

# **JOURNAL**

**of the**

**SENATE OF THE TWELFTH LEGISLATURE**

**of the**

**STATE OF HAWAII**

---

**Special Session of 1984**

**Convened Monday, July 9, 1984  
Adjourned Friday, July 13, 1984**

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THE  
TWELFTH LEGISLATURE  
STATE OF HAWAII  
SPECIAL SESSION OF 1984  
JOURNAL OF THE SENATE

FIRST DAY

Monday, July 9, 1984

The Senate of the Twelfth Legislature of the State of Hawaii, Special Session of 1984, was called to order at 11:00 o'clock a.m., by Senator Richard S.H. Wong, President of the Senate, in accordance with the Proclamation issued by Governor George R. Ariyoshi on July 6, 1984, as follows:

MESSAGE FROM THE GOVERNOR

A message from the Governor (Gov. Msg. No. S1-84), transmitting the proclamation convening the Legislature of the State of Hawaii in Special Session on Monday, July 9, 1984:

P R O C L A M A T I O N

I, GEORGE R. ARIYOSHI, Governor of the State of Hawaii, by virtue of the authority in me vested by law, do hereby convene the Legislature of the State of Hawaii, in Special Session on Monday, the 9th day of July, 1984, at 11:00 o'clock a.m., for consideration of the liquor tax law.

DONE at the State Capitol,  
Honolulu, Hawaii,  
this 6th day of July, 1984.

/s/ George R. Ariyoshi  
GEORGE R. ARIYOSHI  
Governor of Hawaii

APPROVED AS TO FORM:

/s/ Michael A. Lilly  
MICHAEL A. LILLY  
Attorney General"

was read by the Clerk and was placed on file.

The Divine Blessing was then invoked by the Reverend Renate Rose, Associate Pastor, Central Union Church, after which the Roll was called showing all Senators present.

The following introductions were then made to the members of the

Senate:

Senator Carpenter, on behalf of the Senators from the Big Island, introduced Jim and Marty Simpson of Kau.

Senator Kuroda introduced Kimiko and Shizuko Kuroda, his cousins, visiting from Hiroshima, Japan, who were accompanied by his brother, Donald, and sister-in-law, Betty Kuroda.

MESSAGE FROM THE GOVERNOR

A message from the Governor (Gov. Msg. No. S2-84), dated July 9, 1984, informing the Senate that, pursuant to Section 17-4 of the Hawaii Revised Statutes, he appointed Lowell S. Dillingham to fill the unexpired term of Frederick W. Rohlfling as a member of the House of Representatives from the Thirteenth District, effective immediately, was read by the Clerk and was placed on file.

INTRODUCTION OF SENATE BILL

On motion by Senator Cobb, seconded by Senator Soares and carried, the following bill passed First Reading by title and was referred to print, and further consideration was deferred until later on the calendar:

Senate Bill

No. S1-84 "A BILL FOR AN ACT  
RELATING TO TAXATION."

Introduced by: Senator Wong, by request.

At this time, Senator Abercrombie rose to state as follows:

"Mr. President, I had a bill drafted with respect to amending the state budget, given the changed financial conditions observed by the Governor when he restricted the budget at the

beginning of the year. I would like to, at this time, request that the Chair instruct the Clerk to accept that bill and that it also be put before the body."

The Chair answered as follows:

"In response, Senator Abercrombie, the only bill that the special session will be dealing with will be Special Session Senate Bill No. 1, and the Chair rules that no other items may be brought up at this time."

Senator Abercrombie, on a point of inquiry, stated as follows:

"Mr. President, is it not possible for us, regardless of the purpose as stated by the Governor, with respect to this special session, and as long as that element of business is taken care of, either affirmatively or negatively, as is the will and wisdom of the Legislature, for this body in session, special or otherwise, to take up special business as it deems appropriate?"

"My request, Mr. President, is that the body be given the opportunity to decide whether or not taking up the matter of the restricted budget is in order at this time, inasmuch as we have the opportunity by virtue of being back in session after having adjourned.

"The reason I ask that question of you is ... make that request for your consideration is that, had we not met, we would be in the situation where the Legislature was in adjournment, not to meet until next January and the restriction imposed by the Governor would be up to the individual institutional entities of the executive; however, for reasons having to do with the recent Supreme Court decision with respect to taxation and liquor taxes, the constitutionality of the present statute, we are in fact in special session. But, my reading of the rules, both the rules of the Senate and the rules of parliamentary practice that we follow with respect to how we carry out our rules here in the Senate, indicates that the Legislature is fully empowered as a co-equal branch of government to take up such matters as it deems appropriate.

"The reason that I wish to have the bill before the body, and I have indicated as much to the chairman of the Ways and Means Committee, is that the Governor has indicated that some \$22 to \$23 million worth of restrictions are in order at this time

because of the financial condition of the state. Ordinarily, as I said, those restrictions would be carried out by the departments; however, the budget that is in question was one that this body put together and, as was indicated at the close of the last session, Mr. President, there were questions even then as to whether or not we would be in a position where it would be necessary to reconsider at the beginning of the fiscal year or some early time thereafter whether or not that budget would be workable.

"The reports from the Legislature at that time, that is to say when the budget was passed, was summarized in an article on 4-28-84 in the Honolulu Star-Bulletin and I quote: 'It will be several months before lawmakers and the state administration will be able to tell if tax revenues will live up to expectations and whether more budget cuts along the lines of those required over the past several years to balance the budget will have to be repeated.'

"We are at that time now, Mr. President, and I think that it is incumbent upon us, as the body which passed the budget in the first place, to take up the issue of restriction and relieve the executive branch of government from making decisions which are policy decisions first made in this Legislature by way of passage into the budget act.

"I request that you reconsider ... regardless of your personal position, Mr. President, you may be for or against it, but I ask that you reconsider your ruling on the basis of giving the body the opportunity as well as communicating to the other house our desire, if we have a majority who are willing to take up our responsibilities here.

"I ask you to reconsider your position and accept this bill and place it before the Ways and Means Committee."

The Chair responded as follows:

"First of all, Senator, the Chair is in agreement that we can pretty much dictate what can be introduced; however, as I mentioned earlier, the purpose of this special session is to consider the liquor tax bill. After deliberations with members of the Senate, the Chair had decided that the only issue that should be taken up at this special session is the liquor tax bill."

Senator Abercrombie interjected as follows:

"Mr. President, excuse me, I guess on a point of inquiry, you say after deliberations with members of the Senate ... I'm not aware that you acquired ESP between April and now ... you mean deliberation prior to the moment of your speech?"

The Chair answered: "No, within the past three days."

Senator Abercrombie continued as follows:

"Well, Mr. President, I was not one of those who was consulted with, perhaps, have I had known that ahead of time I might have had a different attitude but there has been no vote on it as such and I think that we are doing less than our duty when we have the opportunity to amend that which we have put before the people as the product of our labors over the regular session. Taking less than that opportunity when it is available to us, I think, if not a dereliction of our duty as legislators, certainly, does not speak well of our willingness to come to terms with what will be obviously a very difficult set of decisions to be made within the department."

Senator Cobb then rose on a point of parliamentary privilege and stated as follows:

"Mr. President, the Senator from the Eleventh District is correct in so far as the Legislature may determine the agenda; however, the convening authority in this case, the Governor, has limited the agenda to the consideration of the liquor tax bill.

"If we chose to expand the agenda it would essentially be the same as deciding to convene ourselves in special session which would require two-thirds vote. If the House of Representatives is to be concurring, that would also require two-thirds majority as specified in the Constitution. It would further require at least a prior agreement of the leadership of both bodies. I don't recall having been consulted on the request now before the body but, technically, we could expand our agenda although I think it would take at least a simple majority, if not two-thirds, as specified in the Constitution."

At 11:22 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:25 o'clock a.m.

## STANDING COMMITTEE REPORT

Senator Young, for the Committee on Legislative Management, presented a report (Stand. Com. Rep. No. S1-84), informing the Senate that Senate Bill No. S1-84 has been printed and was distributed to the members of the Senate.

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

## ORDER OF THE DAY

### REFERRAL OF SENATE BILL

The President referred Senate Bill No. S1-84, that had been introduced earlier on the calendar, to the Committee on Ways and Means.

Senator Abercrombie rose on a point of personal privilege and stated as follows:

"Mr. President, earlier this morning I gave a resolution to the Clerk. He indicated to me that, as with the bill that I propose to deal with the budget, the resolution would not be accepted.

"Mr. President, very recently there was an extended comment delivered by Judge Leland Spencer with respect to a child abuse death case of Ronnica Arcala. Mr. President, I will not read into the record the entire extended comment but I offer it to the Clerk for purposes of being recorded formally into the Journal and, in addition, would make the following request. That the members take up Judge Spencer's commentary, take the time to read it, and that, either by way of assignment from the Chair or by way of consideration by the chairmen of the Committees on Human Resources and Judiciary, that the essence of the resolution that Senator Kawasaki and myself wish to place before the body be taken up, and that essence was, based on Judge Spencer's commentary, that a special investigating committee for the purpose of investigating and evaluating the performance of governmental agencies in carrying out their responsibilities under the law to protect the physical safety of Ronnica Arcala and similar cases brought to the attention of the committee be taken up. That the chairs, respectively, of Human Resources and Judiciary, consider dealing with this prior to the next session.

"Mr. President, the import of Judge

Spencer's remarks involved in the sentencing in this case are very, very important and from the point of view of the impact upon reading them are quite striking and I want to quote just a portion to you in hopes that we will, in fact, take this matter up and not let it fly until the next session.

"I am quoting Judge Spencer: 'I want to say this. There is a clear need and a public demand for improvement in the manner in which we protect children from child abuse. I urge that in every instance when a child dies from abuse after the DSSH or the police have intervened or been given the opportunity to intervene, the Governor should appoint an independent commission to investigate and evaluate the performance of the agencies in carrying out their child protection responsibilities. The findings and recommendation of the commission should of course be made public. The Governor should start by appointing such a commission in the case of the death of Ronnica Arcala.'

"He goes on to indicate that, obviously, his comments 'cannot take the place of a full-blown report by such a commission.'

"The Governor has indicated that the DSSH itself is taking a look into the case. That is the Governor's privilege, as I indicated earlier this morning, a co-equal branch of government, he can do as he will with those whom he appoints and has under his direct authority but the Legislature, it seems to me, especially in its committees formed and still in existence, regardless or not whether we are in formal session, are very well geared and have the responsibility of taking up this challenge.

"Judge Spencer indicated as well that he thought that there should be a change in the special sentencing law with respect to extended terms for those who commit violent crime and inflict serious bodily injury on victims who are 60 years of age or older, indicating, by reference to that law, that he would like to see it amended to include children who are under 13 years of age.

"He has very, very strong points to make with respect to responsibilities of both officials in the public-at-large with respect to these innocent victims.

"Mr. President, in the absence of being able to have a resolution formally dealt with, I urge upon you

that you encourage the chairmen of these committees to go into this matter to take up the challenge of Judge Spencer, in a manner that will reflect credit on this body in terms of meeting its responsibilities in this area where we are dealing with, by definition, children who are unable to help themselves unless and until responsible adults look out for them. Thank you."

The extended comment of Judge Leland Spencer is as follows:

#### "EXTENDED COMMENT REGARDING CLARKE CASE"

##### I. INTRODUCTION

Ronnica Arcala, a three year old child, died on April 22, 1982, as a result of head and brain injuries inflicted by the defendant.

During the year leading up to her death, Ronnica had repeatedly suffered severe injuries from abuse while living with her mother and the defendant.

Ronnica's suffering and death ought not to be in vain. The community must learn from this tragedy how to better protect other defenseless children from such abuse.

With this in mind, I feel compelled to state publicly what I perceive to be four serious errors of judgment by the state's Department of Social Services and Housing (which I will refer to as 'DSSH') which errors exposed this child to continued abuse and finally to the abuse which caused her death.

##### II. ERRORS OF JUDGMENT THAT EXPOSED RONNICA TO CONTINUED ABUSE

Ronnica was born on August 6, 1978. In early 1981 she, her mother and the defendant moved out of the home of relatives and into their own apartment.

Ronnica was first hospitalized on May 12, 1981, with fractures to her left collar bone (clavicle) and her left thigh bone (femur). Her mother had related that the child was hurt when she fell from a slide and was also hurt about four days earlier when she was pushed against a wall by the mother's former boyfriend.

Ronnica was discharged from the hospital on June 5, 1981.

She was again hospitalized on

August 4, 1981 with a history of seizures, headaches and eyes turning inward.

X-rays revealed in addition to the fractures of her collar bone and thigh bone for which she had been previously hospitalized, an older left upper arm (humerus) fracture, a recent right lower leg (tibia) fracture consistent with a forceful twisting, a right ankle dislocation, and separation of the joints (sutures) of skull bones consistent with 'recurrent non-accidental trauma of weeks or months in duration'. In addition, the child had 'whip like' bruises under both arms.

All doctors agreed that Ronnica's injuries were the result of child abuse.

Neither Ronnica's mother nor the defendant had an explanation for the injuries.

While Ronnica was hospitalized, the DSSH petitioned the Family Court and was awarded custody of the child. Upon discharge from the hospital, the DSSH placed Ronnica in a foster home.

On October 16, 1981, the DSSH placed Ronnica back into the home of her mother and the defendant upon certain conditions which were imposed to protect Ronnica including the following: Ronnica had to be placed in a day care facility so that her physical condition could be monitored on a day to day basis away from home.

On April 20, 1982, in a coma Ronnica was hospitalized for the third time. She had multiple burn scars on her face, a fractured skull, and severe brain injuries. She died on April 22, 1982.

Taking into consideration the severity of the injuries which Ronnica had repeatedly suffered, the DSSH made at least four serious errors of judgment which exposed Ronnica to continued abuse by the defendant which abuse ultimately took her life.

First. The DSSH should not have placed Ronnica back into the home of her mother and the defendant without first pinning down the identity of the perpetrator of the abuse. If it was the defendant, he of course should have been removed and prosecuted. If it was the mother, then either the child should not have been placed back into the home at all or the mother should have at least been

required to admit to the abuse and undergo treatment. As it was, the perpetrator of the abuse remained unidentified.

Second. The DSSH should not have placed Ronnica back with her mother and the defendant until a background investigation was done on both adults.

They did an investigation on Ronnica's mother but none on the defendant, relying instead on a report from a psychologist who had interviewed the defendant and determined that he would be a 'stabilizing influence on Ronnica's mother'.

If they had done any type of investigation on the defendant, they would have talked to his wife to whom he was still married and with whom he had previously lived for a number of years.

She would have told them that on two separate occasions the defendant had severely abused her child who was the defendant's stepchild. The second abuse was so serious that it resulted in the child being hospitalized.

Third. Within approximately two months after Ronnica was placed back with her mother and the defendant, they took her out of the day care facility so her condition could no longer be monitored away from home on a daily basis. In addition, both Ronnica's mother and the defendant refused to attend any parenting classes.

Again, taking into consideration the repeated nature and severity of the injuries that the child had suffered, it was serious error to not have removed Ronnica from the home when this condition of custody was not performed.

Fourth. In early January of 1982, three separate neighbors reported to police that Ronnica was repeatedly screaming at nights and that they had observed bruises on her face and head.

An investigating police office on at least one occasion confirmed a bruise on her head.

The DSSH contends that they repeatedly visited the home to monitor the child's condition and observed nothing to indicate child abuse.

However, in light of the repeated

nature and severity of the injuries that this child had suffered over a prolonged period of time, and in light of the fact that she had been placed back with the very same adults with whom she lived when these injuries were inflicted, and in light of the fact that neither of the adults had admitted to inflicting these injuries, the neighbors' complaints should have at least caused the DSSH to insist on the performance of the original condition of custody that the child be placed in a day care facility so that her physical condition could be monitored daily away from home. It was a serious error not to do so.

One critical lesson to be learned from Ronnica's tragedy is that once it is established that a home poses a danger of serious injury to a child, the child must not be placed in a home simply for the sake of parent-child unity. Outside supervision cannot protect the child from what may occur in the privacy of an unsafe home.

The social workers and supporting staff of the DSSH who handled child abuse cases during Ronnica's time and who are presently handling such cases are hardworking, caring people who are trying to do a tough job without sufficient personnel. My sole purpose in discussing the errors in Ronnica's case is to make sure such errors are not repeated. I felt that a public statement was the best way to accomplish this.

On a positive note, the Child Protective Act was passed by our legislature in 1983 thanks to efforts of a number of people including Deputy Attorney General Kenneth Enright and Judge Michael Town of the Family Court. This Act has as its sole purpose the protection of children from abuse. Among other things, it required the DSSH to consider 28 specified criteria in determining whether a child's home is safe for the child's placement.

The Child Protective Act is not a cure-all. It is only as effective as the capabilities of the people who deal with child abuse. But the Act is a very important step in the direction of improving the manner in which we here in Hawaii protect defenseless children from abuse.

### III. ADDITIONAL POINTS

I have four additional points that I feel are important to make.

First. Child abuse is very wide-spread. Abused children grow up with physical and psychological problems that interfere with their ability to take care of their own needs and to contribute to the community. Abused children commonly develop into persons who abuse others, commit violent criminal acts and abuse their own children.

The point is, Hawaii's children are our future. Their protection from abuse deserves our highest priority, effort and resources. Government agencies with the responsibility for the protection of children must be staffed with enough people to do the job and these people must be properly trained to do the job. Cutting costs by cutting or limiting the number of people or the training of people in agencies which have the responsibility of protecting children from abuse is a serious disservice to the community.

What agencies and what personnel am I speaking of? First and foremost are the social workers and staff in the Child Protective Service which is part of the DSSH. In addition, there are police detectives in the Juvenile Division of the Police Department assigned to handle child abuse cases; judges of the Family Court assigned to handle child abuse cases; attorneys and staff of the Attorney General's Office assigned to represent the DSSH in Family Court proceedings, concerning child abuse; and attorneys and staff of the Prosecuting Attorney's Office assigned to investigate and prosecute people for child abuse.

A second point I want to make is this. It must be stated loud and clear that certain people have a legal duty to report suspected child abuse to the DSSH or the Police Department. If they do not, they commit a crime. These people include the parent of a child, who has a duty not only to protect the child from abuse but to report any abuse, even if the abuse is from another parent.

These people with a duty to report suspected child abuse also include doctors, dentists, nurses, persons who assist in providing medical or health related services to a child, and all employees of public or private schools.

Aside from persons who have a legal duty, every good citizen has a moral responsibility to report suspected child abuse.



A third point I want to make is this. There should be a special sentencing law for child abusers.

I would point out that there is a special sentencing law which imposes an 'extended term of imprisonment' for any person who commits a violent crime and inflicts serious bodily injury on a victim who is 60 years of age or older. I would urge that that law be amended to include victims who are children under 13 years of age.

Finally and as a fourth point, I want to say this. There is a clear need and a public demand for improvement in the manner in which we protect children from child abuse.

I urge that in every instance when a child dies from abuse after the DSSH or the police have intervened or been given the opportunity to intervene, the Governor should appoint an independent commission to investigate and evaluate the performance of the agencies in carrying out their child protection responsibilities. The findings and recommendation of the commission should of course be made public.

The Governor should start by appointing such a commission in the case of the death of Ronnica Arcala.

My comments this morning are not intended to and cannot take the place of a full-blown report by such a commission."

Senator Kawasaki then rose on a point of personal privilege and remarked as follows:

"Mr. President, in support of the request made by Senator Abercrombie, I do want to say that the concerns that he has expressed are perfectly legitimate. I think it would do this body honor to have that request taken up very seriously by the Chair.

"Lest anyone interpret this concern that we have expressed in the resolution, jointly co-sponsored, that this is election year exposure on our part, might I just point out that both of us are not running for re-election this year. And lest it be also interpreted as perhaps a gimmick to get some publicity, you will note that the two committees requested to enter into this investigation are the committees on Human Resources and Judiciary. Government Operations Committee was eliminated from the committees given the responsibility of

conducting this inquiry.

"I do hope that you will very seriously consider the concerns expressed both by Judge Spencer and Senator Abercrombie because I think this is a matter of interest to the community, of concern to the community. It would certainly do this body honor, justice, as I said. It will certainly be a compliment to this body for us to take this matter very seriously and do something concrete in the way of not accepting the constant excuses that we've had, particularly from the Department of Social Services in many of their inefficient manner of operating that department.

"We've had excuses emanating from that department that we've read in the media and I think the public is pretty well fed-up with such inefficiency and gross negligence.

"I think it's about time that the Senate body take these matters very seriously and started doing some very in-depth investigations so some good results can come out of our inquiries.

"I do hope that you will consider Senator Abercrombie's request very seriously."

Senator Chang then rose to respond as follows:

"Mr. President, I would like to respond briefly, on behalf of Senator Mizuguchi and myself, and report that we have been in direct communication with the director of Social Services, with the director of the Victim Kokua Services, Office of the Prosecutor, and with Mary Jane Lee, director of the Family Court, and have received full assurance that we will be kept abreast of the progress that these agencies are making in addressing the concerns raised this morning."

Senator Kawasaki then inquired as follows:

"Mr. President, will there be a report or a communication or a memo to be disseminated among the members of the Senate after all of this inquiry has been entered into?"

The Chair posed the question to the chairman of the Judiciary Committee and Senator Chang answered as follows:

"Mr. President, I'll assess the information that is presented. If it appears significant and of sufficient substance to warrant publication of a

report or summary to the Senators, we shall do so."

The Chair then remarked as follows:

"Members of the Senate, the Chair would like to apologize to some of the Senators. I note that our message about wearing aloha attire for the five-day special session has been well followed. However, the information relayed to some of the Senators may not have been quite clear. The dress code for this special session will be

aloha attire.

"Also, beginning tomorrow, session will convene at 11:30 a.m. every morning until the hopeful conclusion of this special session."

#### ADJOURNMENT

At 11:36 o'clock a.m., on motion by Senator Cobb, seconded by Senator Soares and carried, the Senate adjourned until 11:30 o'clock a.m., Tuesday, July 10, 1984.

## SECOND DAY

Tuesday, July 10, 1984

The Senate of the Twelfth Legislature of the State of Hawaii, Special Session of 1984, convened at 11:30 o'clock a.m., with the President in the Chair.

The Divine Blessing was invoked by the Reverend Rudolph Duncan of the Episcopal Church of Hawaii, after which the Roll was called showing all Senators present with the exception of Senators Kawasaki and B. Kobayashi who were excused.

The President announced that he had read and approved the Journal of the First Day.

## STANDING COMMITTEE REPORT

Senator Yamasaki, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. S2-84)

recommending that Senate Bill No. S1-84 pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Yamasaki, seconded by Senator Cobb and carried, the report of the Committee was adopted and S.B. No. S1-84, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," passed Second Reading and was placed on the calendar for Third Reading on Wednesday, July 11, 1984.

## ADJOURNMENT

At 11:40 o'clock a.m., on motion by Senator Cobb, seconded by Senator Soares and carried, the Senate adjourned until 11:30 o'clock a.m., Wednesday, July 11, 1984.

## THIRD DAY

Wednesday, July 11, 1984

The Senate of the Twelfth Legislature of the State of Hawaii, Special Session of 1984, convened at 11:30 o'clock a.m., with the President in the Chair.

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

The Chair announced that he had read and approved the Journal of the Second Day.

## HOUSE COMMUNICATION

A communication from the House (Hse. Com. No. S1-84) transmitting House Bill No. 1-84, which passed Third Reading in the House of Representatives on July 11, 1984, was read by the Clerk and was placed on file.

On motion by Senator Cobb, seconded by Senator Soares and carried,

H.B. No. 1-84, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," passed First Reading by title and was referred to the Committee on Ways and Means.

## ORDER OF THE DAY

## THIRD READING

Senate Bill No. S1-84:

On motion by Senator Yamasaki, seconded by Senator B. Kobayashi and carried, S.B. No. S1-84, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," was recommitted to the Committee on Ways and Means.

## ADJOURNMENT

At 11:40 o'clock a.m., on motion by Senator Cobb, seconded by Senator Soares and carried, the Senate adjourned until 11:30 o'clock a.m., Thursday, July 12, 1984.

## FOURTH DAY

Thursday, July 12, 1984

The Senate of the Twelfth Legislature of the State of Hawaii, Special Session of 1984, convened at 11:30 o'clock a.m., with the President in the Chair.

The Divine Blessing was invoked by the Reverend Jaime Prieto, Language Minister of Kalihi Baptist Church, after which the Roll was called showing all Senators present with the exception of Senators Ajifu and Mizuguchi who were excused.

The Chair announced that he had read and approved the Journal of the Third Day.

## STANDING COMMITTEE REPORT

Senator Yamasaki, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. S3-84)

recommending that House Bill No. 1-84 pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Yamasaki, seconded by Senator B. Kobayashi and carried, the report of the Committee was adopted and H.B. No. 1-84, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," passed Second Reading and was placed on the calendar for Third Reading on Friday, July 13, 1984.

## ADJOURNMENT

At 11:40 o'clock a.m., on motion by Senator Cobb, seconded by Senator Soares and carried, the Senate adjourned until 11:30 o'clock a.m., Friday, July 13, 1984.

## FIFTH DAY

Friday, July 13, 1984

The Senate of the Twelfth Legislature of the State of Hawaii, Special Session of 1984, convened at 11:30 o'clock a.m., with the President in the Chair.

The Divine Blessing was invoked by Sister Marie Gertrude Rolden, C.S.J., Instructor Judge of the Tribunal, after which the Roll was called showing all Senators present.

The Chair announced that he had read and approved the Journal of the Fourth Day.

At this time, Senator Henderson introduced to the members of the Senate relatives from Glasgow, Scotland, Graemg and Clare Giles, who were accompanied by his sister, Mrs. Margaret Dobbins.

## SENATE RESOLUTION

A resolution (S.R. No. S1-84), entitled: "SENATE RESOLUTION AUTHORIZING THE PRESIDENT TO APPROVE THE JOURNAL OF THIS SENATE FOR THE FIFTH DAY, SPECIAL SESSION OF 1984," was offered by Senators Kuroda and Henderson, and was read by the Clerk.

On motion by Senator Kuroda, seconded by Senator Henderson and carried, S.R. No. S1-84 was adopted.

## ORDER OF THE DAY

## THIRD READING

House Bill No. 1-84:

Senator Yamasaki moved that H.B. No. 1-84, having been read throughout, pass Third Reading, seconded by Senator B. Kobayashi.

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

"Mr. President, for the past five days this Legislature has been meeting in special session to consider this one bill. Our sessions have lasted five or ten minutes. We have all taken off from other pursuits to come here to address this particular problem.

"I had not intended to speak on this matter. But in looking at the committee report it appears to me that some history, some historical background, should be set forth in the

record to explain why we are here and we are passing this bill.

"Mr. President, the United States Supreme Court in the case of Bacchus Imports, Ltd., et al. v. Dias, in June 1984, found or ruled that the tax exemptions for okolehao and fruit wine, asked by the Legislature, were unconstitutional and violated the interstate commerce clause of the U.S. Constitution.

"In order for us to understand the significance of this opinion, I would like to give some background as to the genesis of the okolehao, fruit wine, and also, significantly, the rum exemption.

"Mr. President, these three exemptions were passed by the Legislature to help the local industries which were engaged in the making of okolehao, fruit wine and rum. The okolehao exemption was passed first in 1971 for a period of five years. The Legislature renewed it in 1976 for a period of another five years to expire June 30, 1981. Also, in 1976 the Legislature passed the fruit wine exemption which also expired on June 30, 1981. In 1981, Mr. President, the Legislature passed the exemption for rum and that will expire, it's still on the books, on June 30, 1986.

"My office contacted Larry Kumabe who is assigned to the legal tax division of the Attorney General's Office. Mr. Kumabe informed me that the liquor wholesalers first began their protest of payment of the taxes in the fall of 1979 and then late 1979 they formally made an appeal to the tax appeals court and began paying their taxes under protest into an escrow account in the sum of \$2 million a month.

"What I think is significant and what is somewhat incredible, in my opinion, is that the administration has allowed this situation to fester since late 1979 when the Attorney General's Office knew or should have known that tax revenues, liquor tax revenues, at the rate of \$2 million a month were being paid into escrow and would be jeopardized or could be jeopardized by the decision of the U.S. Supreme Court which came, as we know, three years later. No one from the Attorney General's Office nor the administration, apparently, ever looked into the question as to what this Legislature could do in

terms of reducing our exposure to the loss of those revenues. It wasn't until last session, Mr. President, that members of the Legislature became aware of the situation and became aware of the situation in the legal sense. In other words, we finally understood why the liquor wholesalers were protesting this tax. We finally understood, for example, that although the protest was based originally on the perceived ... the liquor wholesalers perception that the okolehao and fruit wine exemptions were unconstitutional. We also had the problem of the rum exemption still remaining on the books.

"Now, okolehao and fruit wine expired in 1981, June 30, 1981, but the liquor wholesalers continued to pay under protest because of the rum exemption which is still on the books. Well, last session a few of us met with the special deputy attorney general who was hired by the state and who argued the state's case before the United States Supreme Court. I believe his name is Mr. William Dexter. And, at that meeting, attended by Senators Henderson, Yamasaki and myself as well as other staff members, Mr. Dexter, the man who argued the state's case before the United States Supreme Court, advised us that if we wanted to protect our liquor tax revenues then we should repeal the rum exemption and, if we wanted to help the rum industry, we should give the rum industry a subsidy instead. That information and that recommendation was passed on to the Senate leadership and, Mr. President, the Senate leadership met with the Governor and, in a move which is uncharacteristic of the Senate, deferred to the Governor's opinion on this matter. Indeed, the committee report for this bill states: 'Your Committee notes that action on this matter was not taken during the Regular Session of 1984 upon the advice of the Attorney General that any such action might be viewed by the United States Supreme Court as an admission of wrong on the part of the Hawaii Legislature.'

"That, apparently, is the advice that came from Mr. Hong, the former Attorney General. It certainly was not the advice that was given to us by Mr. William Dexter the skilled, experienced, and, I'm sure, very highly-paid special attorney, hired by the state to argue the state's case before the United States Supreme Court.

"The former Attorney General, Mr.

President, if one would review his legal experience, was solely lacking, I think, in expertise in this area. And every attorney that I contacted who had appellate experience, appellate meaning experience before the court of appeals or the Supreme Court, etc., sided with the opinion given to us by Mr. William Dexter. In other words, that repealing the rum exemption would not only protect the revenues but would not have any effect on the court's decision.

"Well, the Governor chose his course and we decided that we would defer to the opinion and position of the Governor. I hope, Mr. President, that this experience shows what a mistake we made in doing so.

"Under the doctrine of separation of powers, it is not our duty to defer to the attorney general. It is not our duty to defer to the governor. It is our duty to do what we think is best, based on information and the opinions adopted by the majority of the members of this house. We did not do that and we frankly admit this in this committee report, which I think posterity will view as being a criticism of the 1984 Senate.

"Now, there is one other part of this committee report which I find offensive and I take exception to. It's in the last paragraph, it says, 'As this bill before your Committee shows, the action that might have been taken during the Regular Session of 1984 would not have been sufficient in any case, since only a repeal of the offending exemptions was contemplated.'

"Mr. President, that sentence is so illogical. It's so lacking, I think, in support by legal authority that it just 'bites my craw' to see it in a committee report.

"Mr. President, the move last session was to repeal the rum exemption because the rum exemption was the only basis on which the liquor wholesalers were basing their contention that the tax was unconstitutional. The only basis on which they relied to continue to pay under protest and into escrow.

"If the court has, in fact, invalidated the entire liquor tax, has anyone thought that the reason that the court did that was because we did not repeal the rum exemption. Because, if the court cautioned invalidation of the liquor tax, of the entire liquor tax, was not based on the fact that the rum exemption was

still on the books, I'm wondering, what else could it be based on? Because, the only thing that this bill does is to repeal the rum exemption and reaffirm our tax law in general.

"Now, if this law is unconstitutional in its entirety you cannot cure that defect by merely reaffirming the law. And I don't think that there are many people, certainly not the ones who drafted this committee report, who seem to understand that. It's important, I think, that we all understand that when the United States Supreme Court made its decision, the okolehao and fruit wine exemptions had already expired and the only offensive, in my view, the only offensive exemption that was left was the rum exemption. So, if someone will explain to me ... if someone will explain to me why or the basis they believe the court may have invalidated the entire liquor tax law I am only too anxious to be corrected, in my evaluation of this statement, as being totally illogical as an explanation.

"I think we have some important lessons to learn from this. Had we agreed to repeal the rum exemption in the 1984 session we would have been able to save this state roughly \$7 million, and that is a very, very sad situation because news reports indicate that the Governor is considering cutting the budget that we passed up to \$22 million.

"We all know from the last session how many, many people, many special interest groups, organizations came before us virtually begging for monetary appropriations and we had to make some hard decisions. Had this money been available, we may have been able to accommodate some of those requests and concerns.

"I do not buy, for one minute, the explanation by the administration that the reason it did not approve of the repeal of the rum exemption last session was because they believed or it believed that such a repeal would endanger the case before the United States Supreme Court. No experienced appellate attorney that I know of buys that point of view. Let me suggest that perhaps some of the considerations were political in nature. That perhaps one consideration was, how do you explain if we repealed it in the 1984 session? How do you explain not repealing it sooner and cutting our losses sooner? How do you explain no action being taken maybe as early as 1979 when the appeal to the tax appeal court

was filed? How do you explain to the unions, for example, when you represent to them that there is no money in the coffers and they agree to a contract where the raises amount to a paltry three percent? How do you explain to them that your representations to them about money may not have been entirely correct?

"Mr. President, I think these are some of the considerations that perhaps played a greater part in the decision not to repeal the rum exemption. And I think, quite frankly, that there was desperate hope by the administration that the United States Supreme Court would not rule against the state on the okolehao and fruit wine exemptions.

"Let me state this, in closing, that everyone knew, everyone who assessed this case, I think, came to the conclusion that irrespective of the U.S. Supreme Court's decision on okolehao and fruit wine, we would still be in the same position we are today, if the rum exemption was not repealed. Why? Because okolehao and fruit wine, while an argument can be made that those two products are indigenous to Hawaii since no one else makes okolehao, the argument certainly cannot be made that rum is indigenous to Hawaii since they make rum all over the world. And that is a very significant and important factor when one considers whether an exemption is constitutional or not.

"Well, here we are. So, we have no choice, we've been coming in for five days. I'm sorry to take up so much time but I felt I had to at least set the record straight and, of course, I urge everybody to vote 'aye.'"

Senator Abercrombie then rose on a point of inquiry as follows:

"Mr. President, is it possible to separate the committee report from the bill and still have the bill up for passage today?"

The Chair replied in the affirmative, and Senator Abercrombie continued: "If that was the will of the body?"

The Chair responded: "If it was the will of the body."

Senator Abercrombie thanked the Chair then spoke in favor of the bill as follows:

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



committee report and I do that because I believe, while the bill needs to be passed or its equivalent should have been passed several months ago, the committee report is untrue and there is no sense in passing a committee report with respect to this bill, that is to say, passing a bill that has a committee report attached to it that simply does not reflect the facts.

"The reason that I am concerned about it is that those of us who attended the school board meeting last night know that once again the schools have been attacked; that the recommendation was made from the DOE to cut the school priority fund so that every individual school in the state is going to have to suffer from a cut, if it comes, in possible budget restriction. The administration slides along; all the built-in waste slides along; and the one innovation which this Legislature was responsible for in the last several years that sees to it that individual schools are able to operate in such a way as to meet their individual needs get shot by fifty percent.

"At that same meeting, people had to come out, dozens of groups represented, for after school child care groups. Proposal from the DOE to raise funds because of possible restrictions is to increase the costs of these nonprofit groups all across the state so that our children can be taken care of in various and sundry programs after schools.

"We have a state with one of the highest cost-of-living. We have a state with an increasing number of single parent families. We have a state where both parents must work. We have a state where we have split shifts, two and three-shift economy, and in the federal government, in agriculture, in tourism, so that after school programs are a virtual necessity, an absolute necessity for thousand and thousand of parents throughout our state, if they are to have their children looked after and cared for in proper fashion once school ends, most particularly in the elementary grades. And, yet, when we were faced with this situation as articulated by the previous speaker, and when this situation was presented to this body in a bipartisan basis so that there could be no question of any kind of maneuvering or game-playing, we rejected even its consideration. Even though we were warned at that time that approximately \$2 million a month was in jeopardy as a result. So we find

ourselves here today having to explain to every school in the state and the parents and pupils at those schools why their priority fund has to be cut fifty percent; trying to justify to non-profit, mostly volunteer groups across the state, why we are trying to increase their costs for after school child care, all because of political mayhem going on here in the Senate and unwillingness to consider what was necessary to insure that we get the \$2 million when we came out of that session, as far as the liquor tax situation was concerned.

"I think I have every right to raise these issues in urging the passage of this bill at this time because I have had to attempt to justify to people who have asked me about coming back here to the Legislature as to why we have to come back now when we were urged by the leadership in the Senate over and over again to end our session on time. It's one thing to end things up on time; it's one thing to end with business left unfinished.

"As a result, we have this committee report before us that tries to justify what was done or rather, more accurately, what was not done in the last session on the basis that nothing could be done anyway. That's not true. We didn't even try. Had we made an attempt and failed, that's one thing, but not to have made the effort in the first place and then to say that we are forced to come back here is quite another.

"Therefore, of necessity, we must make passage of this bill but we most certainly do not need to affirm a committee report which is not justified either by the facts nor engages in a presentation to the people of this state in terms of its logic with anything that can stand the scrutiny of anyone who is trying to be at the least bit objective as to what in fact took place.

"With this in mind, then, Mr. President, I would like to move...."

The Chair interjected: "Senator Abercrombie, I know you are going to move to separate the report. The Chair in its ruling and answering of your question made an error. The committee report was adopted yesterday and the only thing we have before this body today is the bill.

"The Chair stands corrected."

Senator Abercrombie responded:

"Very well, Mr. President. Then,

for purposes of the record, it will have to stand and I trust that the record will be looked at, certainly when the Journal is printed, that it will reflect the views of the previous speaker and mine and I trust some others in this body, that the committee report does not accurately reflect the conditions that require the passage of this bill at this time. Thank you."

Senator Chang also rose to speak in support of the measure and stated as follows:

"Mr. President, I rise to speak in favor of this motion and in so doing I want to add my own perception of the legislative history that surrounds this particular bill. In looking back at the 1984 session, I would disagree that the outcome of the court case before the Supreme Court was all that clear and I would like to note, for the record, that in the final decision a mere majority of the court struck down the exemptions provided in the Hawaii law.

"In a very strongly worded dissent written by Justice Stevens, in which Justices Rehnquist and O'Connor joined, those Justices would have upheld the Hawaii law. I would like to state several sentences from that dissent:

'As a matter of pure constitutional power, Hawaii may surely prohibit the importation of all intoxicating liquors. It seems clear to me that it may do so without prohibiting the local sale of liquors that are produced within the State. ...I believe it may also engage in a less extreme form of discrimination that merely provides a special benefit, perhaps in the form of a subsidy or a tax exemption, for locally produced alcoholic beverages.

'...The question is not one of "deference," nor one of "central purposes;" the question is whether the provision in this case is an exercise of a power expressly conferred upon the States by the Constitution. It plainly is.

'Accordingly, I respectfully dissent.'

"I think the dissent and the bare majority that the court provided in striking down the Hawaii law illustrates the political statement that I would conclude my talk with, that is to say: 'Today there is no day or night; today there is no black or white; today there is no dark or

bright, only shades of gray.'

"This is, I believe, what we were faced with in the 1984 session and what required our action today. Thank you."

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

"Mr. President, I rise to speak in favor of passage on third reading of this bill.

"Of course this is one of those 'I told you so' situations that had happened here many, many years ago in which some of us here have opposed and railed against some of the propositions adopted here, both in committee and on the floor, granting special privileges to those who have not presented irrefutable evidence that special privilege is absolutely necessary, indeed, for the survival of the private entrepreneurs.

"I think, perhaps, the cogent concerns expressed by previous speakers, Senators Cayetano and Abercrombie, have got to be taken very seriously by us here. These are not statements made just to consume time. I think if we had listened to some of the arguments presented by these people and others here long ago perhaps we didn't need to impose on the taxpayers of this state the additional cost of holding a five-day special session.

"I have been concerned, as a member of the Ways and Means Committee for many years, that I have opposed the special exemptions provided a special segment of our industry here, the liquor producers. I have opposed it on the basis, first of all, that the exemption periods were much too long ... five years. It seems to me, it may have been justifiable for us to provide exemptions for one or two years at the most. And if we're going into even the third year, it was our responsibility on Ways and Means Committee and on the floor of the Senate here to make sure that we require irrefutable evidence that these people have tried hard, they've operated efficiently, with imagination, and that their survival was absolutely dependent upon additional years of special tax exemptions which cost the taxpayers of the state money. We have never done that.

"We have very casually and in a cavalier fashion, if the guy who represents the industry happens to know some of us here, in perhaps

key positions, just presented a proposition that we extend for another five years these exemptions which are costly to the taxpayers of the state, we have been very casual indeed about how we've granted these privileges and, as a consequence, we have gotten into legal problems which some of us have warned against.

"I think we should be careful in other areas of special privileges. Let the caveat here in this body be that we treat everybody, citizens and entities in this state, equally, because I've seen for the years that I've been here, many other special privileges, very costly, very costly to the taxpayers of the state ... nontaxable special purpose revenue bonds to purported nonprofit institutions. Nowadays we even provide it for profit institutions ... to specific industries, specific entities, and not provide this equally in an application to all private entrepreneurs.

"Some of these kinds of actions we take which, I repeat, is costly to the taxpayers are someday going to be challenged in the courts of our country and then declared invalid. I would venture to say, even some of the privileges we provided to OHA is someday going to be challenged in the U.S. Supreme Court. The primary message I have here is that we've got to exercise more diligence in examining very critically, some of the special privileges we grant here which is costly, I repeat for the third time, to the state taxpayers.

"Perhaps this is an object lesson we should never forget and I want to thank Senators Abercrombie and Cayetano for articulating what I would have said. I think this is an important message and if we meet in this five-day session for no other reason than to consider very carefully their remarks, I think the five-day session and cost imposed on the taxpayers may have been worthwhile."

Senator Yamasaki also rose to speak for the measure as follows:

"Mr. President, I'd like to note, in response to the first speaker who read portions of the committee report, S1 I think it is. That committee report contained some language, I guess, in which he felt was disagreeable and I think we agreed to disagree.

"The committee report S3-84 which was adopted yesterday states that, 'Your Committee notes that action on

this matter was not taken during the Regular Session of 1984 upon the advice of the Attorney General that any such action might jeopardize the State's legal position before the United State Supreme Court. As this bill before your Committee shows, the action that might have been taken during the Regular Session of 1984 would not have been sufficient in any case.'

"That's the section of the committee report which was read into the record which had additional words attached to it.

"As we know, Mr. President, this session was called by a proclamation of the Governor of this state for consideration of the liquor tax law and I think that the Governor made clear his position why he is calling a special session -- to remove any cloud whatsoever on Chapter 244 -- and his position was, I believe, that we should reenact Chapter 244 with the exemptions removed from the statute and so we have this bill which is now in proper form.

"I believe that there was an article, an editorial also in the Star-Bulletin of July 9, 1984 in which the headline of the editorial was, 'A Costly Special Session.' And, they too felt that they concurred with the two Senators who took the position that we should repeal the exemption during the last session.

"I think the Governor made it clear that the purpose of calling this special session is to remove any cloud whatsoever to make sure that Chapter 244 is in proper legal form; therefore, Mr. President, I urge each and everyone to vote 'aye' on this bill. Thank you."

Senator Henderson also spoke in support of the bill as follows:

"Mr. President, I would first like to concur with what Senator Cayetano said. I was at that meeting with Attorney Dexter and there was no question, in my mind there were no shades of gray, he was black and white about what we should have done in the last session.

"Dexter told us point blank that if we wanted to protect the revenues of the State of Hawaii we should get rid of the rum exemption. It was that simple. That's what we proposed to do last session.

"Now, whatever reason the Governor had to not do that because

he thought the case might be jeopardized, that never came out in our meeting with Dexter. I think Bruce Honda was there, I think their concern was that if there was any jeopardy on the pure process at all ... that the case had been argued before the Supreme Court and there was very little chance that any action in the Legislature here would have affected the outcome of the Supreme Court's decision.

"I just feel that, also, with this bill that we are passing now, we haven't done anything different. We, in effect, are passing a whole new law without the exemption where our bill last session would have just gotten rid of the exemption. There are no changes, not one word that's different from what would have happened if we passed the bill last year to get rid of the exemptions.

"The other thing I might point out is that we are not out of the woods on this matter yet. Apparently, the liquor industry isn't satisfied with the ad valorem tax and we might have to consider next session, maybe, a gallonage sort of tax. I can see that this thing is going to be around next session also.

"In addition to this there are other taxes on the books that we ought to take a good look at next year. We have the Tax Review Commission coming down and we should be looking at the insurance tax because the tax we place on insurance companies varies whether they are domestic, foreign or alien companies so we have discrimination in our insurance tax laws and the same problem might face us there as has faced us here.

"But I think there is a measure that needs to be done, Mr. President, that we ought to vote this bill into law and I support its passage."

Senator Abercrombie then responded as follows:

"Mr. President, just in rebuttal to the Judiciary chairman's remarks, the only shade of gray around here is the fog machine that has descended on the floor. I am familiar with the dissent written in the case before us and by the quotations given by the Judiciary chairman himself, I think he's quite aware of the fact he's engaged in a non sequitur with respect to the question before us.

"Obviously, as the Supreme Court dissent indicated, the prohibition of

all with the production locally is within the power of the state. If we want to enact a prohibition statute in this state we can do so ... that was not before the court, that's a philosophical point that was made in the dissent and it has nothing to do with the bill before us and the committee report, the logic of the committee report that was before us.

"Second, with respect to the subsidy, that was already suggested by the Senators who presented the bill before us and that was well-articulated in the discussion that took place ... a subsidy or tax credit or some other kind of promotional fee or something of that nature. So that again is not at odds with the dissent. That has nothing to do with what the reason is for the bill being presented in the last session. It has nothing to do with the reason for its presentation in the last session.

"The reason for its presentation was not to take a chance with the philosophy of prohibition or nonprohibition, or subsidy or nonsubsidy, all the rest of it. Not to take a chance on the revenues when we might very well face the prospect of restrictions in the budget. Now what has taken place is, and I realize that the reason actually that we are here today is there is one thing, only one thing that is worst than being wrong in politics and that's being right.

"The people who said that we shouldn't take a chance were right; therefore, we have to be punished with a five-day session and talks about gray shades. The only people who are being punished in all of this at the present time are the people who may not enjoy the benefits of the funds that might have come our way otherwise.

"So, I will say in closing, unless someone wants to take a 'kanalua' vote, there will be a yes or no situation today and not an in-between one."

Senator Cobb then added his support of the measure as follows:

"Mr. President, the roll call tally sheet before us has three columns, 'aye,' 'no,' and 'excused.' A fourth column is needed. It should read 'I told you so' because I agreed with some of the previous speakers, and when we met with the Governor that point was conveyed. But I'd like to go back and touch a little on some of the legislative history that brings us

to this day.

"Two years ago, the same Supreme Court of the United States upheld a so-called Primary Source law. They did so in the face of specific legislative findings that we had made in this Legislature that the bill or the law involving primary source was anti-competitive, restrictive, monopolistic, and caused higher consumer prices but the court held that that is within the state's purview to enact, if a state so chooses to do so under the terms of the Twenty-First Amendment.

"This decision which was rendered on June 29th, a split five to three decision. I would note that one of the dissenters wrote the unanimous Supreme Court decision on the leasehold matter where the state prevailed, that is Justice Sandra Day O'Connor. At least the dissenters were consistent in their advocacy of states' rights, both in matters of leasehold as well as in liquor.

"Mr. President, it is a practical reality, we've had discussions in caucus ... I can recall quite often in the past where the consideration of a gubernatorial veto was certainly germane to the discussion. I know because this session I was the victim of a veto, if you will, involving the usury bill where we attempted to put some sort of cap on agreements of sale because of the documented abuse that had taken place in that area that we had found over the last four years. I can guarantee you that will be a consideration in next year's bill. And it was made very clear to us that the passage of this measure involving liquor would have been subject to a veto had we attempted to do so.

"That still doesn't answer the question that was raised about the separation of powers. But it is a material consideration that is discussed in caucus here quite frequently and I know it will be next year on next year's usury bill.

"Mr. President, if the tally could include that fourth column, it would be more likely, twenty 'I told you so,' and five 'ayes,' but I think we have no choice but to pass this. My regret, in agreeing with some of the previous speakers, was that the action was not taken earlier when the opportunity presented itself even though I don't think that would have affected the decision. Thank you."

Senator Carpenter also spoke in support of the measure as follows:

"Mr. President, briefly speaking in favor of this bill, I'd like to address a couple of points that may speak to legislative history that has yet to be made relating to this liquor tax law.

"Mr. President, I don't think there's any question in my mind and probably most of our minds here today that the purpose clause, Section 1 of the bill, pretty much explains our position, as does the committee report, which attempts to say in effect that, with the exception of the exemptions portion, the law as it presently reads or will be reenacted is basically the same. The monies that have been collected thus far, even though they may have been paid under protest, are in essence the property of the people of the State of Hawaii.

"Mr. President, in light of the pressure that may be applied in the next session, addressed very briefly by the Minority Leader when he indicated that the wholesalers would be pressuring for a tax shift from ad valorem basis to gallonage basis, my feeling is that we should not shift as a state from an ad valorem to a wholesale or a quantity basis. Ad valorem tax is applied on the basis of market value or marketable value per unit of product, and it should continue that way rather than be changed to gallonage or a percentage of alcohol content basis. The ad valorem basis as I see it is treating the product or the commodity that is being taxed as a luxury. That it is, because I don't think anywhere can it be shown that there is a need or that this particular product or line of products containing alcohol has been shown to be in great need by the community-at-large.

"I think the proponents of a 'gallonage' tax would have a very difficult time arguing that the state would be discriminating against 'quality' related to that product in pursuing their point for a gallonage tax. I'd like to strongly recommend that future discussions stick with the ad valorem method. Treat the commodity as a luxury, and according to value across-the-board. I personally don't see anything constitutionally wrong with the present 20 percent tax and perhaps it should even be increased, to increase the potential revenue to the state. Thank you."

Senator Cayetano then added as follows:

"Mr. President, just a couple of

points.

"The previous speaker referred to the purpose clause of the bill and I would like to read into the record one portion on page 1, beginning with line 7, it says, 'It is the declared intention of the Hawaii State Legislature to continue in force all of the provisions of chapter 244, the Hawaii Liquor Tax Law, as though the law was enacted without the exemptions accorded to okolehao, fruit wine and rum manufactured in the State.'

"If that isn't the greatest indictment that what we're doing here today could have been done last session, I don't know what is.

"Finally, with respect to the cries now by the liquor wholesalers about the constitutionality of the ad valorem aspects of the liquor tax, let me say this, that if our liquor tax, because it is based on an ad valorem basis is declared unconstitutional, then we had all better be ready to deal with our general excise tax because that also will be declared unconstitutional.

"My own feeling is that liquor wholesalers are now doing what winners usually do, they are beating on the tails of the whipped dog, the State of Hawaii, and trying to con us into a corner and get us to consider moving to a gallonage basis next year. I think that argument is totally without merit and if we do so then I think that we will be moving in the wrong direction.

"I think it's a damn good idea that anyone who drinks Chivas Regal should pay more than one who drinks Thunderbird wine."

Senator Yamasaki also added as follows:

"Mr. President, reference was made to a meeting held during the last session with the special counsel hired by the Attorney General on the liquor tax case and I disagreed with the recommendations of the special counsel who said that we should repeal the exemption during the last session. And as I said for the record during the last session, I was advised long, long ago that if I have a case in court, that I should not open my mouth any further. That you leave it to your attorneys that represent you in court. And he told me also, further, that any attorney who is worth a grain of salt will so advise his client.

"And you will recall that last session, during the period when the corporate takeover bill was being considered by the Legislature, the corporation involved, their attorneys advised their people not to participate in any more testimony before the Legislature because there is litigation on that issue in the state court.

"This is what I would like to make clear -- as long as I have known and as long as I have read, legal matters and advices, my advice has been to keep your mouth shut and don't say anything that might jeopardize your case in court. Thank you."

Senator Kawasaki then remarked: "Mr. President, I just want to remind the good Senator that the corporate takeover was another one of those 'I told you so' situations."

On motion by Senator Yamasaki, seconded by Senator B. Kobayashi and carried, H.B. No. 1-84, 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 COMMUNICATION

A communication from the House (Hse. Com. No. S2-84) informing the Senate that the House of Representative, Twelfth Legislature, Special Session 1984, has, on July 13, 1984, adjourned sine die, was read by the Clerk and was placed on file.

At this time, the Chair made the following remarks:

"Members of the Senate, before we adjourn this special session sine die, I would like to just make a few brief remarks.

"This special session of the Legislature was convened to reenact the Hawaii liquor tax, so as to remove any legal ambiguities about its status in the wake of the recent U.S. Supreme Court decision. We came in on Monday, we did our work expeditiously, and now we're ready to finish up and go home.

"I would like to thank all the Senators for rearranging your schedules so as to be able to attend this special session on such short notice. Now you can all go back to your regular lives. For those of you on the election campaign trail, good

luck to you. I wish you all success. For those of you who are holdover Senators, I hope you all have a relaxing and enjoyable summer.

"My thanks also to the Senate staff who did all the work necessary to carry out this special session. Mahalo to you all.

"There being no further business, the Chair will entertain a motion to adjourn sine die."

## ADJOURNMENT

Senator Cobb moved that the Senate of the Twelfth Legislature of the State of Hawaii, Special Session of 1984, adjourn Sine Die, seconded by Senator Soares and carried.

At 12:30 o'clock p.m., the President rapped his gavel and declared the Senate of the Twelfth Legislature of the State of Hawaii, Special Session of 1984, adjourned Sine Die.

GOVERNOR'S MESSAGE RECEIVED AFTER THE ADJOURNMENT  
OF THE LEGISLATURE SINE DIE

Gov. Msg. No. S3-84 informing the Senate that on July 14, 1984, he signed the following bill into law:

House Bill No. 1-84 as Act 1,  
entitled: "RELATING TO TAXA-  
TION."



## STANDING COMMITTEE REPORTS

## SCRep. S1-84 Legislative Management

Informing the Senate that S.B. No. S1-84 has been printed and was distributed to the members of the Senate on July 9, 1984, prior to the 11:00 o'clock a.m. session.

Signed by all members of the Committee.

## SCRep. S2-84 Ways and Means on S.B. No. S1-84

The purpose of this bill is to reenact the Hawaii Liquor Tax law.

Your Committee finds that the Hawaii Liquor Tax law, chapter 244, Hawaii Revised Statutes, was challenged in the United States Supreme Court because of exemptions from that tax for okolehao and fruit wine. The decision in Bacchus Imports, Ltd., et al. v. Dias, \_\_\_ U.S. \_\_\_, Sup. Ct. No. 82-1565 (1984) found that such exemptions violated the interstate commerce clause of the United States Constitution and that the exemptions were invalid. In making this finding, the court's opinion was not clear as to whether it was invalidating only the exemptions or the Hawaii Liquor Tax law as a whole. Therefore, your Committee finds that in order to remove any doubt concerning the force and effect of the Hawaii Liquor Tax, the law should be reenacted. In reenacting this law the legislature is deleting the exemptions for okolehao and fruit wine, both of which have expired and the exemption for rum which does not expire until June 30, 1986.

Your Committee notes that action on this matter was not taken during the Regular Session of 1984 upon the advice of the Attorney General that any such action might be viewed by the United States Supreme Court as an admission of wrong on the part of the Hawaii Legislature. As this bill before your Committee shows, the action that might have been taken during the Regular Session of 1984 would not have been sufficient in any case, since only a repeal of the offending exemptions was contemplated.

Your Committee finds that the Hawaii Liquor Tax law should be reenacted in order to remove any doubt concerning its validity and that it should be reenacted as an ad valorem tax at the existing rate of 20 per cent of wholesale.

Your Committee on Ways and Means is in accord with the intent and purpose of S.B. No. S1-84 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

## SCRep. S3-84 Ways and Means on H.B. No. 1-84

The purpose of this bill is to reaffirm the legislative intent that the liquor industry shall continue to be taxed for the manufacture and sale of intoxicating liquor in the State of Hawaii in the same manner and pursuant to the same scheme as currently provided in chapter 244, Hawaii Revised Statutes, without, however, the exemptions accorded to okolehao, fruit wine, and rum. This bill, therefore, expresses the legislative intention to continue to administer and enforce, in the manner heretofore administered and enforced, the provisions now contained in chapter 244, Hawaii Revised Statutes, except for the exemptions invalidated by the United States Supreme Court in Bacchus Imports, et al. v. Dias, \_\_\_ U.S. \_\_\_, Sup. Ct. No. 82-1565, decided June 29, 1984.

In Bacchus, the wholesaler-distributors challenged the constitutional validity of the liquor tax law by reason of the exemptions accorded to the manufacture and sale of okolehao and fruit wine produced from fruits grown locally in the State. Because the exemptions favored local products, the wholesaler-distributors contended the exemptions discriminated against their imported products. By its decision, the United States Supreme Court rendered the following conclusion: "We therefore conclude that the Hawaii Liquor Tax exemptions for okolehao and pineapple wine violated the Commerce Clause

because it had both the purpose and effect of discriminating in favor of local products." Notwithstanding this conclusion by the Court, your Committee is informed that the wholesaler-distributors may yet contend that the Court has invalidated the entire liquor tax law.

Testimony furnished by the Department of Taxation establishes that, for each month since the litigation has begun, local wholesaler-distributors have paid their taxes under protest at the rate of approximately \$2,000,000 a month and that the total amount of revenues now in escrow approximate \$100,000,000. This money, therefore, has been diverted from the general fund and is not available for use for the general good of the State. The Department of Taxation is of the opinion that, as long as the invalidity of the liquor tax law is being questioned, the wholesaler-distributors will continue to pay their taxes under protest.

For the foregoing reasons, your Committee believes that it is prudent that a Hawaii liquor tax law be enacted without the exemptions, and the existing chapter 244, Hawaii Revised Statutes, be repealed to remove any doubt as to the validity of the Hawaii liquor tax and the collection thereof for placement into the general fund of the State.

Your Committee has also amended section 231-1, Hawaii Revised Statutes, to continue to give the Director of Taxation the authority to administer the provisions of Section 2 of this bill. Section 281-83, Hawaii Revised Statutes, has been amended to continue to allow the liquor dealers to pass the tax on to their respective purchasers and to be reimbursed therefor, provided the tax is separately itemized.

There are other provisions in the Hawaii Revised Statutes which currently refer to, or may be affected by, chapter 244, Hawaii Revised Statutes, which is being repealed under this bill. It is the intent of your Committee that all such provisions shall remain in force, and any references in such provisions to chapter 244, Hawaii Revised Statutes, shall be and mean references to the provisions of Section 2 of this bill.

Your Committee notes that action on this matter was not taken during the Regular Session of 1984 upon the advice of the Attorney General that any such action might jeopardize the State's legal position before the United States Supreme Court. As this bill before your Committee shows, the action that might have been taken during the Regular Session of 1984 would not have been sufficient in any case.

Your Committee on Ways and Means is in accord with the intent and purpose of H.B. No. 1-84 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Senator Mizuguchi.

NUMBER AND TITLE	Introduced Referred	First Reading	Second Reading	Third Reading	Action of House	Conference Committee	Final Action of Governor	Further Action	Act No.	Vetoed
SB S1-84. A BILL FOR AN ACT RELATING TO TAXATION.	1 3	1	9	10						

NUMBER AND TITLE	Offered	Referred	Report of Committee	Adoption
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SR S1-84. AUTHORIZING THE PRESIDENT TO APPROVE THE JOURNAL OF THIS SENATE FOR THE FIFTH DAY, SPECIAL SESSION OF 1984.

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NUMBER AND TITLE	Received Referred	First Reading	Second Reading	Third Reading	Action of House	Conference Committee	Final Action	Action of Governor	Further Action	Act No.	Vetoed
HB 1-84. A BILL FOR AN ACT RELATING TO TAXATION.	10 10	10	11	12 20				21		1	