Senator Mizuguchi, seconded by Senator Anderson and carried, the Senate adjourned until 11:30 o'clock a.m., Tuesday, April 3, 1979.