

FORTY-SEVENTH DAY

Monday, April 6, 1981

THIRD READING

The Senate of the Eleventh Legislature of the State of Hawaii, Regular Session of 1981, convened at 11:00 o'clock a.m., with the President in the Chair.

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

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

SENATE RESOLUTIONS

The following resolutions (S.R. No. 199 and 200) were read by the Clerk and were disposed of as follows:

A resolution (S.R. No. 199), entitled: "SENATE RESOLUTION RECOGNIZING AND CONGRATULATING MEMBERS OF BOY SCOUT TROOP 322 OF PEARL CITY HAWAII AND OTHERS WHO RECENTLY EARNED THE RANK OF EAGLE SCOUT," was offered by Senators Young, Kuroda, Mizuguchi, Yamasaki, Uwayne, Cayetano, Holt, Abercrombie, O'Connor, Carpenter, Kobayashi, George, and Yee.

On motion by Senator Young, seconded by Senator Kuroda and carried, S.R. No. 199 was adopted.

A resolution (S.R. No. 200), entitled: "SENATE RESOLUTION CONCERNING THE USE OF THE PESTICIDE DIBROMO-CHLOROPANE (DBCP) ON PINEAPPLE CROPS IN THE STATE," was offered by Senators Young, Abercrombie, O'Connor, Carpenter, Kuroda, Kobayashi, George, Yee and Uwayne.

By unanimous consent, S.R. No. 200 was referred to the Committee on Agriculture.

STANDING COMMITTEE REPORT

Senator Young, for the Committee on Legislative Management, presented a report (Stand. Com. Rep. No. 904) informing that Senate that Senate Concurrent Resolution Nos. 63 and 64, Senate Resolution Nos. 194 to 198, and Standing Committee Report Nos. 816 to 904 have been printed and are ready for distribution.

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

ORDER OF THE DAY

House Bill No. 1469, S.D. 1:

On motion by Senator Henderson, seconded by Senator Carpenter and carried, H.B. No. 1469, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE STATEWIDE FISH AGGREGATING SYSTEM," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Abercrombie, Anderson and Yee).

House Bill No. 212, H.D. 1, S.D. 1:

On motion by Senator Carpenter, seconded by Senator Cayetano and carried, H.B. No. 212, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PORNOGRAPHY," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, 1 (Toyofuku). Excused, 3 (Abercrombie, Anderson and Yee).

House Bill No. 461, H.D. 1, S.D. 1:

Senator Carpenter moved that H.B. No. 461, H.D. 1, having been read throughout, pass Third Reading, seconded by Senator Cayetano.

Senator O'Connor then rose to speak against the measure as follows:

"Mr. President, I'm going to vote against this bill.

"The contents of the bill, as it applies to drivers, mainly prohibiting drivers from having alcohol in their possession while operating a vehicle and drinking in a vehicle, is good. And that was the content of a similar senate bill which we earlier had before this body and voted upon, but the balance of this bill has to do with receptacles and containers of alcohol in vehicles and it is in some ways ridiculous. It has no real definition to it; it is vague and ambiguous and I can see every person going to a picnic or to something at the Waikiki Shell, and I was reminded of this by being at the Waikiki Shell the other night, or at any other place with this kind of receptacle in the vehicle being subject to a crime where none really need be.

"As I understood it, the action of

the Senate Judiciary Committee was to 'x' out everything except that pertaining to the driver. That has not occurred in this particular bill; therefore, I would have to vote against the bill."

Senator Carpenter then rose to speak for the measure as follows:

"Mr. President, recognizing that the good Senator from the 7th Senatorial District did correctly suggest that in the initial bill sent over by the Senate Judiciary Committee to the House, we had indeed spoken only to the driver and the prohibition of the driver consuming intoxicating liquor while operating the vehicle, we have, in the House Bill before us, added a section which essentially says, and it would include individuals like myself who use intoxicating liquor from time to time, the prohibition of that use by placing it in a place more secure, that is, the trunk of an automobile or in the rear seat of a jeep or the recreational-type vehicle so that it would be essentially out of the initial reach of a person driving that vehicle."

"Mr. President, this bill basically hopes to speak to the reduction of traffic accidents, the reduction of allowances by the community for consumption of alcoholic beverages which tends to increase the loss of life throughout the State of Hawaii on an annual basis."

Senator O'Connor then asked if the previous speaker would yield to a question and Senator Carpenter replied in the affirmative.

Senator O'Connor asked: "Mr. President, on page 2 of the bill it says, 'No person shall possess, while a passenger (and the same language is contained later about 'in the vehicle') in a motor vehicle upon any public street, road...' and so forth, several different things, and it says, '...or other receptacle containing any intoxicating liquor which has been opened...' Does this, Mr. President, refer to a case of beer, where the case has been opened and some cans removed?"

Senator Carpenter replied: "Mr. President, my understanding is we are talking here about the items that contain the liquid. So, if we're talking about the case as compared to the can and bottle or other container for liquid, we would be essentially speaking to the item."

Senator O'Connor further asked: "Where then, Mr. President, in the law may I find that so that the court may be guided by the statement of law?"

Senator Cobb then rose to state: "Mr. President, you'll find it in the Senate Journal as reflected in today's proceedings, based on the question that the Judiciary chairman just answered."

Senator Holt rose to inquire: "Mr. President, I wonder if the Judiciary chairman would define recreational vehicle for me?"

Senator Carpenter replied: "Mr. President, recreational vehicle in my mind is a vehicle that is normally used such as a jeep or similar types of conveyances, primarily used for off highway purposes. The bill per se does not speak to recreational vehicles; however, speaks to vehicles that do not come equipped with trunks."

Senator Ushijima then asked if the chairman would yield to a question and Senator Carpenter replied in the affirmative.

Senator Ushijima asked: "Referring to Section 291, receptacle containing intoxicating liquor, etc., now if we have a wine bottle that has been opened and half consumed, you can't keep it in the car unless you put it in the trunk?"

Senator Carpenter stated: "Mr. President, I'm not sure I got the question?"

Senator Ushijima rephrased his question as follows: "Mr. President, assuming that I have a bottle of wine which has been opened, or the seal broken, and let's say it's half filled, now, that bottle of wine then would have to be put in the trunk of the car instead of the back seat or any part of the car, is that it? Otherwise, it would be a violation?"

Senator Carpenter answered: "That is correct. It would have to be put in the trunk of the vehicle if equipped with a trunk or it would have to be put in the back seat if your vehicle is not equipped with a trunk."

The motion was put by the Chair and H.B. No. 461, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INTOXICATING LIQUORS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 18. Noes, 7 (Campell, Holt, Machida, Mizuguchi, O'Connor, Toyofuku and Ushijima).

House Bill No. 1745, H.D. 1, S.D. 1:

By unanimous consent, H.B. No. 1745, H.D. 1, S.D. 1, entitled: "A BILL

FOR AN ACT RELATING TO RESISTING AN ORDER TO STOP A MOTOR VEHICLE," was recommitted to the Committee on Judiciary.

House Bill No. 241, H.D. 1, S.D. 1:

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, H.B. No. 241, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE EXCISE TAX CREDIT," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 538, H.D. 2, S.D. 1:

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, H.B. No. 538, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT AUTHORIZING THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS TO SECURE LONG-TERM MORTGAGE REFINANCING FOR THE POHAI NANI GOOD SAMARITAN KAUHALE HEALTH CARE FACILITY," 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, 24. Noes, 1 (Kawasaki).

House Bill No. 694:

Senator Yamasaki moved that H.B. No. 694, having been read throughout, pass Third Reading, seconded by Senator Anderson.

At this time, Senator O'Connor asked if the chairman of the Ways and Means Committee would yield to a question and Senator Yamasaki replied that he would.

Senator O'Connor asked: "In reading House Bill No. 694, Mr. President, I note that the petty cash in question goes from \$5,000 to \$25,000. In the committee report it says that the petty cash fund in question goes from \$5,000 to \$50,000. I just wondered, which was the intent of the Ways and Means Committee?"

At 11:29 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:30 o'clock a.m.

Senator Yamasaki then replied to the

previous question:

"Mr. President, I would like to have the Journal reflect that the committee report should read: \$25,000."

The Chair then stated that the Journal will so note the correction.

The motion was put by the Chair and carried and H.B. No. 694, entitled: "A BILL FOR AN ACT RELATING TO PETTY CASH FUNDS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 721, H.D. 1, S.D. 1:

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, H.B. No. 721, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PACIFIC WAR MEMORIALS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 800:

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, H.B. No. 800, entitled: "A BILL FOR AN ACT RELATING TO GENERAL EXCISE TAX," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 805, H.D. 1:

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, H.B. No. 805, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE TRANSFER OF ALL FUNCTIONS, POWERS AND DUTIES INVOLVING THE TAXATION OF REAL PROPERTY TO THE COUNTIES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 1060:

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, H.B. No. 1060, entitled: "A BILL FOR AN ACT RELATING TO URBAN RENEWAL," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 1100, H.D. 1:

By unanimous consent, H.B. No. 1100, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO FEE FOR CIVIL IDENTIFICATION CERTIFICATE," was recommitted to the Committee on Ways and Means.

House Bill No. 1103, H.D. 1, S.D. 1:

Senator Yamasaki moved that H.B. No. 1103, H.D. 1, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Anderson.

Senator Abercrombie then rose to speak against the bill as follows:

"Mr. President, I rise to speak against this bill. I rise regularly on this floor where these kinds of bills occur.

"I would be very happy if someone would stand up and tell me what bulk dextropropoxyphene in the nondosage form means.

"I would be happy if someone would stand up and tell me what phenylacetone, P2P, means.

"I would be very happy if someone would tell me what the practical consequences of the various proscriptions for prescriptions are starting on page 3 and running on page after page after page until page 6.

"I suppose in certain respects I might seem obstreperous about these kinds of bills but my reasoning, I assure you, Mr. President, is sound, and the basis for my complaints about these constant additions to the Uniform Controlled Substances Act is sound.

"They continue to add drugs helter skelter and I ask those original questions somewhat rhetorically because I don't intend to really embarrass anyone on the floor but I sincerely doubt that many people here, unless they have some pharmaceutical background or have taken special time to do so can tell us much, if anything, about any of the some 22 drugs that are listed under this Uniform Controlled Substances Act; can tell us whether they are being abused; can tell us what the circumstances are around them as to why, for example, number 4, the bulk dextropropoxyphene has to be added.

"What happens here is that the narcotics people, this new sub-culture, this new species of law enforcement officers

that we have, continues to press for additions to the Uniform Controlled Substances Act. Legislatures continue to add them with little or no study as to whether they really need to be added. The whole idea being that it creates further opportunities for these drug enforcement people to justify their existence.

"In addition, we are making a new section, creating a drug control and enforcement special fund to finance enforcement of this Act. I would direct the members' attention to page 14, and you will find that if we confiscate this property, and I am not opposed to the confiscation of property as such from the so-called big time pushers, although I would be delighted someday to actually find one actually being caught, other than on Kojak...it says it relates to 'costs incident to accounting, personnel, travel, equipment, supplies, contracting, subcontracting, or any purpose deemed necessary for the enforcement of this chapter by the director.' If that's not an invitation to abuse, pardon the pun, I don't know what is.

"Personnel, travel, subcontracting...I remember one time being at a meeting of the narcotics officers association where the principal item of business consisted of two things, besides drinking. In fact, drinking to the point where some of the people had difficulty expressing exactly what the drugs were they wanted to add to the Uniform Controlled Substances Act because they were rapidly becoming intoxicated. They were trying to decide whether they should hold their convention in the Caribbean or whether they should hold it in some other...it wasn't Hawaii at the time, it's too bad it wasn't Hawaii...but, anyway, some sunny clime was where the convention was to be held.

"The other part was how many drugs they could get on the list so that they could add to their swag, if you will, in terms of what they deal with. Believe me, there will be plenty of travel put in here.

"Has it occurred to anybody that maybe it would have been a good idea if you are going to set up one of these special funds to have the money that's derived from the confiscation of property go to drug abuse programs rather than to the people who are making the arrests?

"Has it occurred to anybody that maybe now the people making the arrests are going to have a vested interest in trying to bust people even if it's on somewhat negligible grounds in order to try and get at this property, because they

are going to be the direct beneficiaries of it?

"I know I have argued this before but this is the first time they've gone so brazenly into the open and actually tried to set up a special fund for themselves. If legislators were doing this kind of thing we'd all be run out. If any other department of government was trying to do this kind of thing they'd all be run out, but, because we have drugs, put that word drugs in front of anything and it's an automatic license to these people to accuse you of being pro-drugs or I suppose anti-American or pro-addict or some kind of pejorative phrase and they use this on us and the public all the time.

"Now, we face a situation that was alluded to the other day by some Senators on the floor that we are not able necessarily to fully fund all of the various programs that some of us in one degree or another find useful in terms of drug abuse whether it's alcohol or whether it's some other kind of ingestion of drugs. Why don't we take the money for this and put it in that? Why not a special fund for drug abuse programs?

"Now, if my experience is the same as it was before, I'm not going to prevail today, but I can assure you that this special fund idea is a bad idea. That continuing to add drugs ad infinitum to this Controlled Substances Act is a bad idea. It's a bad way to conduct legislation.

"If such a fund is in fact enacted and if we do pass this bill I can assure you I'm going to be back here trying to get this special fund redirected towards those who are the real victims.

"If this Legislature truly believes that these drugs should be added to this list and truly believes that enforcement should take place, then, as a matter of public interest, we should fund the enforcement officials and the necessary expenses ourselves. We should not be going to this particular kind of funding in order to carry out, in order to fund what we say is a necessary enforcement function of laws that we pass.

"It's one thing to try and fund an airport or a highway or a harbor because under those circumstances you have direct control over the kinds of projects that may or may not be forthcoming. In this particular instance, what we're doing is inviting the people who are doing the enforcing to enhance their own positions personally in the very act of enforcement without any of those control procedures. And at

the same time, we then neglect the people who are the real victims of the people who are trafficking in drugs.

"For that reason, this bill should be defeated. At the very least, it should be recommitted for further consideration in terms of whether the special fund provision is in fact directed in the proper direction.

"Thank you very much."

Senator O'Connor rose to state:

"Mr. President, I rise in singular agreement with my brother from Manoa.

"As I recall the budget document which we passed in this body on Friday of last week, there is a very positive statement in that document that there would be no special funds created, as special funds subverted the basic financial scheme put upon us by the new constitutional outlines and requirements and, yet, here we find another special fund, and I agree with every single thing that Senator Abercrombie has said about that special fund. It is directed at the drug enforcement agency, presently housed in the Department of Health.

"We have argued in this body and in these chambers for years as to whether that's the best place, the proper place for that agency, arguing that it should be in the Attorney General's office.

"That agency has had singular success over the last two years in taking a string of one doctor after another to court on drug charges and yet, it has had a singular lack of success in taking any other pushers, I use other pushers advisedly because I'm not sure that any of those gentlemen or ladies that were charged by the drug enforcement agency were in fact pushers, but taking actual pushers to court and here we set up a fund which in fact makes that agency autonomous, operating on its own without restrictions.

"If this fund grows to any size, which it certainly can in the framework that it's set up, we will have another police agency, police state actively going on unchecked and unsupervised as far as budget control is concerned. For that reason and that reason only I urge that this bill be defeated."

Senator Cayetano, at this time, asked if Senator O'Connor would yield to a question and Senator O'Connor replied in the affirmative.

Senator Cayetano asked: "Giving his criticisms on the establishing of a special fund, Mr. President, I'd like to know why he didn't express such comments and vote against the \$10 million OHA trust fund?"

Senator O'Connor replied: "The \$10 million OHA trust fund, Mr. President, is a funding of a fiduciary trust, as I understood the bill, which was a one-shot situation which was not an ongoing special fund with revenues continuously attributed to it. We have such other fiduciary funds in this state which are not regularly enlarged or changed by a regular contribution of income per statute. There was nothing like that in the OHA trust fund and the OHA trust fund would have been set up, established, and thereafter used.

"For those reasons, I voted for that and I would vote against this and the EMS special fund and any other special fund not required for specific bond debt funding, as we find in our transportation special funds."

Senator Cayetano responded: "Mr. President, as one of the authors of the OHA trust fund, I appreciate the good Senator's comments, but like the proverbial rose, 'a special fund is a special fund.'"

Senator Yamasaki rose to remark as follows:

"Mr. President, I'd like to explain that the purpose of this special fund is, as the committee report indicates, to help control drugs and to finance the enforcement of the Uniform Controlled Substances Act and this is the overall intention of the committee in our efforts to round out a package on our fight against crime in the State of Hawaii."

Then, Senator Abercrombie rose in rebuttal as follows:

"Mr. President, I feel compelled to rebut that.

"If we want to round out our package on stopping crime and, it seems to me, that unless this body is saying that it wants to move into a kind of situation that the University of Hawaii has with certain of its educational programs where unless it can fund itself it cannot move ahead, then it stands to reason that when you have such enforcement activities based on public policy, this is a public investment, you do not require it to fund itself. What you do, if you want to deal with this kind of thing in the way that the chairman of Ways and Means has

suggested is that you then direct yourself to the victims.

"I thought that one of the reasons that we were trying to so-called round out a crime package was to direct our attention towards those people who are being victimized by the crime. There's no drug enforcement officer being victimized by anything except by being overpaid. But, believe me, they're not losing any benefits.

"Now, we've got victim funds we're dealing with here; we're trying to create situations where people can have a chance for rehabilitation of themselves and I don't mean in jail, I'm talking about people trying to reconstruct their social lives or economic lives, family lives. If you're going to do that kind of thing, that's fine, but to take and say that the special fund is to offset expenses for people who are now going to have a vested interest in increasing those expenses, and if there is any showing that can be made by the Ways and Means chairman that this is going to significantly reduce the request of the Department of Health, then maybe we could talk about it. But, how on earth can somebody say that it's rounding out our crime package if the fact of the matter is that we're directing our attention away from those people who are victimized by the crime.

"This bill should be recommitted, and the special fund side of it should be looked at once again to see to it that we come up with something sensible, to direct itself to those we really want to try to assist."

Senator O'Connor added: "Mr. President, just a brief rebuttal. It certainly is no way to fight crime to create a special, uncontrolled slush fund for the Director of Health."

The motion was put by the Chair and carried and H.B. No. 1103, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE UNIFORM CONTROLLED SUBSTANCES ACT," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 16. Noes, 9 (Abercrombie, Campbell, Holt, Kawasaki, Machida, Mizuguchi, O'Connor, Toyofuku and Ushijima).

House Bill No. 1124, H.D. 1:

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, H.B. No. 1124, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO

THE TRANSFER OF THE HAWAII CRIMINAL JUSTICE DATA CENTER FROM THE JUDICIARY TO THE DEPARTMENT OF THE ATTORNEY GENERAL," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Abercrombie).

Standing Committee Report No. 811
(H.B. No. 1604, H.D. 2, S.D. 2):

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, Stand. Com. Rep. No. 811 was adopted and H.B. No. 1604, H.D. 2, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO STATE CAMPAIGN SPENDING LAW," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 812
(H.B. No. 1680, H.D. 1, S.D. 2):

Senator Yamasaki moved that Stand. Com. Rep. No. 812 be adopted and H.B. No. 1680, H.D. 1, S.D. 2, having been read throughout, pass Third Reading, seconded by Senator Anderson.

Senator Kawasaki then rose to ask: "Mr. President, I have a question directed to the chairman of the Ways and Means Committee, if he would yield to a question." And Senator Yamasaki replied that he would.

Senator Kawasaki inquired: "Mr. President, may I inquire as to whether people who purchase these bonds, assuming they are Hawaii people, Hawaii entities, is the income received from the interest payment on these bonds exempt from local (state) taxes?"

Senator Yamasaki answered: "Mr. President, I'm not sure whether the income received from the sale of the bonds is tax exempt."

Senator Kawasaki further asked: "That is, the interest, interest payments made on these revenue bonds, are they tax exempt? Could anyone here apprise me of this question?"

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., and resumed consideration of Stand. Com. Rep. No. 812 and H.B. No. 1680, H.D. 1, S.D. 2.

By unanimous consent, action on Stand. Com. Rep. No. 812 and H.B.

No. 1680, H.D. 1, S.D. 2, was deferred to the end of the calendar.

Standing Committee Report No. 813
(H.B. No. 1724, H.D. 2, S.D. 2):

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, Stand. Com. Rep. No. 813 was adopted and H.B. No. 1724, H.D. 2, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE EMPLOYEE'S RETIREMENT SYSTEM OF THE STATE OF HAWAII," 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. 1867, H.D. 1:

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, H.B. No. 1867, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE SALE OF COPIES OF MAPS AND PLANS OF LANDS," 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. 526, H.D. 1, S.D. 1:

On motion by Senator Kawasaki, seconded by Senator Ajifu and carried, H.B. No. 526, 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, none. Excused, 1 (Yee).

House Bill No. 748, S.D. 2:

On motion by Senator Uwayne, seconded by Senator Abercrombie and carried, H.B. No. 748, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO TEMPORARY DISABILITY INSURANCE," 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. 467, S.D. 1:

On motion by Senator Kobayashi, seconded by Senator George and carried, H.B. No. 467, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE FISH AND WILDLIFE ADVISORY COMMITTEES,"

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

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

At 11:54 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

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

House Bill No. 763:

On motion by Senator Kobayashi, seconded by Senator George and carried, H.B. No. 763, entitled: "A BILL FOR AN ACT RELATING TO NATURAL AREA RESERVES SYSTEM," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Kuroda and Yee).

House Bill No. 1232:

By unanimous consent, H.B. No. 1232, entitled: "A BILL FOR AN ACT RELATING TO LITTER CONTROL," was deferred until Tuesday, April 7, 1981.

House Bill No. 32, H.D. 1, S.D. 1:

On motion by Senator Abercrombie, seconded by Senator Kuroda and carried, H.B. No. 32, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE JOB-SHARING PILOT PROJECT IN THE DEPARTMENT OF EDUCATION," 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. 33, H.D. 2, S.D. 1:

Senator Abercrombie moved that H.B. No. 33, H.D. 2, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Kuroda.

Senator Campbell then rose in support of the measure and stated:

"Mr. President, I rise to speak in favor of this bill.

"When and if the Governor signs this bill, it will mark the close of a long struggle and a sometimes bitter struggle on the part of some of us to place the public library system directly under the supervision of the Board of Education, removing it from the direct supervision of the Department of Education. This

move gives the public libraries the flexibility to better serve Hawaii's young and old.

"Mr. President, my interest in the problems of the public library has been deep and abiding. This interest was accented when former President Carter appointed me to serve as an at-large delegate to the White House Conference on Library and Information Services, being the only state legislator serving in that capacity. I was able to bring to national focus the unique structure of the Hawaii public library (system) by virtue of the at-large delegates choosing me as chairman of the national caucus of at-large delegates.

"Mr. President, it might be of some interest to this body of the fact that the Education Commission of the States, in cooperation with the Kellogg Foundation, is in the second year of a pilot program that could benefit Hawaii public libraries considerably, and as one of the two legislators from around the country on the National Planning Board, I intend to see to it that Hawaii is equally benefitted.

"The passage of the bill before us today gives the public libraries and the Board of Education a golden opportunity. It is my fervent hope that the public libraries and the Board will lose no time in taking advantage of this new structure to institute some innovative programs to serve not only our children, whose formal education should not stop at 2:30 or 3:00 o'clock in the afternoon, but also serve the crying need of life-long learning. I urge support of the bill.

"Thank you."

The motion was put by the Chair and carried and H.B. No. 33, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC LIBRARIES," 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. 1648, S.D. 1:

On motion by Senator Abercrombie, seconded by Senator Kuroda and carried, H.B. No. 1648, S.D. 1, 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, 24. Noes, none. Excused, 1 (Yee).

House Bill No. 1765, S.D. 1:

On motion by Senator Abercrombie, seconded by Senator Kuroda and carried, H.B. No. 1765, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE KAMEHAMEHA DAY CELEBRATION COMMISSION," 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. 506, H.D. 1, S.D. 1:

On motion by Senator Cayetano, seconded by Senator Carpenter and carried, H.B. No. 506, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO COMMUNICABLE DISEASES," 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. 738:

On motion by Senator Cayetano, seconded by Senator Carpenter and carried, H.B. No. 738, entitled: "A BILL FOR AN ACT RELATING TO THE DEPARTMENT OF HEALTH," 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. 1108, S.D. 1:

By unanimous consent, action on H.B. No. 1108, S.D. 1, was deferred to the end of the calendar.

House Bill No. 1514, H.D. 1, S.D. 1:

On motion by Senator Cayetano, seconded by Senator Carpenter and carried, H.B. No. 1514, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT PROVIDING THAT EYE ENUCLEATION MAY BE PERFORMED BY TRAINED TECHNICIANS," 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. 1679, S.D. 1:

On motion by Senator Cayetano, seconded by Senator Carpenter and carried, H.B. No. 1679, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO SCHOOL HEALTH SERVICES," 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. 823, H.D. 1, S.D. 1:

On motion by Senator George, seconded by Senator Kawasaki and carried, H.B. No. 823, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE DEPARTMENT OF TRANSPORTATION," 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. 1022, H.D. 1, S.D. 1:

On motion by Senator George, seconded by Senator Kawasaki and carried, H.B. No. 1022, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ABANDONED VEHICLES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 17. Noes, 7 (Campbell, Holt, Machida, Mizuguchi, O'Connor, Toyofuku and Ushijima). Excused, 1 (Yee).

House Bill No. 1176, H.D. 1, S.D. 1:

On motion by Senator George, seconded by Senator Kawasaki and carried, H.B. No. 1176, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC RECORDS," 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. 200, H.D. 1, S.D. 1:

On motion by Senator Carpenter, seconded by Senator Cayetano and carried, H.B. No. 200, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC HEALTH AND MORALS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 20. Noes, 4 (Abercrombie, Holt, O'Connor and Ushijima). Excused, 1 (Yee).

Standing Committee Report No. 834
(H.B. No. 328, H.D. 1, S.D. 2):

On motion by Senator Carpenter, seconded by Senator Cayetano and carried, Stand. Com. Rep. No. 834 was adopted and H.B. No. 328, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO TRADE REGULATIONS," 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. 541, H.D. 1, S.D. 1:

On motion by Senator Carpenter, seconded by Senator Cobb and carried, H.B. No. 541, H.D. 1, S.D. 1, 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, 21. Noes, 3 (Abercrombie, Cayetano and Uwaine). Excused, 1 (Yee)

House Bill No. 585, S.D. 1:

On motion by Senator Carpenter, seconded by Senator Cayetano and carried, H.B. No. 585, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CORPORATIONS ACTING AS GUARDIANS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

Standing Committee Report No. 837
(H.B. No. 1255, S.D. 2):

On motion by Senator Carpenter, seconded by Senator Cayetano and carried, Stand. Com. Rep. No. 837 was adopted and H.B. No. 1255, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO ELECTION REGISTRATION FOR THE OFFICE OF HAWAIIAN AFFAIRS," 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. 1337, H.D. 1, S.D. 1:

Senator Carpenter moved that H.B. No. 1337, H.D. 1, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Cayetano.

At this time, Senator O'Connor spoke

against the measure as follows:

"Mr. President, I rise to speak against this bill. I signed the bill 'I do not concur' and I've already made this speech once before so I'll abbreviate it somewhat. However, there are some dazzling new matters in this draft which I would bring to the members' attention.

"On page 8 of the bill, there's an attempt to limit campaign contributions. I might say, first, that's probably the only constitutional area that we are soundly working in in campaign spending, that is, the limit of campaign contributions.

"In the new draft it says, 'Campaign contributions; limits as to' and 'persons' has been taken out and 'individuals' put in so that a new concept is that 'No individual shall make contributions to a candidate in an aggregate amount greater than fifty per cent of the campaign expenditure limit provided in' another section. This creates, Mr. President, an absolute 'Catch 22' for people running for office because the person running for office is also an individual.

"Therefore, if this becomes law, anyone running for office is going to be able to contribute exactly fifty per cent of the amount necessary to elect himself or herself, and any amount over that goes to the Hawaii Election Campaign Fund.

"We have had candidates pride themselves in the past on taking no money from other people and running entirely on their own funds or on their family's funds. If that happens in the future, the individual, the minute he starts spending over fifty per cent of his total expenditure, is going to have to, instead of putting the money into his campaign, put it into the campaign fund.

"I would suggest this could have been obviated somewhat by some other draftsmanship, but I would go on to point out that in the same Section 11-204, as newly drafted, that first prohibition refers to individuals but when you get down into the new Section (b), which talks in terms of what happens if someone goes over the fifty per cent. The word 'individual' is not used in that section, but the old word 'person' is left and that word 'person' refers to committees, corporations, political parties, and so forth under the definition section, which means that in this draftsmanship we have eliminated the ability--and maybe this is good--of any entity including an individual and including the candidate from spending more than fifty per cent in the pursuit of any single election, and any amount over that amount

will go to the Hawaii Election Campaign Fund.

"I believe that there was an intent to change the word 'person' to 'individual' in that section, but, of course, that is not demonstrated. Those are some new things in this draft. All of the other comments which I spoke to earlier, when this measure was previously before us I would reiterate and incorporate for the record.

"Thank you, Mr. President. I am going to vote 'no' on this bill."

Senator Abercrombie rose to speak in favor of the measure as follows:

"Mr. President, speaking in favor of the bill, to the degree that Senator O'Connor's comments are true about the fifty per cent figure and the individual is a great step forward because at last now we have an opportunity to nail the rich along with the poor. We are now in a position to address that old admonition that was given to us that the rich and the poor are just equal, they are both forbidden to sleep under bridges in ancient France.

"Now, I think that if someone can only contribute half of their campaign to themselves then perhaps one day I will be able to look forward to that happy state where I'll be able to contribute half of everything I'm entitled to spend to myself. As it stands right now I'll have a difficult time contributing half of what I would like to think I'm worth to my campaign.

"Now, I don't think I'm worth very much compared to the work everybody else does in my campaign. I certainly have never been able to contribute very much in terms of what I think the effort of all those people has been worth to me, but anything which will put the burden on the candidate to depend at least one-half of his or her support on being able to address the goodwill, both in terms of contributions in dollar terms and contributions in terms of work to the campaign from other people, is most definitely not only a step in the right direction but a major policy step in terms of some kind of equity in making sure that our democracy takes some stride forward rather than sideways or backwards."

The motion was put by the Chair and carried, and H.B. No. 1337, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CAMPAIGN CONTRIBUTIONS AND EXPENDITURES," having been read throughout, passed Third Reading on the following showing

of Ayes and Noes:

Ayes, 17. Noes, 7 (Campbell, Holt, Machida, Mizuguchi, O'Connor, Toyofuku and Ushijima). Excused, 1 (Yee).

House Bill No. 204, H.D. 1, S.D. 1:

Senator Carpenter moved that H.B. No. 204, H.D. 1, S.D. 1, having been read throughout, passed Third Reading, seconded by Senator Cayetano.

Senator O'Connor, then rose to speak against the measure as follows:

"Mr. President, I speak against this bill. This bill runs contrary to the system used for identifying evidence in a criminal trial which has been in existence for at least 200 years that I know of. It creates a situation in a statute which, if followed by one relying on it, may well lead that individual into a trap which could cause a prosecution not to be successful.

"There is nothing today in the law of evidence that prohibits photographing a piece of evidence and attempting to use that photograph in trial. The problem is that, unfortunately, we have in the criminal law a thing called the 'chain-of-title' which requires the prosecutor to prove from its collection at the scene of the crime to the time that it is presented to the court or the jury, who had the piece of evidence in his possession and what was done to it to preserve it in the same situation that it was in at the scene of the crime.

"This bill does not address that at all, and would lead one who knows nothing of that requirement, a young lawyer I trust, into a circumstance where he might take a picture of something and believe he could rely entirely on that picture in court. This is a deception, to say the least.

"I will vote against this bill."

The motion was put by the Chair and carried, and H.B. No. 204, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE PENAL CODE," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 15. Noes, 9 (Abercrombie, Campbell, Holt, Machida, Mizuguchi, O'Connor, Saiki, Toyofuku and Ushijima). Excused, 1 (Yee).

Standing Committee Report No. 840 (H.B. No. 567, H.D. 1, S.D. 2):

Senator Carpenter moved that Stand. Com. Rep. No. 840 be adopted and H.B. No. 567, H.D. 1, S.D. 2, having been read throughout, pass Third Reading, seconded by Senator Cayetano.

At this time, Senator Abercrombie inquired if the chairman of the Judiciary Committee would yield to a question and the chairman replied in the affirmative.

Senator Abercrombie asked: "Mr. President, it is my interpretation of this bill, if it passes, referring to the top of the bill, 'Prostitution. A person commits the offense of prostitution if' in the new language is the 'person' as opposed to the bracketed designation 'he'... 'if the person engages in, or agrees or offers to engage in, sexual conduct with another person in return for a fee.'... my interpretation, I want to know if my interpretation is correct.

"My interpretation is that both parties agree, or two or three or four depending on how lucky you are, that everybody connected with the transaction will be prosecutable under this definition. I want to know whether that is correct. If it is correct, I think I can vote for it; if it's incorrect, I think I must vote against."

Senator Carpenter replied: "My interpretation is that the person who receives the fee, irrespective of whether male or female, is the person who is alluded to as the prostitute. I'm not sure that that answers your question."

Senator Abercrombie remarked: "I believe that that's a good safe attempt to answer my question, but the phrase preceding it says, 'prostitution,' not 'prostitute.' In other words, it's not the individual, it's the act; it's the activity called prostitution; and my interpretation, I think, is a reasonable interpretation of the English language when we are talking about prostitution, if we abide by the language which follows the word prostitution, underlined there, 712-1200.

"I am convinced, unless told otherwise, that unless convinced otherwise, I should say, that both parties will be subject to the penalty which follows for having engaged in an act of prostitution."

Senator Carpenter then said: "Mr. President, I understand the question now. The answer to that question, Mr. President, is yes."

Senator Abercrombie continued: "Yes, then I will (support the measure). I suppose everyone needs to have an exception in order to find themselves

truly human. I have spoken many times on this floor and in the other House against mandatory sentencing. I find that in this particular instance there will be a mandatory sentence, so I find myself in a dilemma as to whether I should be consistent with my principle that mandatory sentencing is something that should be avoided in general, as opposed to finally finding a situation where if you have the act of prostitution taking place that at least both people are going to be subject to it.

"If I understood the chairman correctly, this means anyone who is involved with a prostitute in terms of paying that prostitute, male or female, will find themselves arrested for prostitution, as well. I want it very clear now in everybody's mind that if we vote this bill through that means that if somebody is down in Waikiki and is solicited by a prostitute and agrees to abide by the terms and conditions set by that prostitute for his or her sexual favors that the person who agrees to that is also going to be subject to arrest and to the penalties involved here. That was the answer that I received, if I am not mistaken, from the chairman."

Senator O'Connor then stated: "Mr. President, this doesn't change the existing law on prostitution. All it does is change 'he' to 'the person.' 'The person' still refers to the same individual that 'she' referred to. Therefore, the..."

Senator Abercrombie remarked that he was being interrupted and added: "I'd be happy to yield to the Senator if he wants to make a point provided I can maintain the floor, then."

The Chair stated: "There was no attempt to take the floor. The Chair was in error in allowing Senator O'Connor to speak. I thought you were at the conclusion of your presentation. The floor remains with you."

Senator Abercrombie continued: "Thank you. In defense of what I am saying, and I do believe I am reflecting what the chairman of Judiciary said, both people are going to be involved. The good Senator from the Seventh District may disagree with that but the intent of the chairman of Judiciary is clear in his comment. I would direct the members' attention to it.

"A person commits the offense of prostitution; we're talking about the offense now; we have bracketed out the word 'he'; we're talking about the offense of prostitution, 'if the person

engages in or agrees or offers to engage in, sexual conduct with another person in return for a fee.'... 'in return for a fee' almost definitely refers to a second party that accepts the fee, but there's no question then the person engaging in or agreeing to the conduct which results in the payment of that fee is involved in this as well. The changing of the 'he' to 'person' refers back to the offense of prostitution. That means any person that's involved in the offense of prostitution.

"If the intent was to separate the so-called 'John' from the so-called 'prostitute' then the language should have been written quite differently, or I should say that there should have been another definition associated with what constitutes a prostitute, as opposed to the offense of prostitution. So I want it clear in everybody's mind when you vote on this that you are voting to have both parties subject to arrest and mandatory jail.

"Now, I notice heads are shaking back and forth here, but the chairman has agreed with my position, and if you do not believe this is the case, perhaps you should consider to recommit it because you may very well find the judge agreeing with my position and that of the Judiciary chairman, unless I have misunderstood his answer to my question. If so, I am willing to stand corrected."

At 12: 20 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12: 26 o'clock p.m., and resumed consideration of H.B. No. 567, H.D. 1, S.D. 2.

By unanimous consent, action on H.B. No. 567, H.D. 1, S.D. 2, was deferred to the end of the calendar.

House Bill No. 924, H.D. 2, S.D. 1:

Senator Cayetano moved that H.B. No. 924, H.D. 2, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Carpenter.

Senator O'Connor rose to inquire: "Mr. President, how much will inclusion of hearing in this screening process cost in this overall program?"

Senator Cayetano replied: "Mr. President, as I understand it, the cost, I don't have the exact figures in front of me, but as I understand it, the cost would not be very much. Maybe the Ways and Means chairman can answer it. I don't have the figures in front of me. If you want to take a short

recess we can get the information for you."

Senator O'Connor further asked: "Mr. President, the other question of course was why don't we have an appropriation for this bill, for the cost. I don't think it was included in the budget."

The Chair, at this time, ruled that, if there be no objection, H.B. No. 924, H.D. 2, S.D. 1, is deferred to the end of the calendar.

Standing Committee Report No. 842 (H.B. No. 338, H.D. 1, S.D. 2):

On motion by Senator Carpenter, seconded by Senator Cayetano and carried, Stand. Com. Rep. No. 842 was adopted and H.B. No. 338, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO VOTER REGISTRATION," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Kawasaki and Yee).

House Bill No. 84, H.D. 1, S.D. 1:

By unanimous consent, H.B. No. 84, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PENAL RESPONSIBILITY AND FITNESS TO PROCEED," was recommitted to the Committee on Judiciary.

House Bill No. 1550, H.D. 1, S.D. 1:

By unanimous consent, H.B. No. 1550, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PENAL RESPONSIBILITY AND OTHER AFFIRMATIVE DEFENSES," was recommitted to the Committee on Judiciary.

House Bill No. 300, S.D. 1:

By unanimous consent, action on H.B. No. 300, S.D. 1, was deferred to the end of the calendar.

House Bill No. 760, S.D. 1:

On motion by Senator Kobayashi, seconded by Senator George and carried, H.B. No. 760, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC LANDS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, 1 (O'Connor). Excused, 2 (Kawasaki and Yee).

House Bill No. 293, H.D. 1, S.D. 1:

Senator Carpenter moved that H.B. No. 293, H.D. 1, S.D. 1, having been read throughout, passed Third Reading, seconded by Senator Cayetano.

Senator Ushijima rose to inquire: "Mr. President, I just want answers to a few questions from the chairman of the Judiciary Committee.

"On page 6 of the bill, way down at the bottom, about the ballistics checks, it says, 'Within ten days after a permit is issued, the person shall submit the pistol or revolver to the chief of police for a ballistics check.' And 'The chief of police shall maintain records of the ballistics checks together with the file copies of the permits issued.' and so forth.

"Now, is there any kind of cost implication to this?"

Senator Carpenter replied: "There is no cost implication, Senator. No charge."

Senator Ushijima continued: "To the ballistics checks, etc., no charge. That's very nice.

"On page 7, right on the top, '134-2 Registration, mandatory.' you changed 'person' to include 'citizen of the United States of the age of eighteen years or older arriving in the State' etc., then will they be subject to a felony or misdemeanor. Does this mean that citizens below 18 can bring in those restricted things as stated in the chapter?"

Senator Carpenter replied: "It would appear that that is so, but that is not the intent of the language here because this calls for registration in accordance with Section 134-2."

Senator Ushijima further continued: "That's right. It says that every person coming in to the United States who is a United States citizen less than 18 years old would not be subject to this particular section. I think you answered it, stating that citizens below 18 would not be subject to this section, is that correct?"

Senator Carpenter replied: "You may be correct, Senator. The intent of this language change here was to disallow aliens who would, under the present statute, be allowed to bring in firearms into the United States."

Senator Ushijima further inquired: "One other question that I had is on page 10.

"You set forth all these persons 'under treatment for addiction' etc., who would

not be able to own firearms. Under this section then, before any of the authorizing agent or the police chief of the counties would issue a permit they have to check with all the state agencies and they cooperate with the inquiry that is made; is that correct, that is, whether these people come under that category?"

Senator Carpenter replied that that is correct.

Senator Ushijima continued: "Now, knowing the bureaucracy involved in government, I notice that in another section of this bill it says that the chief of police would make an inquiry, then 30 days after an application is made a denial or issuance of a permit will have to be made. Now, I was just wondering as to whether 30 days would be sufficient time for the issuing authority to receive the kind of information that it needs to make a determination as to whether that person should or should not be allowed a permit."

Senator Carpenter replied: "Within the state agencies, we would assume that that 30-day limitation would be adequate time. There are indications that the fingerprint check or the federal criminal history check of results might take longer."

Senator Ushijima then thanked Senator Carpenter for his responses.

At this time, Senator O'Connor rose to speak on the measure as follows:

"Mr. President, I think that in this day and age we are all in favor of gun control and we're all in favor of a measure which would tighten that gun control and make tragic situations such as occurred recently less likely. However, I'm concerned about this bill, concerned enough that I'll probably vote against it this morning because it creates situations that make it completely difficult for agencies involved to clear people who are potential gun owners.

"For example, in this state, it is absolutely impossible to find out whether or not a person is under treatment for addiction of a drug or intoxicating liquor, unless one goes through a myriad of agencies which have no connection with the state. There is no rapid, quick way that a police agency can run through all of those agencies to find out who is under treatment for addiction of a drug or intoxicating liquor. It can be rather quickly ascertained from our computer system as to who has been found guilty of a felony. That isn't always completely up-to-date but is sufficient for this particular purpose,

but many of the other items here, for example, 'who is currently under treatment for mental disease, disorder or defect...' We have thousands of people in this community who are regularly being treated by psychiatrists and psychologists as private patients. It is essentially impossible, and what concerns me is that we put this burden on the police departments to make this check. The police departments are faced with an impossible 'Catch 22' situation. They must make a cursory check and if they do, and if it turns out that one acquires a pistol or firearm and that person is in fact a private patient of a psychiatrist and the police didn't find out about it and issued the permit in any event, I would interpret this as being negligence on the part of the police department. In other words, we are creating a burden for the police department which cannot, under our present system of information, computerized knowledge, and ability to check, find out.

"I don't even build into it the problem of the physician-patient privilege, which exists elsewhere in our law. I just believe that we are attempting to do too much in a certain area of this law, which otherwise would be an excellent step in the right direction."

Senator Carpenter, in response, stated: "Mr. President, the police department supported a much broader section related to those who might have mental problems, or those who might be seeking help from professionals in the mental health field. In fact, this bill essentially speaks to those who have by reason of either mental disease, disorder or defect are considered dangerous to himself or others or their property which is a category more specifically defined, therefore, information ought to be more readily available on those individuals."

Senator Kawasaki, in support of the measure, stated:

"Mr. President, I speak in favor of this bill. I think this is about as reasonable a gun control law as we have been able to devise. In regard to the 10 days minimum, 30 days maximum time specified in this bill before a permit will be issued, I think this is a compromise the Judiciary chairman has had to develop primarily because there was vehement opposition to even a 10 days waiting period requirement.

"I don't recall, as I sat in the Judiciary Committee hearing on this bill in the State Capitol auditorium, the good Senator from the Seventh District even responding to these vehement objections

by the anti-gun control people to the 10-day minimum, 30-day maximum waiting period which is about as workable a compromise as the Judiciary Committee has been out with.

"I would like to see this law enacted and if we find that 30 days indeed does not permit the state agencies to clearly check out some concerns that they have, concerns the police department has, then we can amend the bill next year. But, I would say that it behooves this body today at least to pass this bill out because I consider this to be a reasonably acceptable gun control law and I speak in favor of it."

Senator O'Connor responded as follows:

"Mr. President, in brief response to the good Senator, I did not take issue with the 10 days and 30 days period situation. I took issue with what the police department had to do in that time.

"If, for example, this bill required the police department to check with the State Hospital at Kaneohe and with the other private hospitals in the community for the public knowledge available as to who has been a patient, and for what they have been patients, in the drug, alcohol, or mental disorder area, I would have no quarrel; but the bill doesn't do that. It sets up a different set of criteria for the police department to meet which they cannot. It's an impossible set of criteria. That's what I take issue with, and that's why I have some difficulty with this bill."

Senator Abercrombie then spoke for the measure as follows:

"Mr. President, speaking in favor, I don't care what the difficulties are involved. I refer you to today's paper right now 'Reagan's X-rays Reveal Persistent Problem.'"

"Now, I don't care whether the police department has to put in all kinds of extra personnel, or whether we have to fund something extra on the state level or whatever it is. You just have an example of something which has gone so far into absurdity in terms of so-called protection of our rights that we now have a situation where a man who is so unstable that he's kicked out of the Nazi Party and arrested in Memphis, Tennessee, in possession of three guns on the day that President Carter was in Memphis, is able, two days later, to walk into a Dallas pawnshop and buy guns which he uses to murder the President of the United States.

"I don't care if somebody is under

some kind of psychiatric help because of emotional problems with their family or anything else...that person should not have a gun.

"Anyone who studies the statistics of murder in this country knows that the majority of them are committed in precisely such circumstances, where people have emotional difficulties in respect to their family or friends and end up, because of their capacity to get their hands on a handgun, especially, and commits murder.

"Half of the crimes in this country, half of the felony crimes in this country are committed with stolen guns; and 70% of those crimes are committed by people using handguns.

"Now, it's only common sense that at this stage of the game to make a differentiation between those people who are law-abiding citizens who have no problems, in terms of wanting to use or being likely to use handguns in a way that's going to cause him to commit murder or some other kind of crime, and separating those people from the people who obviously should not have them in the first place. Now, how can we possibly argue that there are logistical difficulties involved that we should allow the kind of thing which we cannot get any better example of.

"Does anybody here doubt for a second that the only reason that the President is alive is dumb luck, complete luck, nothing else. The bullet didn't explode as it should have; it probably ricocheted off the car; it probably then ricocheted off his rib and failed to enter his heart or he would be dead.

"Now, this is the kind of person that this bill is aimed at. Anybody experiencing emotional difficulties should not be allowed to have a gun, period. If someone wants to stand up and say that that somehow runs against the constitutional right to bear arms, I think they've moved into a kind of absurdity that is better served... by the way, when I hear such talk about communism coming in and all the rest of it...that would be better served in Russia. That's the kind of lunatic reasoning that goes on in the courtroom in the Soviet Union when they want to commit people to psychiatric hospitals for holding political views that aren't associated with the ruling clique.

"We should set up this procedure as quickly as possible. If there are any difficulties involved in it, we should know what they are and they

should be treated strictly in terms of what's logistical, and any doctor that doesn't want to report that someone is under their care for psychiatric or emotional problems should be arrested because they are contributing to a circumstance in which they may find that person, because of the emotional difficulties they have and having easy access to a handgun, using it with tragic consequences.

"That's why we should pass this bill and pass it right away."

The motion was put by the Chair and carried and H.B. No. 293, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO FIREARMS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 15. Noes, 9 (Henderson, Holt, Kobayashi, Machida, Mizuguchi, O'Connor, Soares, Toyofuku and Ushijima). Excused, 1 (Yee).

House Bill No. 1511, H.D. 1, S.D. 2:

Senator Cobb moved that H.B. No. 1511, H.D. 1, S.D. 2, having been read throughout, pass Third Reading, seconded by Senator Uwaine.

Senator Kawasaki spoke in favor of the measure as follows:

"Mr. President, while I speak in favor of this bill, I would hope that the conferees, if there is a conference to be held between the House and Senate, will put in some language in this bill so that while banks may be allowed to charge 21% to credit card holders, when the banks' costs are such that it justifies this interest rate of 21%, in the event interest rate costs to the banks come down, the reduction in the interest rate cost also be recognized in the interest payments that the card holders will have to pay to the banks. I do not want the banks and lending institutions to take advantage of the 21% limit and when interest rates to them come down they do not pass this along.

"I would like to see some language incorporated in conference committee so that indeed when the rates or the costs to the banks do come down the banks legitimately bring down the charges to the customers so that in effect the 21% won't be the rate they'd be using permanently to their advantage."

Senator O'Connor then remarked as follows:

"Mr. President, I'm not opposed to the content of this bill personally,

but I'm opposed to the method in which it arrived upon the floor before us today for action.

"I believe that when something as important as the change in percentage of the interest allowed on credit cards which are universally used in this community is to be brought before us for a vote, that matter should be thoroughly and completely debated and be the subject of a bill out of committee in an orderly fashion so that people in the community would have knowledge that such a thing is occurring.

"I am going to vote in favor of this bill. I believe the content of the amendment is appropriate on a personal basis; however, I do not believe that the method used where you piggyback on to an existing bill a completely different concept at the 23rd hour, so to speak, and bring it straight for a vote on the floor is appropriate and correct and I hope that we don't engage in this new coalition government of ours in that type of activity too often."

The Chair responded as follows:

"Senator O'Connor, with reference to the manner in which the bill arrived here on the Senate floor, as we are all aware of, the amendment was proposed, it was discussed and was adopted and the final version of the bill is what you see before you. I, for one, as presiding officer would never try to attempt a process by which any member of the Senate proposes an amendment on the floor at the 23rd hour.

"It is acceptable by the Constitution and is a right of every Senator in this particular body to offer amendments if he or she feels that it fits within the scope of the title of the bill and honestly feels that it should be part of the legislation leaving this particular body. I would be personally opposed to any attempt by anyone to prevent any member of this body from offering a floor amendment or a typed out amendment as part of the procedure here at the Senate.

"I want to make it very clear that the opportunity is for all members of this Senate to participate and also to initiate changes that they themselves feel are important for whatever their reasons might be."

Senator Anderson then remarked as follows:

"Mr. President, as the author of the amendment, I would like to clarify very quickly that I don't consider an amendment to a bill piggybacking. I think the piggybacking concept

is one where a bill comes out of conference and there's a new version or a second idea or concept attached to it. That's where the word piggybacking came from. An amendment that fits into the broad title or a specific title as in this instance is not in fact at all piggybacking.

"This subject, while it was not heard in the Senate this year, was heard in exhaustive hearings last year in every detail. The bill before us, the amendment is not changed, it is not apart from the hearings or discussions of last year. It was our understanding that it was coming from the House but because of an internal problem it did not come over. It is not a new idea or a new problem. It is one that sort of fell through the cracks last year, and if the Senator feels very strongly about it, I'll talk to the chairman and recommit it."

The Chair, in response, stated:

"I think the response of the previous speaker, Senator Anderson, was that he favors the bill but he raised some procedural questions on how the matter came before this body. Am I correct, Senator O'Connor?"

Senator O'Connor replied as follows:

"That is correct, Mr. President. I might add that the good Senator who just spoke is absolutely wrong in that this particular measure constitutes an area which was not thoroughly discussed last year because what was discussed were the interest and usury requirements initiated by a change in federal law. This particular area was not covered and this was gone into in committee at great length, up one side and down the other, and this area was not gone into because it was not covered by the federal law. And I would just say that the matter was not covered last year; it is my understanding that it was not covered this year in the Consumer Protection Committee and it is indeed strange to have it pop out at the last minute."

Senator Uwayne then remarked: "Mr. President, in response to the question that was posed to the good Senator from the Seventh District by the Senator from the Third District, I'd just like to offer that if he feels so strongly that he make a motion for recommitment and I'd be more than happy to second that motion."

Senator Cobb added: "Mr. President, there was a hearing on this matter last year in which the Senator from the Third District attended and asked questions for well over two hours because we heard this matter in connection with

about 15 other usury bills during the course of our decision-making last year. Not only that, but we had rather exhaustive discussions in our conference committee on this. However, if he feels so strongly about the procedure, I will be more than happy to, one, either recommit the bill, or two, take the floor remarks to the conference committee and recommend that the subject of credit cards be deleted, and I intend to do exactly that."

The Chair responded: "Before there are any further discussions on conference committees, if we are to pass this bill on it will be left to the discretion of the House whether or not this measure goes into conference."

The motion was put by the Chair and H.B. No. 1511, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO INTEREST AND USURY," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 1769, H.D. 1, S.D. 1:

Senator Cobb moved that H.B. No. 1769, H.D. 1, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Uwaine.

Senator O'Connor then inquired: "Mr. President, I wonder if the good chairman would yield to a question? I really don't know the answer to this. I wonder why the salesmen's licenses in this rather important area of trust funds are being done away with. I have considered these as sort of a safeguard in the past and I just wonder why we're doing away with the salesmen's licenses and all control of the salesmen in that same situation."

Senator Cobb replied: "Mr. President, because the salesmen come under specific companies which have a bonding and licensure requirement, and the committee felt that it was important to have the authority and responsibility and the chain of responsibility go to the company via the bonding requirement."

Senator O'Connor further inquired: "Mr. President, on the same vein, why are we doing away with those safeguards suggested by the House which sort of follow the Auditor's report in this area of the trust funds?"

Senator Cobb responded: "Mr. President, we had several trust companies come in and testify as to the unworkability of some of the Auditor's recommendations,

and I would further remind the good Senator from my district that the Legislative Auditor is the auditor and not the Legislature. We are not bound to agree with him in every case in point nor do we."

The motion was put by the Chair and carried, and H.B. No. 1769, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CEMETERIES AND MORTUARIES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 17. Noes, 7 (Campbell, Holt, Machida, Mizuguchi, O'Connor, Toyofuku and Ushijima). Excused, 1 (Yee).

House Bill No. 1870, H.D. 1, S.D. 1:

By unanimous consent, action on H.B. No. 1870, H.D. 1, S.D. 1, was deferred to the end of the calendar.

At 12:55 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 1:02 o'clock p.m.

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

On motion by Senator Henderson, seconded by Senator Kobayashi and carried, H.B. No. 511, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC LANDS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 20. Noes, none. Excused, 5 (Anderson, Cobb, Kuroda, O'Connor and Yee).

House Bill No. 754, H.D. 1, S.D. 1:

On motion by Senator Henderson, seconded by Senator Carpenter and carried, H.B. No. 754, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO COMMERCIAL FISH CATCH REPORTS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, none. Excused, 4 (Anderson, Cobb, Kuroda and Yee).

House Bill No. 822, S.D. 1:

On motion by Senator Henderson, seconded by Senator Carpenter and carried, H.B. No. 822, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO NOTICE OF BREACH OR DEFAULT OF

AGREEMENTS FOR USE OF STATE LAND," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, none. Excused, 4 (Anderson, Cobb, Kuroda and Yee).

Standing Committee Report No. 854 (H.B. No. 1590, H.D. 1, S.D. 2):

Senator Henderson moved that Stand. Com. Rep. No. 854 be adopted and H.B. No. 1590, H.D. 1, S.D. 2, having been read throughout, pass Third Reading, seconded by Senator Carpenter.

Senator Kawasaki rose to ask: "Mr. President, I have a question directed to the chairman of the committee from which this committee report and the bill emanate, if he will yield to a question."

Senator Henderson replied that he would.

Senator Kawasaki continued as follows:

"Mr. President, I find this bill a little confusing. I had some discussions with the staff attorneys and they are equally confused about the intent of the bill. I will try to qualify a point for the record here because the bill might be subject to controversy in future years.

"The question I have for the chairman of the Economic Development Committee specifically is this, will this bill in its amended form guarantee to us that the filling of the 300 acres of what is now submerged lands in Keehi Lagoon...will this bill prevent the development and the filling of these lands and the development of that into industrial lots? Will that development, first of all, require legislative approval?

"In reading the bill, it doesn't seem to guarantee this. On the one hand the bill, I think it was Section 171-60, does preclude the leasing of these lands, but under subsection 153, developers may, under the very broad language, be allowed to lease these lands and in effect fill up this land in Keehi Lagoon, submerged land, and use it for industrial lots.

"I'd like to make sure that this bill guarantees that before such a development is attempted that legislative approval is going to be required."

Senator Henderson responded:

"Mr. President, the present law, and there are two sections that apply; one, the Governor and the Land Board can approve the development of submerged

lands; the other requires the approval of both Houses of the Legislature in addition to the approval of the Governor and the Land Board.

"What this bill does in effect is to make the law that, if it's going to be a development, if the land is going to be put out for private development, then it has to come to the Legislature by way of a concurrent resolution. It cannot be done arbitrarily by the Governor."

Senator Kawasaki continued:

"Mr. President, Section 171-53 (c) reads, 'The board may, with the prior approval of the governor,' ...just the governor...'lease submerged lands, and lands beneath tidal waters which it deems are suitable for reclamation,' and so forth. This language does not indicate to me that legislative approval is required."

Senator Henderson answered:

"Mr. President, that language is there in order to accommodate situations where you might have a person that wants to come in and put a little pier in front of his private residence. If the person is going to be involved in commercial development like the Keehi Lagoon situation, then they would have to come to the Legislature for approval with a concurrent resolution."

Senator Kawasaki responded:

"Mr. President, I am very happy at that response. I would like to have the chairman's (Economic Development) comments and guarantee, if you will, be entered into the record of the Senate Journal."

The Chair replied: "Senator Kawasaki, the statements made by Senators on the floor are part of the record."

At this time, Senator Holt spoke against the measure as follows:

"Mr. President, in response to the previous speaker's comment, the chairman of the Economic Development, I would like to speak in opposition to this bill because I believe that it would allow Keehi Lagoon to be developed. It would allow the Executive Branch to bypass this Legislative Branch and issue leases for these kinds of development.

"If you look at the language, it says, 'No lease shall be granted under this subsection for any development project subject to the provisions of section 171-60.' What this means in effect is

that we have to determine which section is applicable to Keehi Lagoon, either 171-53 or 171-60. This would allow the Executive Branch, through the Attorney General's office, to look at Keehi Lagoon and they may, in fact, determine that Keehi Lagoon is 'land beneath tidal waters' which is a definition in 171-53 that is not included in 171-60. If that is such, Keehi Lagoon would be subject to the provisions of 171-53, which only needs approval of the Governor, and not the Legislature.

"I think that if you look at the words in this bill you will find that it does not protect the submerged lands that we're trying to save, but it does in fact breathe life into developments, like the Hadley-Pruyn proposal, and I urge all of my colleagues to vote against this bill."

Senator Kawasaki responded as follows:

"Mr. President, I am caught between the horns of a dilemma here because the present statute does in effect allow the Governor himself to give approval for these Hadley-Pruyn type of developments. But with this bill passing, and I have some reservations about this bill myself, but with the statements made by the chairman of the Economic Development Committee very clearly defining what is the legislative intent here, which is going to be on the record, which departments like the Land and Natural Resources will have to give close attention to, I think it will perhaps guarantee that legislative approval is going to be required."

"Without the bill, on the other hand, as I said, the present statute would allow just the Governor to give approval, so as I said, I'm kind of caught in between the horns of a dilemma. Perhaps passage of this bill would enhance the probability of maintaining Keehi Lagoon as 300 acres of water recreation facilities, which is quite unique in this state."

Senator O'Connor then asked if the chairman of the Economic Development Committee would yield to a question and Senator Henderson replied in the affirmative.

Senator O'Connor asked:

"Mr. President, one of the key parts of the committee report which will be looked to to resolve the dilemma, earlier referred to, as to whether or not Keehi Lagoon is tidal water or submerged land is on the second page of the committee report, the second paragraph to the end. In that, section 1 of the earlier bill clearly required

the Legislature's approval by concurrent resolution, actually in the bill.

"Now, the committee report says that 'As the bill has been amended by the previous committee, the original purpose as stated in section 1, of the the bill has become otiose.' I wonder if the chairman could tell us what that word means, as it might become terribly important in court if this ever boils up into a fight, o-t-i-o-s-e."

Senator Henderson answered as follows:

"Mr. President, it means that it's without substance; without meaning; the purpose is no longer required as far as the committee report, as far as the bill is concerned."

"I think that what we're trying to get at here is that we're trying to simplify or make the law more comprehensive and understanding."

"The problem right now is that there are two ways that somebody could go if they wanted to develop Keehi Lagoon. The intent of this law right now, the form that it's in, as far as what we were able to determine in our committee hearings and by the testimonies that we received is that it now clearly provides that you cannot put submerged lands out for private development without getting the concurrent approval from both Houses of the Legislature."

"Now, if it's a case where a homeowner wants to put a pier in front of his house, then you don't have to come to the Legislature."

"We're trying to make sense where sense should be. It means that when you have a major project that's going to affect a lot of interest in the state, then you come to the Legislature; if you don't have it, you don't need to. That's the full intent of this change in the law."

"Thank you."

Senator O'Connor then rose to speak against the measure as follows:

"Mr. President, if that is the intent of the bill, it should be specifically and clearly stated in the bill. It is not."

"There is nothing to differentiate between the little wharf and a large development. There's nothing that differentiates between a major thing or a minor thing. None of that is in the bill or in the law, and the point raised by the good Senator Holt earlier is clear and that is that Section 171-53 refers, and

you can see it very plainly by looking at the first page of the bill, it refers to any submerged public land or land beneath tidal waters.

"Section 171-60 to which the amendment would have us refer does not have any provision in it concerning land beneath tidal waters. It only refers to submerged land. Therefore, the Executive Branch of government can make a determination that the flats of Keehi Lagoon are 'land beneath tidal waters' and apply Section 171-53 and the Governor can go ahead and authorize that development without the approval of the Legislature. Therefore, I would vote against this measure."

The motion was put by the Chair and carried, and Stand. Com. Rep. No. 854 was adopted and H.B. No. 1590, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE ENVIRONMENT," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 18. Noes, 7 (Campbell, Holt, Machida, Mizuguchi, O'Connor, Toyofuku and Ushijima).

Standing Committee Report No. 855 (H.B. No. 781, S.D. 2):

Senator Cobb moved that Stand. Com. Rep. No. 855 be adopted and H.B. No. 781, S.D. 2, having been read throughout, pass Third Reading, seconded by Senator Uwaine.

Senator O'Connor spoke against the measure as follows:

"Mr. President, this bill would give the Department of Regulatory Agencies subpoena powers over documents, subpoena powers over witnesses, and the ability to take depositions of witnesses under oath prior to any action being filed in court.

"The Attorney General came to this body back in 1973 and sought the same powers, and we granted those powers with a key phrase, 'subject to the rules of court,' included so that any time there was an instigation of an action or the instigation of any sort of investigation, at least there would be public notice to the individual against whom that was being directed that such a matter was going on.

"This bill before us today gives carte blanche powers to the Department of Regulatory Agencies in the areas of depositions, both oral and written interrogatories of documents, and the ability to subpoena documents...something

the Attorney General doesn't even have at this juncture...and the ability, as I understand it, to allow the Department of Regulatory Agencies to run through every business in town willy-nilly and do anything they desire in order to pick up material having to do with their regulatory function.

"Mr. President, I do not object to giving them certain powers, but those powers should certainly be no greater than the Attorney General's and should certainly be no greater than any other attorney in town would have under similar circumstances. They should be required to go to court so that the sanctions and protections that the rules of court provide might be implemented, if necessary, by those people against whom investigations are launched. This is going to be a very difficult bill, if passed."

Senator Cobb remarked as follows:

"Mr. President, one bit of observation, Mr. President, and that is the Office of Consumer Protection also has the power that's outlined in this bill, and rather than grant it on a carte blanche basis we imposed a two-year 'drop-dead' clause and limited it to subpoena, and not police power to see how it works and if there is an abuse or not."

The motion was put by the Chair and carried, and Stand. Com. Rep. No. 855 was adopted and H.B. No. 781, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE DEPARTMENT OF REGULATORY AGENCIES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 18. Noes, 7 (Campbell, Holt, Machida, Mizuguchi, O'Connor, Toyofuku and Ushijima).

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

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, H.B. No. 2, H.D. 1, S.D. 1, 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, 25. Noes, none.

Standing Committee Report No. 857 (H.B. No. 125, H.D. 2, S.D. 1):

Senator Yamasaki moved that Stand. Com. Rep. No. 857 be adopted and H.B. No. 125, H.D. 2, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Anderson.

Senator Kawasaki rose to speak against the measure as follows:

"Mr. President, I rise to speak against passage of this bill and, in effect, the next two bills (H.B. No. 126, H.D. 2, S.D. 1, and H.B. No. 127, H.D. 2, S.D. 1) because they are similar types of bills permitting the floating of special revenue bonds to help industries such as manufacturing, processing, and industrial, somewhat relevant to this bill. My concerns are about the same on the bill that was put to the end of the calendar for hospital facilities.

"The concern that I have is that contrary to what is the general assumption around here that these bills do not in any way impact upon the state revenues, contrary to that, the only reason special purpose revenue bonds are attractive to investors is that these bills, the income earned from the interest of holders of these bonds is not subject to state tax.

"In the case of the hospital bill, the total number of projects involved is some \$163 million. That's at the end of the calendar but I think it's relevant so that's the reason why I bring it up.

"In these bills, the manufacturing, processing, and industrial companies are also the beneficiaries of special purpose revenue bonds and we don't even have a limit.

"Supposing some industrial company in one of these three categories wanted to have the state use its good name and float \$100 million worth of bonds and the bonds would require interest payments of something conservative, in the way of 10%, that would mean \$10 million of income earned on the interest on these bonds to the bond holders, that are not subject to state taxes. This is a considerable amount of money and if we really use our imagination and realize that these categories, the next two bills included, may just involve literally millions of dollars of these revenue bonds being floated for the benefit of these private entrepreneurs. The resulting loss of tax revenue to the State of Hawaii is going to be tremendous... tremendous amount of money involved here. And for this reason, I think, we should be a little more concerned about the end effects of this particular bill and the next two bills.

"I made a comment two years ago when the Hawaiian Electric Company came to us to float some special revenue bonds in their behalf, and I predicted

at that time that there would be other organizations coming to us to request for benefits of these types of special revenue bonds.

"The only reason, as I said, that these bonds are attractive to buyers of these bonds is that the income earned from the interest on these bonds is not subject to taxes, and for all practical purposes, the net result to the holders of these bonds is going to be much greater than what the interest indicates-- 10% interest. That doesn't mean that the holders of these bonds are going to save income taxes on 10% of the interest earnings because depending on the tax position of each individual or each company that buys these bonds, it's a tremendous tax advantage, and this is the reason why these bonds are attractive. This is all right, except that it's going to cost the state a good sum of money. For this reason, I speak against all of these bills."

Senator Cayetano then briefly added: "Mr. President, just a point of clarification on Senator Kawasaki's remarks. It is my recollection that the interest on these bonds are certainly exempt from federal taxes; in some cases they are exempt from state taxes. However, the key thing to remember about this is that the exemption only applies to Hawaii residents or Hawaii corporations. Therefore, if a New York resident buys these bonds, there's no problem."

Senator Kawasaki further remarked as follows:

"Mr. President, just one added point of information. About an hour ago I had the occasion to inquire of the Tax Department whether these special revenue bonds, all of these categories of bonds, were indeed exempt from state taxes and they replied in the affirmative, they are, and they involve big money."

Senator O'Connor then remarked as follows:

"Mr. President, I would just like to amplify on Senator Cayetano's remarks.

"Generally, these types of bond issues are floated nationally. We do float several types of bond issues in the state government today. They are purchased by large brokerage houses across the United States by investors. Those people would not be subject to paying Hawaiian taxes in any event. They would pay taxes if they were incurred in their own state. The federal exemption generally is picked up by most states. I believe we have picked it up, as the good Senator just indicated, and most other states

would also. But these are the kinds of bonds that are traded across the United States and probably very few of them would be sold in Hawaii to investors."

Senator Kawasaki rose to respond as follows:

"Mr. President, just in response to the good Senator from the Seventh District. Last week's Wall Street Journal had a front page article saying that the Congress of the United States is now very much concerned about the loss of revenue to the federal government because of these special purpose revenue bonds. It was in last week Thursday's Wall Street Journal, as I recall.

"The Congress too is very concerned about the results of these bonds."

The motion was put by the Chair and carried and Stand. Com. Rep. No. 857 was adopted and H.B. No. 125, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MANUFACTURING ENTERPRISES," 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, 24. Noes, 1 (Kawasaki).

Standing Committee Report No. 858 (H.B. No. 126, H.D. 2, S.D. 1):

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, Stand. Com. Rep. No. 858 was adopted and H.B. No. 126, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PROCESSING ENTERPRISES," 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, 24. Noes, 1 (Kawasaki).

Standing Committee Report No. 859 (H.B. No. 127, H.D. 2, S.D. 1):

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, Stand. Com. Rep. No. 859 was adopted and H.B. No. 127, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INDUSTRIAL ENTERPRISES," 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, 24. Noes, 1 (Kawasaki).

House Bill No. 128, H.D. 3, S.D. 1:

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, H.B. No. 128, H.D. 3, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO UTILITIES," 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, 24. Noes, 1 (Kawasaki).

Standing Committee Report No. 861 (H.B. No. 247, S.D. 2):

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, Stand. Com. Rep. No. 861 was adopted and H.B. No. 247, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO LIQUOR," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 17. Noes, 8 (Campbell, Holt, Kawasaki, Machida, Mizuguchi, O'Connor, Toyofuku and Ushijima).

Standing Committee Report No. 862 (H.B. No. 329, H.D. 1, S.D. 2):

By unanimous consent, Stand. Com. Rep. No. 862 and H.B. No. 329, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC OFFICERS AND EMPLOYEES EXCLUDED OR EXEMPT FROM COLLECTIVE BARGAINING," were recommitted to the Committee on Ways and Means.

Standing Committee Report No. 863 (H.B. No. 344, H.D. 1, S.D. 2):

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, Stand. Com. Rep. No. 863 was adopted and H.B. No. 344, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE RELIEF OF CERTAIN PERSONS' CLAIMS AGAINST THE STATE AND PROVIDING APPROPRIATIONS THEREFOR," 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. 864 (H.B. No. 368, H.D. 1, S.D. 2):

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, Stand. Com. Rep. No. 864 was adopted and H.B. No. 368, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC UTILITIES," having been read throughout, passed Third Reading

on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 482, H.D. 2, S.D. 1:

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, H.B. No. 482, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE GENERAL EXCISE TAX ON FERTILIZERS AND PLANT NUTRIENTS," 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. 866 (H.B. No. 629, H.D. 1, S.D. 2):

By unanimous consent, action on Stand. Com. Rep. No. 866 and H.B. No. 629, H.D. 1, S.D. 2, was deferred to the end of the calendar.

Standing Committee Report No. 867 (H.B. No. 635, H.D. 1, S.D. 1):

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, Stand. Com. Rep. No. 867 was adopted and H.B. No. 635, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC PURCHASES AND CONTRACTS," 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. 641, H.D. 2, S.D. 2):

Senator Yamasaki moved that Stand. Com. Rep. No. 868 be adopted and H.B. No. 641, H.D. 2, S.D. 2, having been read throughout, pass Third Reading, seconded by Senator Anderson.

At this time, Senator Holt rose to inquire as follows:

"Mr. President, can I ask the chairman of the Ways and Means Committee whether this rental assistance program is a fund created as a special fund?"

Senator Yamasaki replied: "Yes, the \$12 million originally in the bill was taken out. This is just the enabling legislation."

Senator Holt then commented: "The enabling legislation for the rental assistance without the money. Thank you."

Then, Senator O'Connor inquired: "Mr. President, an additional question to the chairman. Is that money in the budget?"

Senator Yamasaki replied that it was not in the budget.

The motion was put by the Chair and carried and Stand. Com. Rep. No. 868 was adopted and H.B. No. 641, H.D. 2, S.D. 2, 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.

House Bill No. 693, H.D. 1, S.D. 1:

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, H.B. No. 693, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO DEPOSIT OF STATE FUNDS IN TREASURY," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 870 (H.B. No. 695, H.D. 1, S.D. 1):

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, Stand. Com. Rep. No. 870 was adopted and H.B. No. 695, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PAYMENTS FOR SICK LEAVE," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 871 (H.B. No. 709, H.D. 1, S.D. 2):

By unanimous consent, action on Stand. Com. Rep. No. 871 and H.B. No. 709, H.D. 1, S.D. 2, was deferred to the end of the calendar.

House Bill No. 733, S.D. 1:

Senator Yamasaki moved that H.B. No. 733, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Anderson.

Senator Holt, at this time, requested that his remarks on this measure, found in the Journal, 46th Day, Friday, April 3, 1981, be incorporated herewith.

Senator Saiki then rose to state as follows:

"Mr. President, I am going to cast a very reluctant 'aye' on this measure. I did make some remarks the other evening about wholeheartedly endorsing the special funds for emergency medical services. My concern is with the other sections of the bill.

"I feel very strongly that paramedic training and the constant evaluation of the Emergency Medical Services System in our state should always remain firmly in the hands of professional medical experts, and not left to the lowest bidder, whoever they may be. This bill seems to imply an opening up to bidders who may not be necessarily qualified to provide our people with the quality of emergency care that they would need. However, I have every hope that my concern would be taken care of in conference committee, providing this bill does go into conference committee, and this recognition of leaving people who are caught in dire emergencies on our highways and in our homes...these people will be assured of qualified paramedics who have been trained by medical people. Thank you."

Senator O'Connor rose to speak against the measure as follows:

"Mr. President, I'm going to vote against this bill, both for reasons of special funds which I won't go into any more, but because it does put the whole matter up for contract.

"I think that sometimes in this body, in this Legislature, we forget too soon, and we forget why we went into this program in the first place. We forget that the City and County of Honolulu had gotten to a point where its ambulance services were in fact contracted out to private bidders and we forget that that private bidder had done such a miserable, rotten situation with the ambulance service that people were simply not getting from accident situations into the hospitals. It was from there that we started several years ago and the prior speaker was one of the main instigators of this situation in going to the EMS program. Today, we take the first step back in the same direction. I hate to see this happen. I would vote against it."

Senator Cayetano added his remarks as follows:

"Mr. President, I appreciate the remarks of the previous speakers, certainly the opinion and expertise of Senator Saiki is highly valued in this area and will be taken into account if this bill should go to conference.

"The changes made in the bill were made for a couple of reasons. First, the Ethics Commission did issue an opinion which was critical of the way the training, not the training per se but the setup in terms of who was to provide training and the built-in conflicts because of the law, that was one concern.

"Another concern was a memorandum from the Attorney General's office raising grave concerns about the present law surviving legal scrutiny in terms of the sole source provider provisions of the law. So this is what those amendments were meant to address.

"The program has come a long way, Mr. President. Development of the emergency medical services program is now, I think, of high quality. I had the occasion of going to the school itself and looking at what they are doing. I also had the occasion to ride the ambulance one night and I am very satisfied with the present level of training. However, the existing law provides or is structured so that training really can be done only by one organization.

"The amendment as proposed in this bill is meant to open it up; for example, during the discussions on this bill the question of opening up the training possibly to the University's Medical School was entertained. Those are some of the considerations that were taken into account when this bill was amended."

The motion was put by the Chair and carried, and H.B. No. 733, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EMERGENCY MEDICAL SERVICES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 17. Noes, 8 (Campbell, Holt, Kobayashi, Machida, Mizuguchi, O'Connor, Toyofuku and Ushijima).

Standing Committee Report No. 873 (H.B. No. 769, H.D. 2, S.D. 2):

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, Stand. Com. Rep. No. 873 was adopted and H.B. No. 769, H.D. 2, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE 1984 SILVER JUBILEE OF HAWAII'S STATEHOOD AND MAKING AN APPROPRIATION THEREFOR," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Anderson).

At 1:34 o'clock p.m., the Senate stood in recess subject to the call

of the Chair.

The Senate reconvened at 1:36 o'clock p.m.

Standing Committee Report No. 874 (H.B. No. 785, H.D. 1):

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, Stand. Com. Rep. No. 874 was adopted and H.B. No. 785, H.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, 23. Noes, none. Excused, 2 (Abercrombie and Soares).

Standing Committee Report No. 875 (H.B. No. 788, H.D. 1, S.D. 1):

Senator Yamasaki moved that Stand. Com. Rep. No. 875 be adopted and H.B. No. 788, H.D. 1, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Anderson.

At this time, Senator Cobb spoke against the measure as follows:

"Mr. President, speaking for myself, I'm going to vote against this bill because it does not delineate between a veteran who has received a dishonorable discharge, an undesirable discharge, or a special discharge. In the individual cases that I am familiar with in the general court martial jurisdiction of the Army, where an individual who receives a dishonorable discharge would have to be convicted of a major felony or a violent crime. I think this would run counter for the purpose of the veterans' benefits for such people."

The motion was put by the Chair and carried, and Stand. Com. Rep. No. 875 was adopted, and H.B. No. 788, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO VETERANS RIGHTS AND BENEFITS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, 4 (Ajifu, Cobb, George and Kuroda).

House Bill No. 807, H.D. 1, S.D. 1:

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, H.B. No. 807, H.D. 1, S.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. 808, H.D. 2, S.D. 1:

Senator Yamasaki moved that H.B. No. 808, H.D. 2, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Anderson.

Senator Cayetano rose to speak against the measure as follows:

"Mr. President, I'm going to vote against this bill. First of all, this bill is not needed at this time. During the hearings, the testimony presented to us by the Department of Transportation (DOT) indicated that with some imagination they will be able to continue the highway programs without deficit up to 1983, I believe it was.

"The problem that the department has, at the present time, is using cash for CIP; for example, in this budget they requested \$5 million cash CIP. My contention is that we should permit them to use GO reimbursables, allowing that cash to stay in the highway fund and to be used to meet the deficit. Moreover, previous testimony given by the department the last biennium indicated that there was a contradiction in their financial forecast. My recollection is that, for example, in the special maintenance program what they are forecasting in the outyears in this budget is about double what they forecasted when it came to the Ways and Means Committee in 1979. What we have to be, I think, cognizant of is that the diversion of the 4% general excise tax revenues into the highway fund, if we are not careful, will lead to further reduction of our general fund revenues into the outyears.

"Now, I know that this bill provides for a 'drop dead' clause of about three years. My contention is that we should wait at least another year because it's not going to hurt anyone, least of all the Department of Transportation, until we can find maybe some other answer to this problem, including reassessing some of the spending in the highway department and also considering an increase in the fuel tax itself."

Senator Abercrombie also rose to speak against the bill as follows:

"Mr. President, I would reiterate one point in respect of the debt question which Senator Cayetano alluded to which I think is one of the most important points to keep in mind; and secondly, I don't believe that this is addressing the situation correctly.

"We have here a State Highway Fund.

Now, if we want to put more in the State Highway Fund, the honest way of doing it, the direct way of doing it, is increase the gasoline tax. To take this excise tax situation and to transfer it is worse than deception; it's setting ourselves up to do the same kind of thing should we have to deal with it in the future. It's letting these people continue to have, I believe, a blank check operation over there, and we shouldn't be doing it. This is the wrong time, the wrong way, the wrong place, and the wrong thing to be doing."

The motion was put by the Chair and carried and H.B. No. 808, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TAXES ON LIQUID FUEL SOLD OR USED FOR OPERATING MOTOR VEHICLES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 20. Noes, 5 (Abercrombie, Cayetano, Kawasaki, Uwaine and Young).

Standing Committee Report No. 878 (H.B. No. 824, H.D. 1, S.D. 2):

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, Stand. Com. Rep. No. 878 was adopted and H.B. No. 824, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Cobb).

At 1:43 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 1:50 o'clock p.m.

Standing Committee Report No. 879 (H.B. No. 919, S.D. 1):

Senator Yamasaki moved that Stand. Com. Rep. No. 879 be adopted and H.B. No. 919, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Anderson.

At this time, Senator O'Connor rose to speak against the measure as follows:

"Mr. President, I'm going to vote against this bill and I will admit in doing so that I am second-guessing other attorneys. However, in this matter we are paying \$4.1 million in a stipulated judgment settlement to a young lady who is a quadriplegic. The dollar amount is based upon her life expectancy of 55 years and a yearly expenditure

for her care based upon statements made to our attorney by the other side.

"As I understand it, we, the state, never hired an expert to determine what the minimum amount might have been for the care and sustenance of Sylvia Gamino over her life expectancy, nor did we determine what her minimal life expectancy might be, which might have substantially made this amount less.

"I am in a quandary in this matter because I believe that we should be paying something about half of what we're paying, but, unfortunately, because there was no work done in the area that I've indicated on our side it is impossible to put a dollar figure on the lower amount which should be considered in this case. However, I am absolutely sure that the lower amount would be in the range of \$2 to \$2.5 million; therefore, I am going to vote against this measure."

Senator Uwaine rose to remark on the matter as follows:

"Mr. President, maybe I can help enlighten the good Senator from the Seventh District as to how we arrived at this \$4.1 million, and that, in fact, the state did have an economist look into the life expectancy and earned income of Miss Gamino.

"As background information, before I proceed, Mr. President, the determination right now is not a matter of whether the state is at fault or not but rather that last year in May the state was found guilty and at fault. Today, the issue is how much do we pay for that negligence.

"This is background information again, Mr. President, the information as far as this individual being paralyzed from the neck down, which is a more simple term than the medical term, quadriplegic.

"Mr. President, Miss Gamino was earning a salary of \$17,000 a year; she was 23 years old at the time. Her medical care for 1980 was \$90,000 and her hospital care for 20 days was \$4,600 in 1980 for a grand total of \$112,152. Given that as a base, we hired our own economist, Dr. Moss, from the mainland and the plaintiff hired her own attorney as well as an economist, Dr. Schultz.

"The difference in the amount is that Dr. Schultz found it as \$4.8 million and our economist found it as \$2.8 million.

"The vast difference, Mr. President, is in two areas--one, as far as her lost earning capacity for her life expectancy, which is 56 years, as well as the fact that another major difference was the medical care for her life expectancy...again on that particular issue it was the matter of the type of nurses that she needed.

"Our economist and our attorney felt that she may need just two, what we call licensed vocational nurses and one personal care attendant during the time that she is asleep. However, her attorney and doctors felt that she needed three licensed vocational nurses, 24 hours. The difference in the hourly rate is about \$10.50 for licensed vocational nurse versus \$6.10 for a personal care attendant. This big difference, Mr. President, was the reason why there was the vast difference in the amount that was arrived at, the \$4.8 million of her economist versus the \$2.8 million of our economist.

"Mr. President, it's not a matter of who was at fault. Right now we're trying to determine how much we were at fault.

"Another area of concern that was raised by several members of our caucus was how much we are paying for pain and suffering. Pain and suffering is estimated conservatively at \$1.5 million and this is based on the previous case of a young lady in Hilo, I believe an intermediate school student, who was in an accident and was paralyzed from the neck down. For her pain and suffering the court in Hilo, the jury in Hilo awarded her \$750,000, and this was four years ago.

"Another fact is that we need to reimburse the federal government for money that was put in for workmen's comp.

"Right now, Mr. President, the total difference is between the \$6.3 million versus the \$4.3 million which our economist and attorneys feel is reasonable. Our attorneys advise us that, based on the projection of our economist, that is going to be the bottom line because whoever they put on the witness stand is not going to justify her economist, but rather put her economist at a disadvantage in the fact that our economist is very conservative. In fact, the state doesn't have any witnesses that they can put on the stand to justify why she would need two licensed vocational nurses versus three.

"Every doctor, every mainland expert that they could find from New York to Sacramento to Los Angeles to San Francisco all have said that if they are put on the stand they are going to say that she needs three licensed vocational nurses.

"Mr. President, it comes down to a matter of credibility. If we have people that we can put on the stand to justify the cost that it should be at the point of \$4.3 million versus the

fact their economist and attorneys say should be about \$6.3 million.

"My question to our attorneys was that why would she not want to go to court if she could arrive at something like \$6.3 million. Their answer was, and it's perfectly normal, that she's been through enough pain and suffering that she wants to just resolve this case because in all likelihood, because of the huge amount, this case would drag on for a period of about two years.

"I think it's important to remember also that again it's a matter of who is at fault--that's already determined. Judge Fong in his decision last year stated that the only recourse that the state has was to sue Mr. Yamamoto who was the driver of the other vehicle that collided with the state vehicle. The state is going to try and sue him for 10% of the damages because the state feels that he should have braked about five to ten feet earlier.

"Right now, Mr. President, it's a matter of if we have to pay, we have to pay. It's a matter of how much, and I think this is more than reasonable, this \$4.1 million appropriation.

"Thank you."

Senator Kawasaki then rose to speak against the measure as follows:

"Mr. President, while I certainly favor a compensation to the very unfortunate victim of this accident, I'm just not in agreement, notwithstanding the very detailed, very good explanation given by the chairman of the Human Resources Committee.

"It just seems to me that compensation of \$4.1 million is much too excessive. I'm afraid that we are going to set a precedent in the way of compensation for these kinds of cases that may be a burden that will come to haunt us in the future. Hopefully, we would not have cases like this involving the state, but it just seems to me the settlement amount of \$4,100,000 for this quadriplegic person is going to be a precedent that we are going to have to live by in future settlements of this kind, and I am just afraid that this excessive amount is going to incur a great burden to the state in the years to come. For that reason, I vote against this bill."

Senator Campbell added his remarks as follows:

"Mr. President, previous speakers have touched on some of the points that I wanted to raise related to this issue. I feel that this is certainly a very large

sum of money to be paid out by this Legislature without being involved in any way in the process we call the decision-making process. I'm not a legal person, therefore, I'm in no position to say what the nature of that participation ought to be, but there seems to be something basically wrong with a process by which this Legislature is asked to rubber-stamp a judgment, and it doesn't really make any difference how large that judgment is. This one happens to certainly accent the necessity of looking at the process.

"At recess time, I talked with the chairmen of the Judiciary Committee and the Ways and Means Committee because at the Ways and Means Committee it was suggested that there was a bill in the hopper which might at least address a segment of this problem and that relates to whether or not it was necessary for the Legislature to pay a judgment in lump sum. And if this bill is to address that issue, certainly it will help.

"At this point, Mr. President, I wonder if I'm in order to ask the chairman of the Judiciary Committee if knows what the status of that bill is."

The Chair allowed Senator Campbell to proceed.

Senator Campbell continued: "Mr. President, the question is, what is the status of a bill in the hopper at the present time which addresses the question of whether or not this Legislature is required to pay in lump sum a judgment of this description?"

Senator Carpenter replied: "Mr. President, in answer to the good Senator's question, we did have in the Judiciary Committee a bill which would essentially have structured payments for tort claims of this type. The bill, having passed third reading, was forwarded to the House of Representatives. My understanding is that they have not acted upon it at this time."

Senator Campbell thanked Senator Carpenter for his reply and continued as follows:

"Mr. President, my last statement relates to a comment in the Ways and Means Committee that certain legislators informally were contacted to at least express an opinion prior to an agreement made for the judgment that we are talking about today.

"Now, I'm not going to insist on who those legislators were, but I want to go on record at this time that

I strongly oppose to legislators being informally involved in this kind of process. I do feel that this Legislature, if it cannot do it at this session, come back at a subsequent session to deal with the question of involvement in the decision-making process when it comes to this kind of an issue. Thank you."

Senator Uwaine, on a point of clarification stated as follows:

"Mr. President, may I try to clarify a point that I made earlier to make it more distinct as far as what we are talking about, our economist versus their economist.

"As far as the difference between what their economist projected and ours, and I want to give it a little more detail. For example, their economist, based on Miss Gamino's life expectancy, on just her three licensed vocational nurses, to pay them \$10.50 an hour on a 24-hour shift was \$3.7 million. Our economist, with two licensed vocational nurses and a personal care attendant arrived at a cost of about \$2 million for a difference of \$1.7 million savings, if, we could get a personal attendant rather than three licensed vocational nurses.

"Another vast difference, Mr. President, is the fact that on her future earnings, in 1979 she was at a GS-5 rating of \$17,000 a year; she was a young lady who was up and coming; her supervisor said that she was in line for promotion to a supervisor's position. Based on her earnings, her life expectancy, if she remained in the federal government, would have been about \$689,000 which their economist based it on. Our economist based it on \$461,000 and there was a vast difference of about \$250,000 because our economist felt that irrespective of the fact that she is paralyzed from the neck down, she still could get married and have children.

"Another difference was the fact that her hospital care for the future, based on the 20 days, our economist based it at 20 days for the rest of her life for skin care, for urine infection problems, etc., based it on \$191,000. Their economist increased it to \$307,000 because of the fact, and it sounds very reasonable to me, that if anything, it's going to get worse.

"These three areas, Mr. President, were the reasons for this vast difference between \$6.3 million and \$4.3 million, and again, I say, Mr. President, that the bottom line that our economist, our attorneys, our Attorney General's deputies, all mentioned together, collectively, arrived at the \$4.3 million figure.

And, if we're very lucky in suing Mr. Yamamoto, which I hope we're not very successful, we may get back some more money into the state. Thank you."

Senator Cobb then remarked as follows:

"Mr. President, just one brief observation. I think the bill, if passed, and I believe it got into the subject of annuities, what it prevented...in the case in point, if the victim in this bill lives less than her full life expectancy, there is a tremendous windfall to the relatives.

"I'm hopeful that someday this house will address that, either this session or next, otherwise, we'll find ourselves in this same kind of procedural and monetary box again."

Senator Abercrombie added his remarks as follows:

"Mr. President, speaking for this bill, but referring to comments by the chairman of Human Resources and Senator Campbell's comments, I was also in the Ways and Means hearings that day. It is quite obvious to me that we already have in law, in our Constitution, a remedy for preventing this kind of situation.

"Mr. President, any Senator may stop me if I am wrong, but I am under the impression that we have here what is called a stipulated judgment. Again, I am not an attorney either but the explanation given to me and I have no reason to doubt that it was given to me in all honesty was that that means the state has now committed itself.

"Now, the Governor had a briefing for whatever the wisdom or unwisdom of the process, some Senators here apparently were briefed on it...but what we should have is a special session and this is already provided in law; we don't need any special bills or any special law.

"If the government, that is to say, the Attorney General as the attorney for the state becomes convinced in any case that a judgment should be rendered, stipulated or whatever, seems to me that the evidence should be accumulated and presentation made to the appropriate committees of both Houses in special session, and that if those committees agree with the evidence as presented by the different sides that we propose the correct bills and the sums and go ahead. Otherwise, Mr. President, you will find the situation in which the Executive will make the

determination as to what the Legislature is going to be bound to do.

"When I inquired as to what would happen if we refused to go along with the money because we're after all not a party to the decision to stipulate to the judgment on behalf of the state, I was told that because the stipulation already exists the attorneys for Miss Gamino would then sue the state for their money and would get it. The difference would be that she would be deprived for such length of time as it takes for her attorneys to secure from the state the funds she is entitled to. I don't think that's fair. It's not fair to her. Why should we make her, who is already a victim after all, a further victim because the Legislature has been done in by the Executive.

"Now this is just another example, it seems to me, of the kind of indifference that takes place, not just in this particular subject but over and over again where the Legislature is concerned with the Executive.

"We commit ourselves into various phases of contracts. We faced the same situation with the Law School at the University where the state decided to get into a contract and then figures it can lasso the Legislature into paying for the rest of it because it's under way.

"The attitude of the Executive has been, get things rolling and then the Legislature will just have to go along.

"In this particular instance, as I understand it from my Ways and Means experience, we are committed by virtue of having a signed, sealed, and delivered judgment that commits the state to paying this money.

"Now, Mr. President, I submit then the conclusion that we have the proper remedy.

"I'm going to insist and I want it in the record that the Attorney General inform us and a decision be made by you or your successor and the Speaker of the House, whoever that may be, as to whether or not a special session is in order to consider whether we should stipulate the separate judgment in the first place. We do not need any further legislation in this area. What we need is to have the Constitution as it already exists implement it."

Senator Cayetano then rose to speak in favor of the measure as follows:

"Mr. President, I am in favor of this bill. I think, with respect to the bill itself, the key question for members

of the Ways and Means Committee and the Judiciary Committee was whether the amount, the settlement was fair. My review, my personal opinion is that, under the circumstances, the amount is fair and that this bill should pass. However, I believe Senator Abercrombie brings out some good points. This is not the first time that the Legislature has been faced with a stipulated judgment, a judgment entered into by the Executive without any kind of approval by the Legislature.

"Senators may recall about two years ago there was a stipulated judgment for roughly \$3 million in the Mark Construction case. In that case the Legislature balked at paying the \$3 million and the plaintiff, Mark Construction, in that case agreed to settle for I believe \$2.5 million. However, in that case, there was a question as to whether the amount of the settlement was fair, and I believe the Legislature at that time was ready to have the matter determined in court as to whether a stipulated judgment of that kind could be enforced against the state if the Legislature decided not to pay. My opinion is that the Legislature would prevail in such a lawsuit.

"Last year we had the Montague case, \$40,000, again a stipulated judgment by the Attorney General, again without approval of the Legislature. Despite some misgivings by some Senators we ended up paying that.

"So, now we have this Gamino judgment. As I said earlier, it should be paid. However, for the future, especially with an eye to future or pending cases on which the state is the defendant in which lives have been lost and if damages forthcoming will be great, I suggest that we consider very seriously passing legislation which would authorize the state to impose structured settlements.

"In this Gamino case, if we take as a given premise that the \$4.1 million is fair, actually the state, had we a law which allowed us to do this, we could have imposed a structured settlement where the state would pay roughly \$2.5 million or so to purchase an annuity, resulting in a savings of \$1.5 million. However, in fairness to Miss Gamino, I think that question is passed and I think we should pay.

"Looking to the future, we'd better consider doing something like that...and just to mention, for example, the Holo Holo case which is coming down in which several people were killed. I believe this will make a good interim project for the Judiciary Committee if the bill which is now in the House

does not pass."

Senator Abercrombie added his remarks as follows:

"Mr. President, I did not raise the Holo Holo issue, but I must comment on it further because it has been raised.

"The remarks of the previous Senator are not just in passing, believe me. I can tell you that unless we take very seriously the discussion we're having today as to how to deal with this we are going to find ourselves, Mr. President, in all likelihood, facing a judgment stipulated or otherwise that may go into the hundreds of millions of dollars, and I am repeating that for the record and for everybody's attention...not tens of million, I'm talking about hundreds of millions of dollars. Under those circumstances, especially in relation to the Holo Holo case, I tell you in as much vigor as I can put forward to you that we had better have a very thorough discussion in special session of this Legislature before anything goes further with that case in terms of trying it or not trying it. I guarantee you if we do not do that we may very well find ourselves in a situation that is virtually astronomical in the cost implications."

The motion was put by the Chair and carried, and Stand. Com. Rep. No. 879 was adopted and H.B. No. 919, S.D. 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR PAYMENT OF A JUDGMENT BETWEEN THE STATE OF HAWAII AND SYLVIA GAMINO," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, 4 (Ajifu, Campbell, Kawasaki and O'Connor).

Standing Committee Report No. 880 (H.B. No. 920, S.D. 2):

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, Stand. Com. Rep. No. 880 was adopted and H.B. No. 920, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE PUBLIC EMPLOYEES HEALTH FUND," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 881 (H.B. No. 1048, H.D. 2, S.D. 2):

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, Stand. Com. Rep. No. 881 was adopted and H.B. No. 1048, H.D. 2, S.D. 2, entitled: "A BILL FOR AN ACT RELATING

TO THE AUTHORIZATION OF SPECIAL PURPOSE REVENUE BONDS TO ASSIST UTILITIES SERVING THE GENERAL PUBLIC," 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, 24. Noes, 1 (Kawasaki).

Standing Committee Report No. 882
(H.B. No. 1167, H.D. 1, S.D. 2):

Senator Yamasaki moved that Stand. Com. Rep. No. 882 be adopted and H.B. No. 1167, H.D. 1, S.D. 2, having been read throughout, pass Third Reading, seconded by Senator Anderson.

Senator Kawasaki rose to remark on the measure as follows:

"Mr. President, I am a little at loss to understand the need for this bill. I had assumed that the DPED was doing this kind of work. The bill does not specify the number of employees, how many staff people that's involved here, where it's going to be located, and so forth. It seems to me that the Department of Economic Development could well assume this task along with others that it has and not have to have a statute enacted in this regard. I'll vote for this particular bill; however, I just wonder if we even need this bill."

The motion was put by the Chair and carried, and Stand. Com. Rep. No. 882 was adopted and H.B. No. 1167, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE ESTABLISHMENT OF THE VENTURE CAPITAL INFORMATION CENTER," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 883
(H.B. No. 1233, S.D. 2):

By unanimous consent, action on Stand. Com. Rep. No. 883 and H.B. No. 1233, S.D. 2, was deferred to the end of the calendar.

House Bill No. 1239, H.D. 1, S.D. 1:

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, H.B. No. 1239, 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. 885
(H.B. No. 1267, H.D. 1, S.D. 2):

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, Stand. Com. Rep. No. 885 was adopted and H.B. No. 1267, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE USE OF PUBLIC BUILDINGS BY BLIND OR VISUALLY HANDICAPPED PERSONS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 886
(H.B. No. 1357, H.D. 1, S.D. 1):

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, Stand. Com. Rep. No. 886 was adopted and H.B. No. 1357, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EMPLOYMENT SECURITY," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 887
(H.B. No. 1358, H.D. 1, S.D. 2):

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, Stand. Com. Rep. No. 887 was adopted and H.B. No. 1358, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO EMPLOYMENT SECURITY," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 888
(H.B. No. 1359, H.D. 1, S.D. 2):

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, Stand. Com. Rep. No. 888 was adopted and H.B. No. 1359, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO EMPLOYMENT SECURITY," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 889
(H.B. No. 1360, H.D. 1, S.D. 1):

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, Stand. Com. Rep. No. 889 was adopted and H.B. No. 1360, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING

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

Ayes, 25. Noes, none.

Standing Committee Report No. 890
(H.B. No. 1716, H.D. 2, S.D. 2):

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, Stand. Com. Rep. No. 890 was adopted and H.B. No. 1716, H.D. 2, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE PUBLIC EMPLOYEES HEALTH FUND," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 1763, H.D. 1, S.D. 1:

By unanimous consent, H.B. No. 1763, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE TAX REVIEW COMMISSION," was recommitted to the Committee on Ways and Means.

Standing Committee Report No. 892
(H.B. No. 1871, S.D. 2):

Senator Yamasaki moved that Stand. Com. Rep. No. 892 be adopted and H.B. No. 1871, S.D. 2, having been read throughout, pass Third Reading, seconded by Senator Anderson.

At this time, Senator Kawasaki rose to state: "Mr. President, I am voting against this bill primarily because the conversion plan will reduce the number of salary steps involved for these collective bargaining units. This inevitably is going to result in added costs to the state government at a time when we should not be involved in this kind of added cost."

The motion was put by the Chair and carried, and Stand. Com. Rep. No. 892 was adopted and H.B. No. 1871, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE COMPENSATION OF PUBLIC OFFICERS AND EMPLOYEES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 1876, H.D. 2, S.D. 1:

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, H.B. No. 1876, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO

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

Ayes, 25. Noes, none.

Standing Committee Report No. 894
(H.B. No. 1879, S.D. 1):

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, Stand. Com. Rep. No. 894 was adopted and H.B. No. 1879, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO STATE OFFICERS AND EMPLOYEES EXCLUDED FROM COLLECTIVE BARGAINING AND MAKING APPROPRIATIONS AND OTHER ADJUSTMENTS," 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. 1880, H.D. 2, S.D. 1):

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, Stand. Com. Rep. No. 895 was adopted and H.B. No. 1880, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC SCHOOLS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 18. Noes, 7 (Campbell, Holt, Machida, Mizuguchi, O'Connor, Toyofuku and Ushijima).

House Bill No. 1875, H.D. 1, S.D. 1:

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, H.B. No. 1875, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR THE REDEVELOPMENT OF THE ALOHA TOWER COMPLEX," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, 4 (Ajifu, Anderson, Kawasaki and Wong).

Standing Committee Report No. 897
(H.B. No. 50, H.D. 1, S.D. 2):

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, Stand. Com. Rep. No. 897 was adopted and H.B. No. 50, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII HOUSING AUTHORITY," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 796, H.D. 1, S.D. 1:

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, H.B. No. 796, H.D. 1, S.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. 799, S.D. 1:

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, H.B. No. 799, S.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.

Standing Committee Report No. 900 (H.B. No. 1437, H.D. 1, S.D. 2):

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, Stand. Com. Rep. No. 900 was adopted and H.B. No. 1437, 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, 17. Noes, 8 (Campbell, Holt, Machida, Mizuguchi, O'Connor, Soares, Toyofuku and Ushijima).

House Bill No. 1874, H.D. 2, S.D. 1:

Senator Yamasaki moved that H.B. No. 1874, H.D. 2, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Anderson.

Senator Kawasaki then rose to speak against the measure as follows:

"Mr. President, I speak against passage of this bill primarily because I think the language needs drastic improvement, one of which is that the seven members on the Development Corporation, three of whom will be from the public sector to be appointed by the Governor, do not require Senate confirmation.

"It seems to me that if this Development Corporation is going to spend the kind of money we're talking about, perhaps we should try to assure ourselves that the best qualified people and the most objective people be appointed to this three public member commission. I would like to see Senate confirmation

incorporated there.

"Further, on page 16 of the bill there is no language that specifically guarantees that these concessions in the development are going to be subject to competitive process. There's one language that says that people will draw for this; that's fine and dandy for someone to be fortunate enough to have drawn the opportunity to operate one of these concessions, but no language is incorporated in the bill that requires competitive bidding so it would be an open competition kind of a thing. It might be just a private negotiation which might be very detrimental to the public interest. We've had cases like this in airport concessions and so forth. I'd like to see language much more specific incorporated in this bill. Short of that, I will vote 'no' on this bill."

The motion was put by the Chair and carried and H.B. No. 1874, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE ALOHA TOWER DEVELOPMENT CORPORATION," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 20. Noes, 5 (Ajifu, Anderson, Kawasaki, Wong and Young).

House Bill No. 1428, H.D. 1, S.D. 1:

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, H.B. No. 1428, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PRE-JUDGMENT INTEREST," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Standing Committee Report No. 903 (H.B. No. 1470, H.D. 2, S.D. 2):

Senator Yamasaki moved that Stand. Com. Rep. No. 903 be adopted and H.B. No. 1470, H.D. 2, S.D. 2, having been read throughout, pass Third Reading, seconded by Senator Anderson.

At this time, Senator O'Connor rose to speak against the measure as follows:

"Mr. President, I rise to speak against this bill. This bill is one which would allow the establishment of a monopoly at the Honolulu Airport in the area of duty-free shopping. It provides that two concessionaires and only two concessionaires be allowed to handle the entire matter at the airport.

"I'm concerned about the bill for several reasons. I have carefully studied legal memoranda; I have carefully studied opinions; I've listened to the oral arguments of some very learned attorneys in this area; and I'm still concerned. I'm concerned because I believe that passage of the bill, rather than alleviate the situation, which is the urging of certain of these attorneys, we are simply buying a bigger problem. And the bigger problem we're buying, I am sure, is a major lawsuit at least by the excluded permittee and maybe by others, both in antitrust and in the area having to do with the violation of the commerce and export/import clauses in the United States Constitution.

"Directing my attention first to the antitrust area, it is obvious, on the face of the reported action, that we are creating a monopoly. A monopoly is being created for the benefit of the state, supposedly so that the state can continue to have the revenues from these two organizations...earlier had from one of them and currently by contract has from each of them.

"We have had some decisions in this jurisdiction, one of them being a decision by Judge Weigel, called *Lear vs. Photo Management*, and there have been decisions in other areas which condemn this kind of law and this kind of situation as a monopoly in violation of the Antitrust Act.

"The people who are the proponents of this measure in large part are basing arguments on decisions in other jurisdictions which have to do with state involvement and have to do with the state's ability to get in and regulate and physically involve itself with the operation at hand. There is a case which allows such physical involvement and says that that physical involvement of the state, therefore, removes the operations from the Antitrust Act.

"Rather than go on at great length and cite cases and things of that nature, I would simply say that having read that case and the string of cases that run from it, commonly called the *Parker Doctrines*, they are not convincing and, essentially, in this situation all we are doing is creating a monopoly with the state as a party to it where two organizations will benefit from a circumstance and they will only benefit. I might say that this is the single largest retail operation in this state with hundreds of millions of dollars at stake and that there certainly is room in that kind of monopolistic situation for competition.

"Further on that point, when the

contracts were let to the two existing concessionaires, in the contract documents it was specified that there would be additional permittees allowed to take goods to the individual planes at the airport and that those permittees would be able to operate from bonded warehouses in the community without concession facilities available to them at the airport. Therefore, there was knowledge in these concessionaires that that situation would occur, when that situation was attempted to be placed into existence by the Department of Transportation.

"As I understand it, the two concessionaires brought this bill to the Legislature for introduction and action upon it. This is a situation where I think we are establishing a dangerous precedent. We are setting up a monopolistic circumstance in our community with government intervention.

"I certainly am not convinced that allowing permittees to come into the area would not enhance the dollars that would come to the state from this overall operation. There is nothing that I've seen that would not allow or require the state to charge the same amount to the permittees as is charged the concessionaires for the services that are involved.

"I believe firmly that in this situation we are running afoul of the Federal Antitrust Act and the bottom line of the matter is we are creating a circumstance where there shall be, I'm sure, major litigation brought against these two individual concessionaires and the State of Hawaii, all acting in concert charging that we are in violation of the Antitrust Act.

"I believe, in this circumstance, that there is an awful lot more exposure to the state and we've just acted on a \$4 million matter for poor Sylvia Gamino. In this circumstance, we're talking about hundreds of millions of dollars. There's a lot more exposure to the state in this circumstance from this potential litigation than there is in simply not acting in this matter in allowing the free flow of trade to take its place and allowing additional permittees, as many as the Department of Transportation believes should be allowed, to go ahead and get into this business out at the airport.

"I am going to vote 'no' on this bill."

Senator Cayetano then rose in favor of the measure and stated as follows:

"Mr. President, I rise in favor of this bill. First, I think the previous speaker kind of over-simplified this whole situation.

"If the Senators will look at the bill, the bill has a one year 'drop dead' clause. The reason for that is to protect the state. Let me explain.

"What is involved here is the integrity of the Airport Special Fund. As everyone here knows, the Airport Special Fund is funded primarily by the landing fees paid by the airlines and also the revenues derived from the duty-free operations.

"Last year, bids were asked for the concessions at the Honolulu International Airport of the duty-free concessions there. I believe there were three bidders; two bids were let and contracts entered into. The third party, the only permittee applicant so far, chose not to bid.

"In order to understand the situation, keep in mind that the contracts into which the two concessionaires entered with the state provided that the state would be guaranteed about \$52 million per year, or 20% of the gross revenue, whichever is greater. On the other hand, permittees or organizations or businesses which were not successful in obtaining the concession will be charged a 20% permittee fee on their gross revenue. The problem, Mr. President is that there is a grave question as to whether the 20% permittee fee is constitutional. Judge Fong in a decision a year or so ago ruled that a 7½% fee on pineapple, non-duty-free goods, was unreasonable. It is, I think, not unreasonable to assume that a 20% fee might face some problems in court.

"Now, what does all of this mean? Well, unfortunately for the state the lawyers for the two duty-free concessionaires were successful in getting the state to agree that if the 20% permittee fee was challenged and reduced by the court that the revenues which the two concessionaires were required to pay under the contract would be reduced accordingly. That will mean a loss of about \$30 million a year for the Airport Special Fund and this is the problem.

"I disagree with Senator O'Connor when he says that we were opening up ourselves to a federal antitrust lawsuit. The fact of the matter is that exposure without this law is greater because the U.S. Supreme Court has held that the antitrust laws do not apply to state action. State action means action by the Legislature.

"Now, I would agree with Senator O'Connor that the kind of state action called for has certain requirements, if you refer to the Parker vs. Bond Doctrines.

I don't want to go into that right now; it's quite involved; but it's my understanding that the provisions for state action, which means in this case, regulations in the bill are sufficient to meet the Parker test. So, what we're doing, Mr. President, is buying time. That's what we're doing; we're just buying time till the State Attorney General's office, Department of Transportation and everyone else concerned can decide what they are going to do down the road.

"If what we are going to do is to give the two concessionaires who are now doing business at the airport, a monopoly so to speak, well it may come as a surprise to some of the lay people here, but not as a surprise to a lawyer, that the state is empowered to do that. If what we are going to do is try to open it up, we can do that also. We're just buying time; there's a one year 'drop dead' clause."

Senator Kawasaki also rose to speak in support of the measure as follows:

"Mr. President, I rise to speak in favor of the bill primarily because I was concerned over the fact that the permittee involved here had every opportunity to bid along with the other two successful concessionaires at the airport. They did not see fit to bid, primarily because perhaps they figured the permit system of entry into the business is much more economical. It doesn't require an outlay of investment of millions of dollars, literally, as have been the investment on the part of the two successful airport concessionaires.

"Perhaps we might reflect on the possibility of really creating a monopoly. A monopoly for the people of this state in that at the conclusion of the seven and a half year contract, perhaps the state itself, like many jurisdictions in the world, should operate this largest retail business in the State of Hawaii. Let the people of Hawaii operate this so that revenues would be incurred to the benefit of the state. We as legislators should consider this possibility at the conclusion of this seven-year contract. Let the people operate this monopoly."

Senator O'Connor in further response stated as follows:

"Mr. President, I am in sympathy with the previous speaker; however, I would point out that by adopting this bill we will adopt a situation where only this type of corporation, and these are both foreign corporations that are involved in this bidding, can possibly get into the bidding and win as against our local corporations.

"If we are not in a situation where we can have permittees who can provide certain kinds of goods and manufactured items, particularly local items, to those planes from custom bonded warehouses we are never going to get local people into this business.

"The bidding and the situation for duty-free operations have grown to a point where we're talking about \$500 million, something in that nature, over the next seven years for this bid. It is impossible for local people to get into that; impossible for local people to get into the operation. But for small items...one of the earlier speakers talked about the pineapple situation...you can have local people and we should have permittees in this area; we should allow for permittees. This bill goes contrary to that and will essentially ice out local people from ever getting into this business over the next seven and a half years because we are doing away with the permittee system.

"Further, I would point out that in the statements made by Senator Cayetano, he referred to the two tests that the string of cases we have each referred to in the Parker Doctrines have adopted. The first of those tests is that the state clearly articulates and affirmatively expresses the state policy that would displace competition with regulation or monopoly public service.

"If we pass this bill today, we may, and I say may, carry that test. I say may because in our instance the state is in essential partnership with the two individual concessionaires that have the business. But, moreover, more important, the second tier of that test is that the state or one of its agencies actively supervise the organization.

"Unless we get into it, Mr. President, to a degree not contemplated by this bill and certainly not contemplated by the DOT, that part of the test will never be met. And that's the part of the test that concerns me in future litigation."

Senator Abercrombie asked if the chairman of the Transportation Committee would yield to a question and Senator George replied in the affirmative.

Senator Abercrombie then asked: "Mr. President, if my understanding is correct, the Transportation Committee intends to bring forward a resolution that will address this bill further and, if so, what will that resolution entail?"

Senator George replied as follows:

"Mr. President, it is the intent of the Committee on Transportation to report out the two resolutions which are presently in that committee, Senate Resolution 133 and Senate Concurrent Resolution No. 46.

"Basically, if I may, Mr. President, in response to the previous speaker, if I may indicate what those resolutions contain. Basically, it is a homework assignment to respond to the various concerns that have been raised on this floor today and that have been earlier raised in testimony before the Committee on Transportation. There are unanswered questions. There are two opposing camps, as it were, of people of good reputation and of considerable authority who take diametrically opposing views on this whole matter. Not only is the financial impact to the state absolutely enormous, as indicated by the previous speaker, but there are constitutional questions and legal questions of wide variety.

"I believe the sensible indication to this body is to spend a year achieving proper answers to these in order that we may proceed in a manner that's commensurate with our responsibilities in this area, and that, Mr. President, is what these resolutions will in effect do. Thank you."

Senator Abercrombie thanked the previous speaker and remarked as follows:

"Mr. President, on that basis then I would like to speak in favor of this bill. The reason for that is that my opposition to this monopoly, if you will...that's the way it's in use so I'll use the word for conversation's sake today...proposition has been manifested to various Senators here.

"I found it unfortunate that the kind of emotions generated over this bill took on proportions that they did, but it probably did for precisely the reasons that had been ably argued by Senators O'Connor and Cayetano, because of the enormous amount of money involved.

"My particular reasons for having a demurrer entered, prior to the resolutions that are forthcoming from the Transportation Committee, was that as I read the various proposals the outfit that was asking to have permission to operate as a permittee was entitled to do so. The fact that they did or did not bid for the concession at that time, in my judgment, was not to be taken as something to be against them.

"Whether the Department of Transportation had put together the proper procedure ahead of time really was in my mind, not to be debated because they didn't do it, and I quite agree with something that Senator Cayetano had made clear to me in various of our conversations that, because something had been done by the Department of Transportation that wasn't in the interest of the state, that was no reason for the Legislature to go along with it. We had several examples and instances already today, and in previous days' discussions, to indicate that this Legislature should take an independent view.

"Therefore, given the fact that proponents of this measure have stated that they believe that the one year grace period will give us the opportunity to answer questions, and the chairman of the Transportation Committee has indicated that's precisely what she intends to do, I think it is in all of our interest then to vote affirmatively on this bill today. In one year's time then come to a conclusion as to the direction of the duty-free concession problem."

Senator Cobb added his remarks as follows:

"Mr. President, I'd like to express the reservations that I have on this bill. Perhaps, to go to what my colleague expressed from the Seventh District--namely, the lack of a provision for a permittee. But because the bill has a one year 'drop dead' clause and is linked very directly to the two resolutions the chairman of the Transportation Committee has indicated are coming out, I would like to address the point, though a permittee is allowed to come in by the state should come in under exactly the same conditions and contract stipulations that a concessionaire does, both as to percentages as well as to dollar amount, not only from the standpoint of consistency but to insure the preservation and protection of the Airport Special Fund.

"I, personally, would not object to permittees coming in, if granted by the state and enacted in future legislation, and it's obvious we're going to be addressing this question next year, but at the consistence of both percentage and dollar amounts obtained; otherwise, I think we would find ourselves in a box discriminating against a permittee as opposed to being in favor of a concessionaire. Thank you."

Senator O'Connor stated, in response, as follows:

"Mr. President, one brief point in response to the good Senator's comments. It should be pointed out that the Airport Special Fund in no way would be deprived

because of any problems with the duty-free shop. If there is a loss in revenue with the duty-free shop income at the airport, Host or Duty-Free or some new permittee, that loss in income must be made up through the landing fees, and the integrity of the fund will continue. It is the airline people who would stand the problems if the duty-free revenues dip; their landing fees would increase."

Senator Cobb thereby responded as follows:

"Mr. President, in direct response to that, the integrity of the fund would be maintained, but I'm not so sure about the integrity of our tourism trade and the number of tourists coming over here if airport fees...if cost of coming over here on airplanes dramatically increased. That would have a definite and deleterious effect."

The motion was put by the Chair and carried, and Stand. Com. Rep. No. 903 was adopted and H.B. No. 1470, H.D. 2, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO TRANSPORTATION," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, 2 (Campbell and O'Connor).

MATTERS DEFERRED FROM APRIL 3, 1981

House Bill No. 185, S.D. 1:

By unanimous consent, action on H.B. No. 185, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO BALL OR MARBLE MACHINES," was deferred to Tuesday, April 7, 1981.

At 2:48 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 2:49 o'clock p.m.

House Bill No. 1310, H.D. 1, S.D. 1:

Senator Carpenter moved that H.B. No. 1310, H.D. 1, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Cobb.

Senator O'Connor rose to speak against the measure and stated as follows:

"Mr. President, I'm going to vote against this bill. The problem with this measure is that it invades the distinctly difficult area of domestic relations. It goes directly to the circumstance

where husband and wife have stood up with children, are divorced, and there is an argument between husband and wife over the children. These arguments are terribly vicious sometimes, emotions run high; they are difficult to cope with; they rage in Family Court hour after hour in much involvement. And because emotions run so high, people tend to do unusual things when they are in this circumstance.

"This bill will place a very harsh penalty on the noncustodial parent who takes the children, his or her children, and keeps them. It goes maybe to a good end, and, that is, there are people who take children and essentially kidnap them, never to return them to the other parent, but, simultaneously, it strikes at all of those parents who get into the regular, usual family court squabble that we see week in and week out in our courthouse. In other words, it takes care of the 'baby and the bath water.'

"Because of the circumstances that we see so often, I would urge the people who are voting on this bill to carefully reflect on their vote because it will create a tremendous burden in the domestic relations area and will create sanctions for parents who desire and honestly feel that they should have their children and take them, acting in good faith where their actions are beyond the usual feelings that people have in their normal, everyday, common, and usual life.

"I urge a 'no' on this measure."

Senator Cayetano also rose to speak against the measure as follows:

"Mr. President, I oppose this bill and join Senator O'Connor in his comments.

"Having read the testimonies on this bill, I can see the good end toward which this bill is directed; however, in the 11 years that I've been practicing law I've come to the conclusion that when it comes to the welfare and best interests of children, a law like this will not stop the parent. This bill does not cover, for example, the cases in which the child or the minor agrees to go with the parent; and this has happened. It certainly happened in my experience where although the court had made a determination in ordering custody for all kinds of reasons to, for example, the mother, the child nevertheless wants to stay with the father. And the bill doesn't speak to that question, so you could have the very harsh results of the FBI tracking down parents, whether it be the father or the mother, bringing him back in chains with the child who agreed to go with him.

"The committee report states that there's a traumatic impact on children who have been kidnapped, if you will, in this fashion. However, there is the other side of the coin, and I think that when we fashion laws which impose a penalty, especially felonies, which are very, very harsh on people we should always go on the principle that it's better to let nine guilty men go free so that one innocent will not be convicted, and I don't see that in this bill."

Senator Abercrombie then spoke for the measure as follows:

"Mr. President, I speak in favor of this bill, recognizing the realities as stated by the two previous speakers. There are also other realities I bring to the members' attention.

"We are an island state. We are a considerable distance from the mainland as well as other foreign countries, and I think you'll find that the felony situation is necessary if we are to deal realistically with what constitutes kidnapping, child-snatching in this state.

"Many of these activities that are taking place now are under circumstances which are also protected by the Constitution which is freedom of religion. Unfortunately, because of certain religious differences or falling out among parents we have now seen a rash of cases not just in this state but nationwide where children have been taken because one parent or relatives of the children are upset over a change in religious persuasion and religious grounds which then become the basis upon which the children are taken.

"There are certainly circumstances where a child prefers perhaps to go with one parent or another. One must presume that where the courts are concerned there was good reason for awarding a child to one of the parents. It may be that the child may find it attractive to be with one of the parents but it may not be in the child's interest to be with that parent. Sad to say, and I'm sorry to say that there are instances where one parent is trying to do a good job raising a child in a one-parent situation and then the other parent gets to have the child; the child may have a good time, if you will, because the child is catered to but not necessarily being raised in a manner that's going to be in his/her interest. So, the preference of the child is not necessarily a reason to see that that child goes with the person who is unable to convince the decision-makers where the authority is involved, that being with that person full-time is in the child's interest.

"It seems to me, especially where

emotions are concerned, this Legislature has been passing, in my judgment, very, very harsh bills right and left for the last couple of years on the basis that the people better be made aware by their attorneys or other agencies of government and/or the public press, etc., that there's going to be consequences to their action. And if it's going to be a highly emotional situation, I guess then, what's going to happen now is that clients of attorneys are going to have to be informed as to what the consequences are if they take the law into their own hands where children are concerned.

"When I have to balance my judgment, or when I have to make a judgment and try and balance these factors, it seems to me that the realities of child-snatching resulting in children being taken from this state and then not returned to the person who has custody and has been carrying out his or her duties in respect to that child, the realities are such that I feel an affirmative vote is necessary at this time."

The motion was put by the Chair and carried and H.B. No. 1310, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CUSTODIAL INTERFERENCE," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 19. Noes, 5 (Cayetano, Holt, Mizuguchi, O'Connor and Ushijima). Excused, 1 (Campbell).

Senate Bill No. 466, S.D. 1, HD. 1:

By unanimous consent, action on S.B. No. 466, S.D. 1, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PAYMENTS INTO THE STATE TREASURY," was deferred to Tuesday, April 7, 1981.

House Bill No. 1530, H.D. 1, S.D. 1:

On motion by Senator Ajifu, seconded by Senator Kobayashi and carried, H.B. No. 1530, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO AGRICULTURAL PRODUCT PROMOTION AND MARKET DEVELOPMENT," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 804, S.D. 1:

By unanimous consent, action on H.B. No. 804, S.D. 1, entitled: "A

BILL FOR AN ACT RELATING TO INHERITANCE, ESTATE TAXES," was deferred to Tuesday, April 7, 1981.

At 2:50 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 3:00 o'clock p.m.

Senate Bill No. 523, S.D. 1, H.D. 1:

By unanimous consent, action on S.B. No. 523, S.D. 1, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII INSURANCE LAW," was deferred to Tuesday, April 7, 1981.

Senate Bill No. 530, S.D. 1, H.D. 1:

By unanimous consent, action on S.B. No. 530, S.D. 1, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO BEAUTY CULTURE," was deferred to Tuesday, April 7, 1981.

Senate Bill No. 600, S.D. 1, H.D. 1:

By unanimous consent, action on S.B. No. 600, S.D. 1, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PRACTICING PSYCHOLOGISTS," was deferred to Tuesday, April 7, 1981.

Senate Bill No. 1359, S.D. 1, H.D. 1:

By unanimous consent, action on S.B. No. 1359, S.D. 1, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INSURANCE," was deferred to Tuesday, April 7, 1981.

Senate Bill No. 1628, S.D. 1, H.D. 1:

By unanimous consent, action on S.B. No. 1628, S.D. 1, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MOTOR VEHICLE ACCIDENT REPARATIONS," was deferred to Tuesday, April 7, 1981.

MATTERS DEFERRED FROM EARLIER ON THE CALENDAR

Standing Committee Report No. 812 (H.B. No. 1680, H.D. 1, S.D. 2):

Senator Yamasaki moved that Stand. Com. Rep. No. 812 be adopted and H.B. No. 1680, H.D. 1, S.D. 2, having been read throughout, pass Third Reading, seconded by Senator Anderson.

Senator Kawasaki rose to speak against the measure as follows:

"Mr. President, I speak against passage of this bill primarily because it will involve special revenue bonds for the funding of some \$163 million worth of hospital and medical facilities,

and it will mean a substantial loss of revenue to this state as interest earned by local owners of these bonds would be exempt from state taxes. For this reason I wish to vote against this bill."

Senator Mizuguchi then rose to request for a ruling of the Chair as to a possible conflict of interest as he is serving as an officer of one of the health care facilities mentioned in the measure, and the Chair ruled that he is not in conflict.

Senator O'Connor also requested for a ruling of the Chair as he too serves as an officer of one of the health care facilities, and the Chair ruled that he is not in conflict.

The motion was put by the Chair and carried, and Stand. Com. Rep. No. 812 was adopted and H.B. No. 1680, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO SPECIAL PURPOSE REVENUE BONDS FOR HEALTH CARE FACILITIES," 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, 23. Noes, 2 (Abercrombie and Kawasaki).

House Bill No. 1108, S.D. 1:

On motion by Senator Cayetano, seconded by Senator Carpenter and carried, H.B. No. 1108, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO LEAHI HOSPITAL," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

Standing Committee Report No. 840 (H.B. No. 567, H.D. 1, S.D. 2):

Senator Carpenter moved that Stand. Com. Rep. No. 840 be adopted and H.B. No. 567, H.D. 1, S.D. 2, having been read throughout, pass Third Reading, seconded by Senator Cayetano.

At this time, Senator Carpenter rose to speak in favor of the measure as follows:

"Mr. President, this bill essentially would provide two possible conclusions for a first offense for prostitution, and that would be for a fine of \$500 or a term of imprisonment of 15 days without possibility of suspension, coupled with, for a subsequent or

second offense, a fine of \$500 and imprisonment of 30 days without possibility of suspension or probation.

"Mr. President, the bill essentially hopes to reduce the proliferation of prostitution, particularly, in the area of Waikiki. Ancillary to that, a discussion to which we entered initially before the bill was referred to the end of the calendar speaks to de-gendering the word 'he' and substituting 'the person' on line 4. Essentially, that section ought to be interpreted as has been interpreted prior to the change of 'the person' for the word 'he.'

"I'm sure that there would be some discussion as to whether or not that accomplishes a change in the meaning somewhat. It is the intent of the committee to essentially just change the language so that we would be in conformance with the present interpretation by the court."

Senator Abercrombie then rose to speak against the measure as follows:

"Mr. President, I'll speak against the bill then, both on the grounds that this mandatory sentence will not do anything other than possibly increase the price slightly because the stable of prostitutes that will be coming in should have to be slightly larger, provided that we are able to successfully prosecute under the statute. But I reiterate my earlier position that this means that you can prosecute both people involved. And if one really wants to get rid of prostitution you should prosecute both people involved, but that's really the intent.

"Personally, I'm not so sure that it's all that important an issue other than perhaps for the prosecutor to be able to run for reelection, but I really don't have a whole lot of sympathy with people around the streets at 4:30 in the morning who run into ladies who ask them if they'd like to have a date and it's going to cost him something. I believe that most people who are not at a stage of being certified morons are under a clear understanding of what that involves.

"I think we already have plenty of laws in the books in respect of harrassment, thievery, etc., assault, if someone tries to knock somebody down and take their money on the street, as has been associated with this prostitution activity, but there is no doubt in my mind that when you say 'a person commits the offense of prostitution' and then you say that 'the person engages in or agrees or offers to engage in with another person in return for a fee'...now I'm perfectly

cognizant that 'another person in return for a fee' refers to in common parlance previously known as the 'John,' the person who is to pay the money. But when you put the word 'person' in there as a substitute for 'he' and then leave in language 'or agrees or offers to engage in' it does not matter if only one of the people, one of the persons involved, is being referred to when you utilize the phrase 'return for a fee.'

"By the act of agreeing or offering to engage in the activity, you have committed the offense of prostitution, whether or not you happen to be the person receiving the fee. By offering the fee or agreeing to the fee, you are committing an offense of prostitution. Whether you are in fact the prostitute is immaterial to the definition of prostitution and that's what the sentence involves.

"With all deference to my good friend, the chairman of the Judiciary Committee, I maintain that if this law passes that the police will be perfectly entitled to arrest both parties for the offense of prostitution even though if only one of them may be a prostitute."

Senator Carpenter responded: "Mr. President, I would just like to say that if the courts interpret it that way, then so be it. I have no objection."

Senator O'Connor rose to remark as follows:

"Mr. President, to clarify this issue, if we can at this juncture.

"The purpose of this bill is not make the customer of the prostitute responsible under the law for the crime of prostitution. The purpose of the bill is to create a mandatory minimum sentence for prostitution as it has been historically defined in our law. Changing 'he' to 'the person' does not change a thing, and though Senator Abercrombie would want that and desires it and twists it and turns it, it still doesn't change the way the law has been drafted nor the way the law reads today.

"I would make two comments on the bill as proposed. First of all, I'm in favor of the measure because I do believe that this is probably the only way we're going to clean prostitution up in Waikiki--namely, having mandatory sentences for those engaged in prostitution. But first of all, directing the chairman and anyone else who gets involved, hopefully, in the conference committee on this matter, that that section starting with Section 4 and going to the end of the bill should really be in Chapter

706 of the Penal Code, which has to do with sentencing, and not in 712 which has to do with definitions of crimes.

"Secondly, if this bill becomes law some of the things that I talked about on Friday when we were discussing the budget concerning additional facilities in our corrections institutions are going to have to be accomplished.

"More precisely, I would suggest that we're going to have to have at least one structure on the Koolau grounds of large size, preferably one of the buildings already in existence renovated, to handle all of the people that are going to be incarcerated under this bill."

Senator Abercrombie then rose to remark as follows:

"Mr. President, I'm afraid that I must belabor this a bit because I find this rather a strange procedure we're involved in now. The argument being made to me that it's not the intent of the bill to do the things that I say it does. I would submit to you, Mr. President, that the purpose and what it does are two different things. I understand that you are supposed to write legislations in order to accomplish the purpose, not stand up and say, 'Well, this is the purpose we intended even if the language doesn't read that way.'

"Now, I assume that when you pass a law, you pass a law in order to have it mean what it says. And I am saying to you that it means exactly as I said it means and any judge who can read the English language should agree to it. And I would submit to you further that if you are indeed serious about ending prostitution...and I think what this really comes down to is an exercise for the editorial pages of the paper...we've done something about prostitution; we're going to see all the prostitutes go away' kind of routine...go to jail...it should be at Koolau by the way because there'll be a lot of teenagers involved. It will be an interesting thing to see how that works. But if you really mean it, what you do is you arrest the customer. The prostitute can't operate without the customer and if a little sign put in all hotel rooms just reminding people that if they engage in an offense of prostitution that they are going to be arrested and put into jail, you will see it disappear fast enough.

"In the absence of it, what you are going to do is to tell the public that somehow prostitution is going to disappear or lessen, is the fond hope here, that it's going to lessen in degree. It will not lessen in degree; it will have

no effect whatsoever other than as I say, is to cause a lot more importation.

"The only people who will be helped out will be the airlines who will have a few more people coming that might not otherwise in order to pick up the slack, and we will have, as Senator O'Connor has indicated, a financial problem because we will have to guarantee the care and feeding of men and women who will be mandatorily sentenced under this law. So I look forward to the time, if this passes, that some good judge in the State of Hawaii agrees that I do, in fact, understand the English language which puts the customer in jail, and then watch the stories in Time magazine."

Senator O'Connor, in response, said: "Mr. President, I'm certainly happy to hear my colleague label this anti-crime bill a pro-tourism bill because all of the pro-education bills have been labeled anti-crime bills."

Senator Cobb then rose to remark: "Mr. President, just one on parliamentary procedure... if the committee had intended, as the Senator from the Sixth District had stated, I think it would have been in the committee report. In this case, I must agree with the comments of the Senator from the Seventh District relative to his interpretation."

The motion was put by the Chair and carried, and Stand. Com. Rep. No. 840 was adopted and H.B. No. 567, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO PROSTITUTION," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Abercrombie).

House Bill No. 924, H.D. 2, S.D. 1:

Senator Cayetano moved that H.B. No. 924, H.D. 2, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Carpenter.

Senator Cayetano then rose to state as follows:

"Mr. President, this bill was put to the end of the calendar so we could answer a question posed by Senator O'Connor.

"As I recall, the question was whether the money, whether this bill would cost anything, and the answer to that is that the Department of Health is currently following the procedure as outlined in the bill and the funds

are in the budget. This change was just to reflect what the Department of Health is already doing."

The motion was put by the Chair and carried, and H.B. No. 924, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO VISION AND HEARING SCREENING," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 300, S.D. 1:

Senator Carpenter moved that H.B. No. 300, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Carpenter.

Senator Carpenter then rose to speak on the measure as follows:

"Mr. President, I rise to speak in favor of this measure.

"Mr. President, as the members of the Senate may recall, H.B. 300 came over with a change to a definition of a 'dangerous instrument.' At that time, under consideration but on the back burner was consideration of S.B. 610, 'Relating to Offenses against the Person.' Subsequent to a hearing which was held, wherein several items were brought to the fore--namely, discussions of redefinition of 'forcible compulsion,' the contemplated elimination of the 12-month amorous interlude section under the first degree and the discussion of reduction, that is, the increase of reporting in time were all taken under advisement and discussed in the Judiciary Committee. It was determined that we would look at the entire section relating to rape, and those subsequently relating to sodomy, and ensuing discussion produced this document before us this afternoon.

"This document essentially redefines 'forcible compulsion' and essentially increases the penalty for rape and sodomy in the first degree, increases the penalty for rape and sodomy in the second degree, and changes the reporting time to six months from the present three months.

"Mr. President, in 1978 there were 231 rape offenses reported in the State of Hawaii; in 1979 there were 296; in 1980 there were 334 offenses reported; and 1981 protends more.

"Mr. President, I believe the bill as represented is a fair measure. It has been reviewed by many individuals--

namely, the Attorney General, the Public Defender, the Hawaii Crime Commission, representatives from the Prosecuting Attorney's office, as well as staff and members of the Senate.

"Mr. President, I believe it strikes at the core of the definition by eliminating the term and use of 'resistance' so as to eliminate that from consideration in this, Mr. President, I believe that it is a fair measure.

"I have had the opportunity to discuss this measure briefly with the chairman of the House Judiciary Committee and if indeed there are areas of question, we would sit down in conference and work them out. Thank you."

Senator O'Connor then rose to remark on the measure as follows:

"Mr. President, I'm terribly torn by this measure because due to recent developments there appears to be some things in our rape law which could be changed for the better. However, I believe that this measure before us is not a change for the better, it is a step backwards.

"I would point out to the members that on the first page of this bill there's a definition of the words 'forcible compulsion.' 'Forcible compulsion' is and has been an element of the crime of rape in the first and second degree in this state. This bill does not intend to change that. It does intend to change the definition of 'forcible compulsion.'

"One of the matters raised in deliberations on this bill was whether or not resistance should be continued as an element of 'forcible compulsion.' The intent of this measure is to remove resistance as an element of 'forcible compulsion,' but the difficulty and the terrible problem of the bill is in taking out the element of resistance, a new element has been added, and that element is that which is cited in both sections 11a and b where the person is required to submit or caused to submit and the word 'cause' is an important word.

"The precise word 'forcible compulsion' means, first of all, 'the use of physical force or physical violence which causes the person to submit; or the use of a threat, express or implied, against the person or any other, which causes a person to submit.' This is a brand new element; but I would suggest, Mr. President, in fact, I'd state flat out that there isn't any change in this law because it is obvious that the word 'submit' is nothing more than an anonym or the opposite of the word

'resist,' and the word 'resist' is the anonym of the word 'submit.' It's a classic case of black and white when you try to choose between them.

"When you say one of the elements of this situation is to prove the matter is black, and then you try to change it and say, 'No, that's not the way we're going to have it; one of the elements of this matter is to prove that it is not white'... black and white beingonyms. We've just changed the matter around, but the real difficulty with this drafting and the real problem with this section is the next sentence because in going into the proof of black and white, we then say in the next sentence, 'physical or verbal resistance by the person is not an element of forcible compulsion.'

"In other words, we take out of the trial and out of the matter any comment, any proof on the word 'resistance.' So, we are stuck in a situation where we have to prove that the force caused the person to submit, but we can't talk about resistance. The intent of trying to take resistance out of this law was an attempt to try to get the victim out of the situation where the victim had to prove something. That doesn't change a bit because the victim still must be the person who testifies, if this ever becomes law, that the physical force of violence caused the victim to submit or that the threat, expressed or implied, caused the victim to submit. It can be proved no other way.

"So, the bill by its very structure, creates a perfect 'Catch 22' where we set up an element of a crime and then essentially say that some of the matters which must be gone into to prove the elements are not an element and are probably irrelevant and immaterial, and to those who are versed in this matter the jury would then be instructed to disregard physical or verbal resistance by the person as it is not an element of 'forcible compulsion.'

"Mr. President, I would suggest that if this ever became a law we could never convict a person in this jurisdiction of rape in the first degree.

"Let's go on on the bill because unfortunately we don't stop there. In the bill we then go to changing rape in the first degree to a Class A felony, rape in the second degree becomes a Class A felony, and rape in the third degree becomes a Class B felony, as does sodomy in the same way. And then curiously there is no page 7 of the bill, a new sentence of imprisonment section, and this sentence of imprisonment section

says that where you have rape in the first degree, or sodomy in the first degree, for those crimes only the sentence shall be 'to an indeterminate term of imprisonment.' And 'the court shall impose a sentence of life imprisonment with possibility of parole or twenty years as the court determines in all other cases.'

"Today in our law is a measure passed in 1980, just last year. We made Class A felonies crimes which have mandatory sentences, and already Class A felonies have the mandatory sentence to an indeterminate term of imprisonment of 20 years without possibility of suspension of sentence or probation. So, basically this section runs contradictory to a section which we have already passed last year in this body.

"Basically, Mr. President, I think that this measure runs afoul of the old adage 'when you once add something which requires much thought and much care, oftentimes you over-react and get something that is more than you bargained for.' And I think in this situation we will be better off if this measure were considered at some great length and considered for a longer time than that we've had to look at the bill.

"The reason that I say that, more importantly, is that there were rather significant changes made to the rape law last year. The definition of 'forcible compulsion' was amended with an eye to make it more simple and easy for the jury to understand. That more simple and easy definition was not the one used in the celebrated Nanakuli rape case. In the Nanakuli rape case they were tried under the old law where the definition is much more cumbersome and more difficult to understand.

"Since the advent of the new law and the advent of crimes charged under the new law, there have been but two rape trials and in those rape trials there was one conviction and one was found innocent. So, as yet, we still don't have a track record on the changes we made last year in this area to know whether or not they were significant, whether or not they might really change the jury trials in the rape area.

"For all these reasons, Mr. President, I would urge a vote of 'no' on this measure."

Senator Young then rose to speak in favor of the bill as follows:

"Mr. President, I rise to speak in

favor of this bill. At this time, I would like to commend the Judiciary chairman and the committee members for the sensitivity and time given to this measure.

"Laws are enacted to govern society, and I would like to quote former Attorney General Ed Levi who said: 'Law is not everything in society. The law is only one of a number of institutions through which we express ourselves and which in turn influence us, maintain our customs and change our habits, so that law takes a place along with family structure, religious belief, the expressions of art, and the explanation of science. The public, the press, the academic community, the artist, all by their assertions and conduct inform and develop the law.'

"Lastly, he states that 'Of course, the law is imperfect. It is made by man. It reflects his failings, his human weakness, but it also reflects his powers and wisdom.' Thank you."

Senator O'Connor, in response, stated: "Mr. President, I rise in response to the last speaker's comments. I agree entirely with that.

"The Governor of the state submitted to the Legislature a proposed definition of 'forcible compulsion,' which included the measures which are in the old law, took out the 'element of resistance' and added 'use of dangerous weapon' and the fact that other persons were present during the alleged rape as 'elements of forcible compulsion.'

"It was my understanding before this bill was circulated that the committee decision was to adopt the Governor's or the Attorney General's definition of 'forcible compulsion,' which I didn't have a great deal of joy with, but by the same token was not as opposed to as I am to the version which is actually in this bill. Therefore, I agree entirely with the prior Senator and agree that something should be done, but not this."

Senator Carpenter then rose to state as follows:

"Mr. President, I'd like to speak to two comments made by the previous speaker. One speaks to the sentencing of imprisonment, rape in the first degree.

"Mr. President, as is more than evident to all the Senators here reading this, this is a new section so we would not be countermanding the section which was adopted last year. This is a new section which would speak to sentence of imprisonment as regards

rape in the first degree and sodomy in the first degree.

"Secondly, Mr. President, I'd like to say that if we need to, I think as legislators, develop a track record for every change that we make in legislation and have a determining factor of whether or not the change ought to come about, Mr. President, I suggest that we are in the wrong business."

Senator Cayetano spoke against the measure as follows:

"Mr. President, I rise to speak against this bill. As some of the previous comments indicate, this bill, Mr. President, is the result of the sensational case referred to as the Nanakuli rape case.

"The atmosphere and the circumstances under which this bill was considered and developed is nothing short of sensational, and for that I have to credit the press.

"Reflecting on what has happened, I'm really at a loss to wonder why the press made so much and gave so much coverage to this case. I believe the press itself had some questions as to whether their coverage of this case was fair and reasonable. And in Sunday's Advertiser/Star-Bulletin, I read some statements which show that hearings, if you want to call it that, by the press on the Nanakuli rape case coverage resulted in nothing but rationalizations.

"Why was this case given more coverage than if the victim had been a local female? Why is more coverage given to visitors than to local females? I wonder if the press realizes the power it has. Perhaps this case would be the best recent example of the power of the press, the specter of 2,000 demonstrators coming to an emotion-packed hearing at the State Capitol auditorium, hardly conducive to good legislation.

"I wonder if the press realizes not only its power, but its responsibility to the community, because the coverage on this case, Mr. President, which has now extended nationwide, if not worldwide... I think probably worldwide is a better description because it has gone to Canada and Finland, and recently there was an article in Time magazine about this case and in my opinion it parallels the Massie case of 50 years or so ago. It has a very ugly theme because the so-called perpetrators of the crime in this case are of one ethnic group and the victim is of another. That is an ugly theme, no matter where it is talked about, and I submit to you that it's probably the major cause

of lynching and miscarriages of justice in the southern part of our United States.

"I hope that in the future our press corps will reflect a bit on this case because I can tell you, as far as I am concerned, it will only serve to divide our community, if our community is in fact not divided now.

"Sensational reporting, moreover, seems to put the hangman's noose, if you want to put it that way, around the wrong neck... putting the noose around the neck of the Legislature when it should have been around the neck of the prosecutor. Most attorneys will tell you that you are in deep trouble when you present all of the evidence, when you ask all the questions, and the other side rests without presenting any evidence and questions.

"I submit to you, Mr. President, that this is a case where the prosecutor lost because of mistakes that were made in the trial, and it doesn't do the community any good to hear a recently elected prosecutor make excuses that the defendants' attorneys brain-washed the jury. What nonsense!

"All of this, I think, has led to a hurried piece of legislation which has some major failings and which Senator O'Connor pointed out correctly.

"If this bill should go to conference, which I hope it will, I hope that the chairman would take those failings under consideration. Whenever we pass laws, Mr. President, we have a duty, I believe, we have a higher duty in being a little more careful and judicious when we pass laws which affect the individual liberties in terms of criminal offenses of our citizens. Although laws always should be drafted on the premise that the defendant is innocent until proven guilty, this bill is the result of fever-pitched emotionalism. I never had an experience like this in my life and those who took part in the hearing, I think, will agree with me.

"What are we accomplishing? The Nanakuli rape case, as Senator O'Connor pointed out, was tried under the old law, and the very questions which some of the speakers who are speaking for this bill address or have attempted to address were considered when we passed the rape law or amendments to the rape law last year. I submit that the premise or statement by Senator O'Connor that that law does not have a track record or history is a very, very relevant one because that law was passed, was drafted, was developed under circumstances far less emotional than this bill.

"I don't think this bill can pass constitutional muster. The provisions stated, which defines 'forcible compulsion' contain in my opinion a non sequitur that has already been discussed in some degree by Senator O'Connor. This is on lines 14 and 15 which states: 'Physical or verbal resistance by the person is not an element of "forcible compulsion."'"

"Senators may argue about what that phrase means. I submit to you that if there is a question, the court would probably declare this law unconstitutional, in which case you would have a very unfavorable result because this law repeals the old law, and in the meanwhile if this law is declared unconstitutional you may have people who are truly guilty of committing rape being let off.

"The other aspect of this bill which really troubles me is the increase in penalties. Our present rape law, as set forth in the Penal Code, followed a deliberate scheme. If one reads the comments to the Penal Code you'll see that the scheme entails taking into consideration how people act socially, historically, etc.

"This bill would increase the penalty for rape in the third degree from a Class C felony to a Class B felony. That is an increase in penalty of 5 to 10 years. Now, rape in the third degree is rape under the following circumstances: (a) the other person is mentally defective, mentally incapacitated, or physically helpless; (b) the other person is less than 14 years old.

"I submit to you, Mr. President, and this body, the reason the Penal Code made that a Class C felony is because it recognized that there are certain social situations; for example, where a woman or person may drink too much and then become the victim of a rape as defined under Class C, but we also recognize that under those circumstances the penalty should not be as harsh as a rape in the first degree or rape in the second degree. That's why we had it set out like this.

"The other section, section b, which provides that the other person is less than 14 years old, again, we made that a Class C felony. And let me state that to be convicted under that section all the prosecution has to prove is (1) there was intercourse, and (2) the person with whom intercourse was had was less than 14 years old, and that's it. The fact that the person may have consented is immaterial. In today's society, with our youngsters

being more sexually aggressive than they were in the past, I think it is a terrible thing to make this a Class B felony.

"Again, the drafters of the Penal Code recognized that mistakes may be made in terms of identification, in terms of age...that's why we made it a Class C felony.

"This bill, Mr. President, is a reaction to hysteria, and that is not what we were elected and paid for."

Senator Abercrombie rose to speak in favor of the measure as follows:

"Mr. President, I speak in favor of this bill on the grounds that it is my considered judgment that while the points made by the previous two speakers are very well taken indeed, that it is within our purview to deal with most especially the area in regard to the definition of resistance and from my point of view more particularly the voluntary social companion/stranger distinction.

"However, I do believe that the changes in various degrees in penalties are totally unwarranted and will in fact make convictions more difficult to achieve and that, in particular, where third degree and physical helplessness are concerned. It fails to recognize obvious social situations that could take place and create even more tragic circumstances in that the accusation and/or conviction of rape itself if it were seen in isolation was to be considered. Therefore, it is my hope that those parts of this bill which address what I believe to be necessary changes will survive and those parts of the bill which reflect penalty and definition of degree elements will be substantially rearranged or eliminated when this bill goes to conference."

The motion was put by the Chair and carried, and H.B. No. 300, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO OFFENSES AGAINST THE PERSON," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 16. Noes, 9 (Campbell, Cayetano, Holt, Machida, Mizuguchi, O'Connor, Toyofuku, Ushijima and Wong).

House Bill No. 1870, H.D. 1, S.D. 1:

By unanimous consent, action on H.B. No. 1870, H.D. 1, S.D. 1, was deferred to the end of the calendar.

Standing Committee Report No. 866

(H.B. No. 629, H.D. 1, S.D. 2):

By unanimous consent, action on Stand. Com. Rep. No. 866 and H.B. No. 629, H.D. 1, S.D. 2, was deferred to the end of the calendar.

Standing Committee Report No. 871 (H.B. No. 709, H.D. 1, S.D. 2):

On motion by Senator Yamasaki, seconded by Senator Anderson and carried, Stand. Com. Rep. No. 871 was adopted and H.B. No. 709, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR COLLECTIVE BARGAINING COST ITEMS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Kawasaki).

Standing Committee Report No. 883 (H.B. No. 1233, S.D. 2):

Senator Yamasaki moved that Stand. Com. Rep. No. 883 be adopted and H.B. No. 1223, S.D. 2, having been read throughout, pass Third Reading, seconded by Senator Anderson.

At this time, Senator Cayetano rose to speak against the measure as follows:

"Mr. President, this matter came up last year and I'm going to be consistent and vote 'no' again on this bill even though I have supported the Office of Hawaiian Affairs in other matters.

"The bill basically would allow the board the discretion of doing something we don't allow any other board and, that is, to set the salary of that office's administrator. My basic premise on this matter has been to allow the board to have some history for us to be able to determine the scope of its responsibilities, look at its programs, and then if the salary is justified I would have no qualms paying this administrator at a director's level, if the situation so warrants. At this time, I think this bill is premature."

Senator Kawasaki also spoke against the measure as follows:

"Mr. President, in reference to the remarks made by the good Senator from the Fourth District, I believe there are other bills here completely relinquishing the Legislature's right to have some control over the setting of salary ranges. We have this in a bill that allows the directors of the Reference Bureau, the Legislative Auditor, the Ethics Commission and the Ombudsman's office to set salaries,

so perhaps this is comparable in that respect. Perhaps the reservations that he had should be recognized on how similar some of the provisions are in another bill that we are about to discuss very shortly."

The motion was put by the Chair and carried, and Stand. Com. Rep. No. 883 was adopted and, Roll Call vote having been requested, H.B. No. 1233, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS ADMINISTRATOR," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 20. Noes, 5 (Ajifu, Cayetano, Kawasaki, Kuroda and Uwayne).

MATTERS DEFERRED FROM EARLIER ON THE CALENDAR

House Bill No. 1870, H.D. 1, S.D. 1:

Senator Uwayne moved that H.B. No. 1870, H.D. 1, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Yamasaki.

Senator Kawasaki then rose to speak against the measure as follows:

"Mr. President, I rise to speak against passage of this bill because, in my judgment, if there is any act of legislative conduct that is thoroughly and utterly unworthy of this honorable body, the Senate of the State of Hawaii, I think it's the affirmative passage of this bill. I think that if there's any act of legislative conduct that is a reprehensible defiance of the plea, the urgent, fervent plea made by the President of our country I think it is the affirmative passage of this bill.

"The President of the United States in his campaigns, in his inaugural address, in his budgetary address to the nation, and, very recently, in an address before union officials and from which convention he emerged only to be wounded by a would-be assassin's bullet and he today lies wounded in the hospital... the urgent message that the President had is being completely disregarded by those of us who would bring ourselves to vote for this bill.

"The urgent message was, in essence, that never in the history of the United States of America has our country gotten into such terrible fiscal bind. He pointed out that our total indebtedness today, the total number of IOU's scattered throughout the remote corners of this world amounts to literally \$1 trillion and the indebtedness,

the interest that we have to pay on this tremendous amount of IOU's, according to the Department of U.S. Treasury, amounts to \$90 billion yearly, just for the debt servicing of this tremendous deficit.

"A trillion dollars is a figure incomprehensible to us, and I think the President very aptly illustrated what it amounts to.

"Mr. President, if you were to have in your possession a million dollars worth of thousand dollar bills, you'd have a stack four inches tall. A trillion dollars amounts to a stack of thousand dollar bills sixty-seven miles high. This graphically illustrates the extent to which our country has gone into fiscal morass.

"At a time in the nation when we have eight million people willing and able to work without jobs, when we have in this state of ours 24,000 people willing, able, but unable to find jobs, I think it's a height of sheer folly for us to pass a bill that would increase the salaries of our top level, our highest paid government officials out of the 30,000 government employees that we have.

"We have no dearth of people seeking the office of the governor, seeking the office of the lieutenant governor, seeking positions to be appointed to cabinet positions paying \$42,000 a year. We have a lot of people very willing and able to hold these jobs or to make themselves available to these jobs.

"We are not providing in this bill compensation for the lower levels of government employees, the poor custodian who undoubtedly finds himself in difficulty because of the high cost of inflation.

"By passage of this bill we are completely disregarding the pleas of the citizens of this state and the union. Citizens of this state would say that our standard of living today is much lower than it was a year ago, greatly lower than two years ago, five years ago, because our cost of utilities has gone up, electric bills have gone up, the cost of telephones has gone up; the food prices are the second highest in the union, second only to Alaska; that if we are forced to by necessity borrow money from lending institutions, we are forced to pay the highest rate of interest in the history of this nation.

"Just today we passed a bill that will enable the lending institutions to charge on credit cards an unprecedented 21% interest. In five years' time the

interest that you pay on these credit cards will amount to more than the total cost of the principal. This high interest rate, unprecedented prime rates... the fact that Chrysler Corporation is bankrupt and needed the help of government to stay in business; that General Motors has lost \$1.25 billion in the last quarter; that Ford Motor Company has lost almost half a billion dollars; that the Korvette Company, a big department store chain in dire circumstances needing help from the government; that some of our utility companies are having some trouble... all of this, I think, is indicative of the fact that we are in bad, bad financial straits.

"The President who is privy to confidential information from the Department of Treasury, from the leading economists in our government, knows all of this, and this is why he had of necessity to go to the Congress of the United States and go before the people of this country on TV and radio to plead that every citizen in this country, this great country of ours, to help him to somehow turn from the direction that our country is heading, the direction of bankruptcy!

"This is the reason why he had to plead with the Congress of the United States that he needs a \$41 billion reduction in federal expenditures. This is the reason why he has had of necessity to cut down needed human services, so much so that we in this Legislature are now confronted with the problem of trying to make up for some of that deficit.

"In the face of all of these situations, I simply can't bring myself to realize how we can in good conscience vote for salary increases for people at the top levels of government employees, top wage earners in this state in terms of government employment. I think this is not the time, certainly, for pay increases when we have cut drastically from needed human services.

"To vote for this bill now and to pass this bill is an insult to the intelligence of not only the President of these United States who has such a desperate message to all of us, but it's an insult to the people of this state. I will not belabor this point any more, but I ask you not to vote for this bill which I said is utterly unworthy of this body."

Senator Yee then rose to speak for the measure as follows:

"Mr. President, I wasn't going to speak, but I rise to speak in favor of this bill in answer to some of the comments by the learned colleague

from across the floor.

"I think President Reagan is under mandate by the people because the federal government is broke. He had to do something.

"Here in the State of Hawaii, we're in a little different situation. We have a surplus. We continually complain about the type of people we have in government...ordinary, incompetent not capable of doing the job. Then where is this talent going to come from? The talent must come from the business sector, the professionals, who make a lot more, much more money than what we're paying the department heads. They have greater incentive because they don't have to go through the political ramifications of each session to justify their budget, justify their compensation, justify their activities. They don't have to worry about meeting political campaign fund raisers. They're free to do what they are capable of doing and they're judged by their peers. This is what we want in our cabinet heads, our governor, lieutenant governor, judges...we want quality people, capable people from the outside to join government service.

"If we keep running down people like this, no way are they going to come in. We're going to have only average judges, average executives, and I'm sure that's not what we want. We want top-flight people.

"We're talking about a 7% increase, 8%...and you talk about the janitor, maybe they're entitled to a 10% increase to keep up with inflation but you just can't knock top-level people down because we need them to serve the government in terms of service to the people of the state."

Senator Abercrombie also rose to speak against the bill as follows:

"Mr. President, I want to speak against the bill for many of the reasons stated by Senator Kawasaki.

"If you look at the contents of the bill, Mr. President, you will see that many of the people the previous speaker refers to are left out; only certain people are put in. Why are some people left out? I don't know, maybe the director of the Office of Children and Youth is worth less than some of these other people, or the Hawaii Paroling Authority, the Consumer Protector, the Public Defender...and we've been talking a lot about crime and all that...why are all these people left out?

"There's only a few people being

taken care of, and I think that given the fact that we have yet to determine whether a lot of our programs are going to be able to deal with their fiscal problem, I think we have to be against it.

"The previous speaker tossed in the judges...that's a separate bill. The Judiciary is a separate bill, and perhaps it will warm the cockles of Senator Yee's heart to know that I have reconsidered the issue since my vote on second reading. I am going to vote for the judiciary raises this time.

"On the whole then, inasmuch as I've made this sacrifice on behalf of Judge Wakatsuki and others, I urge that we vote this one down and the next one up."

Senator Cobb added his comments on the measure as follows:

"Mr. President, I'd like to express a basic reservation that I have about this bill as well as the next one coming up on judicial salaries, and if possible have my remarks incorporated in the Journal for both bills, and that is, we're in the same box, ladies and gentlemen, that this body and the House of Representatives found ourselves in in 1975, and that is, having to address either percentage as expressed in here or possibly a larger percentage salary adjustment for the top paid officials of our state.

"What we lack, even to this day, after the hell that we went through six years ago is the basic mechanism to address this question in the future.

"I personally feel that what the City and County of Honolulu has is fundamentally wrong when they tie the mayor's salary to the level of collective bargaining increase they negotiated, because that does not provide an incentive at all for the mayor of the City and County of Honolulu to hold down negotiated pay raises. Instead, what I would like to see us develop is a mechanism to link these kinds of top level salaries to the same level of percentage increase that the average worker in the private sector of Hawaii gets, so that we have some means of tying these pay raises to the pay raises of the man in the street. And further, if the level of pay for the private sector of Hawaii goes down over a two-year period, then the Governor and everybody else associated with him should take a pay cut; and if it goes up, so be it, even if it means that we have to provide for a biannual legislative review and we have to take a look at it every two years. If we fail to do this, Mr. President, we're going to be exactly in the same box four

or six years down the road from now.

"That's my basic reservation about this and the judges' pay raises. We're going to have to come in every four to six years and ask to vote a lump sum for these individuals without looking back at what the track record is in the private sector. Thank you."

Senator Uwaine also rose to remark on the measure as follows:

"Mr. President, I would just like to thank the good Senator from the Fifth Senatorial District for his very fiscally responsible remarks and that it will be in consideration if this bill goes into conference.

"I would also like to mention to my colleagues that, as far as this particular bill, I would like to see it passed this afternoon, on the floor, by at least a majority of 13 votes. Should this bill die on the floor I want to assure my colleagues that it won't embarrass me, although I'll be one of those people voting in the majority, hopefully.

"And a word to my good colleague Senator O'Connor from the Seventh District. If he finds it in his heart that the people's concerns and people's issues come first...the other minority Democrats as well who feel that social problems, for example, like the points they brought up on Friday about the grants-in-aid...should they feel that they would like to vote down this bill because of the fact that we have not addressed many of the social problems and here today we're passing a bill giving a 7% increase to the Executive, then I would say to them, be my guest, no hard feelings, and in fact, if they feel so strongly I encourage them to vote 'no.' Thank you."

Senator O'Connor then asked if the last speaker would yield to a question and Senator Uwaine replied, "Why, certainly...not."

Senator O'Connor continued: "Mr. President, I would just say, then, it's very difficult for me to vote this bill down because I don't know how many millions of dollars a year we're going to save if this bill doesn't pass."

Senator Kawasaki further remarked as follows:

"Mr. President, since the good Senator, chairman of the Human Resources Committee, just stated that he will take into account some of the cogent arguments that I made, I just want to give him a few more bits of statistics.

"On our total indebtedness, the interest payments that the State of Hawaii pays annually on all the loans we have outstanding, the bonded indebtedness, amounts to \$132 million a year. This is the interest cost on our indebtedness in this state, all borne by the taxpayers of this state.

"And I forgot to mention that the President, as soon as he took office, immediately froze salary increases for most federal jobs as you know. As a matter of fact, he completely eliminated a number of bureaus. He stated that he's yet to cut down the federal spending some \$30 to \$40 billion, he was greeted with a lot of skeptical cries, but in the course of congressional hearings, most surprisingly, the very Senate Democrats who were opposed to his initial messages of cutting, because of necessity, supported him. As a matter of fact, they went him one better. The amount of budgetary cuts that they passed from the Senate was in excess of what the President asked. This apparently is the result of their getting a better fiscal picture about the straits that our country is in.

"Now, someone had mentioned, the good Senator from the Sixth District had mentioned the fact of the budget surplus, and I have a suggestion. If we have a budget surplus as it is stated, then perhaps we should bring some relief to the 24,000 people in this state who don't have jobs...the man who is the breadwinner of the family who sits down at dinner with his family and has to face his family with a dismal thought that tomorrow morning he hasn't got a job to look forward to. Perhaps we should make some make-work programs to spend some of the fiscal budgetary surplus that the good Senator from the Sixth District alludes to.

"In any case, Mr. President, if we have money, let's give the taxpayers the benefit. Perhaps, we should increase the tax refund or tax credits; but certainly this is not the time for salary increases for the governor who gets paid \$50,000 a year, who's got a quarter million dollar contingency fund, who's got a staff and servants, who's got two chauffeurs, chauffeuring his wife to the shopping center if that's necessary, who's got two bodyguards accompanying him, and a whole lot of department heads who I charge at this point...the majority of whom will not in private enterprise earn what they're earning today, with the kind of fringe benefits they're getting, and they know it. This is the reason why they eagerly stay in their positions and I said we have no dearth

of candidates wanting these positions, so the argument about how we are not going to attract good people at \$42,500 has no validity as far as I am concerned.

"I think that people generally serving in high cabinet positions should do so with a reasonable salary but with a strong sense of public service indoctrinated in their intellectual makeup. This is the kind of people we want and I maintain that this is not the time to raise executive salaries."

The motion was put by the Chair and carried and, Roll Call vote having been requested, H.B. No. 1870, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE COMPENSATION OF PUBLIC OFFICERS OF THE STATE AND MAKING APPROPRIATIONS THEREFOR," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 15. Noes, 10 (Abercrombie, Ajifu, Anderson, Carpenter, Cobb, George, Henderson, Kawasaki, Kobayashi and Soares).

At 4:11 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 4:14 o'clock p.m.

Standing Committee Report No. 866 (H.B. No. 629, H.D. 1, S.D. 2):

Senator Yamasaki moved that Stand. Com. Rep. No. 866 be adopted and H.B. No. 629, H.D. 1, S.D. 2, having been read throughout, pass Third Reading, seconded by Senator Abercrombie.

At this time, Senator Kawasaki rose to speak against the measure as follows:

"Mr. President, a number of years ago when we raised the salaries of the judiciary, I had the occasion to speak to many private lawyers in the field, particularly regarding the compensation of the judges who serve the district courts, and, unanimously, the opinion was \$40,000 designated at that time by the Salary Commission was much too high for those positions, recognizing the scope of their responsibilities, their workload and so forth. This bill raises that even to a higher figure of \$42,500.

"Again, as I said, we have no lack of candidates who want to be judges. Apparently, there are more candidates than we can fill positions for and, again, as I said, this is not that segment of

government employees who are hit hardest by inflation or high cost of living. It seems to me prudence dictates that we should withhold the raising of salaries for the judiciary.

"You know, when a person serves as a judge, the some \$42,500 that he makes is a considerably lot of money because were he in private practice he probably would have to earn in the neighborhood of between \$65,000 to \$70,000, in view of the fact that he will have to pay for his library, he has to pay for his secretary, utilities, and other costs, all of which is not something he has to worry about being a judge with clerks under him, with a secretary, with chambers and offices provided for him. My point is that judges in this state are doing reasonably well.

"I had compared the judicial salaries of other states with ours and we're not doing too badly by our judges.

"Again, as I said, for this category of employees, this is not the time for us to raise salaries. Let's worry a little more about how the average citizen on the street is going to make out. In this high inflation era and this high cost of government era that we are concerned about, I would say that by passage of this bill we are completely ignoring the plight of many, many people in this state who are less fortunate."

The motion was put by the Chair and carried, and Stand. Com. Rep. No. 866 was adopted and H.B. No. 629, 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, 17. Noes, 8 (Ajifu, Anderson, Cobb, George, Kawasaki, Kobayashi, Saiki and Soares).

At this time, the Chair made the following remark:

"Members of the Senate, we've been here for about five and a half hours. I would like to take this opportunity to commend all the Senators for the manner in which they have conducted their discussions on the various issues before the Senate. Decisions have been reached, personalities have been avoided, and for that the Chair is most grateful. Thank you."

ADJOURNMENT

At 4:20 o'clock p.m., on motion by Senator Cobb, seconded by Senator Anderson and carried, the Senate

adjourned until 11:00 o'clock a.m.,
Tuesday, April 7, 1981.