

TWENTY-NINTH DAY

Tuesday, March 5, 1985

The Senate of the Thirteenth Legislature of the State of Hawaii, Regular Session of 1985, convened at 11:45 o'clock a.m., with the President in the Chair.

The Divine Blessing was invoked by the Reverend Tuck Wah Lee of the United Church of Christ, after which the Roll was called showing all Senators present.

The Chair announced that he had read and approved the Journal of the Twenty-Eighth Day.

Senator Chang then introduced to the members of the Senate Mrs. Grayce Schoonfield, his mother-in-law, who is visiting from Los Angeles, California.

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 196 to 199) were read by the Clerk and were disposed of as follows:

Gov. Msg. No. 196, transmitting the Progress Report of the State Health Planning and Development Agency, Phase I, prepared by Peat, Marwick, Mitchell & Co. for the Department of Health, pursuant to Act 267, SLH 1984, was referred to the Committee on Health.

Gov. Msg. No. 197, submitting for consideration and consent to the First Circuit Court, the nomination of Wilfred K. Watanabe, as Judge, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, for a term of ten years, was referred to the Committee on Judiciary.

Gov. Msg. No. 198, submitting for consideration and consent to the Second Circuit Court, the nomination of E. John McConnell, as Judge, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, for a term of ten years, was referred to the Committee on Judiciary.

Gov. Msg. No. 199, submitting for consideration and consent to the First Circuit Court, the nomination of Frank Tokio Takao, as Judge, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, for a term of ten years, was referred to the Committee on Judiciary.

SENATE CONCURRENT RESOLUTIONS

The following concurrent resolutions (S.C.R. Nos. 24 and 25) were read by the Clerk and were disposed of as follows:

S.C.R. No. 24, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF TRANSPORTATION TO INVESTIGATE TRAFFIC REDUCTION ALTERNATIVES FOR THE PALI AND LIKELIKE HIGHWAYS," was offered by Senators Hee, Cayetano and Toguchi.

By unanimous consent, S.C.R. No. 24 was referred to the Committee on Transportation.

S.C.R. No. 25, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING A REORGANIZATIONAL PLAN TO SEPARATE THE SCHOOL OF TRAVEL INDUSTRY MANAGEMENT FROM THE COLLEGE OF BUSINESS ADMINISTRATION OF THE UNIVERSITY OF HAWAII AT MANOA AND TO INCREASE SUPPORT ALLOCATED TO THE SCHOOL OF TIM," was offered by Senators Soares, Holt, Henderson, George, A. Kobayashi, Aki, Hagino, Matsuura and Toguchi.

By unanimous consent, S.C.R. No. 25 was referred to the Committee on Higher Education.

SENATE RESOLUTIONS

The following resolutions (S.R. Nos. 28 and 29) were read by the Clerk and were disposed of as follows:

S.R. No. 28, entitled: "SENATE RESOLUTION REQUESTING THE DEPARTMENT OF TRANSPORTATION TO INVESTIGATE TRAFFIC REDUCTION ALTERNATIVES FOR THE PALI AND LIKELIKE HIGHWAYS," was offered by Senators Hee, Cayetano and Toguchi.

By unanimous consent, S.R. No. 28 was referred to the Committee on Transportation.

S.R. No. 29, entitled: "SENATE RESOLUTION REQUESTING A REORGANIZATIONAL PLAN TO SEPARATE THE SCHOOL OF TRAVEL INDUSTRY MANAGEMENT FROM THE COLLEGE OF BUSINESS ADMINISTRATION OF THE UNIVERSITY OF HAWAII AT MANOA AND TO INCREASE SUPPORT ALLOCATED TO THE SCHOOL OF TIM," was offered by Senators Soares, Holt, Henderson, George, A. Kobayashi, Aki, Matsuura, Toguchi and Hagino.

By unanimous consent, S.R. No. 29 was referred to the Committee on Higher Education.

STANDING COMMITTEE REPORT

Senator Aki, for the Committee on Economic Development, presented a report (Stand. Com. Rep. No. 322) recommending that Senate Bill No. 967, as amended in S.D. 1, pass First Reading and be recommitted to the Committee on Economic Development.

On motion by Senator Aki, seconded by Senator Matsuura and carried, the report of the Committee was adopted and S.B. No. 967, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO LAND," passed First Reading and was recommitted to the Committee on Economic Development.

ORDER OF THE DAY

THIRD READING

MATTERS DEFERRED FROM
MONDAY, MARCH 4, 1985

Senate Bill No. 153:

By unanimous consent, S.B. No. 153, entitled: "A BILL FOR AN ACT RELATING TO GEOTHERMAL ENERGY," was recommitted to the Committee on Energy.

Senate Bill No. 1351, S.D. 1:

On motion by Senator Young, seconded by Senator Hee and carried, S.B. No. 1351, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, 2 (Abercrombie and George). Excused, 1 (Hagino).

Senate Bill No. 117:

Senator Yamasaki moved that S.B. No. 117, having been read throughout, pass Third Reading, seconded by Senator Mizuguchi.

Senator Abercrombie rose to speak against measure as follows:

"Mr. President, I spoke yesterday against this bill. Mr. President, since that time, I have reflected on the bill and I find that I can see little to change my mind to be against this bill with respect to what is called frivolous tax returns.

"I call the members attention, again, just as a reminder, to the language of the bill itself, lines 8, 9, 10, ' ... contains information that on its face indicates that the self-assessment is substantially incorrect; and the conduct is due to a position which is frivolous or a desire (which appears on the purported return) to delay or to impede the administration of the tax laws ...'.

"Mr. President, I ask all the members here to think very carefully about how a government agency could use that against the individual, to force that individual into court. Mr. President, I think the reason that we pass laws like this occasionally is we think it will never happen to us and it may very well be that it doesn't happen to us but we do not pass bills on the basis of what ... we should not pass bills on the basis on what might not happen to us or to our friend or to our acquaintances or to those whom we hold in high regard. We have to pass laws and we should pass laws and we should be cognizant of this in the body of the laws that we pass in terms of how it affects the average person, the single person, the individual who depends entirely upon us to act in the public interest and in the interest of the individual citizen in this country, and taxpayer in this country.

"Mr. President, people pay taxes in this country and people put in tax returns who do not understand the English language as well as some of the people in this room, and who will be voting today might understand it. Just think of the language, please, in this bill ' ... and the conduct is due to a position which is frivolous' I honestly would ask all the members here if they can define for me what is 'a position which is frivolous.'

"What this bill says is that the return need not even be frivolous in and of itself but merely put you into the position of being frivolous. I don't know if the word 'position'... perhaps there are lawyers on the floor who can tell me if there is something in the law which defines 'position.' But I can tell you as a layman reading this language that this gives the opportunity to an agency of the government, should it decide to take revenge upon a given individual, that it could utilize such language to declare that the 'position' of the person making the tax return is frivolous and that they have a desire. Desire, Mr. President, is a thought crime. Not to have the act of committing a fraudulent return or even a frivolous return, if that's to be a word that is going to be accepted, but the desire to delay or impede. That's almost like conspiracy. It is in fact thought crime. You had the desire. How do you know what desires I have or do not have? How is that possible to be proved? But you will be taken to court and your desires will be on trial.

"Now, this is not my language and I'm not trying to be picky about this, I am describing to you the effect of what I believe exists as a result of the language which is in this bill and that's what we're voting on and that's what we're going to pass.

"How is it possible in 1985, just after the year 1984 has passed in which Orwell's book indicated what happened to people when

thought crime took place. We have gone through a spasm of trials in this country in the 1960's and in the 1950's in which people lost their jobs, in which people were prosecuted in the courts because of supposedly what was in their thoughts and what those thoughts were supposed to portend for the body politic. Not for what they did but for what they thought or were supposed to have thought. What people's interpretations of their thoughts were. And here we are actually using the word desire. Again, I am not an attorney but I would certainly like to ask attorneys whether desire now is also something that is legally being established in terms of a definition so that prosecution can take place. And I repeat, that is not for us but for the ordinary person.

"We may not think that we would ever be the subject of an investigation by a government agency but just yesterday we introduced a distinguished theologian here, a black American, Dr. Cornel West, and we know that the FBI had investigated Martin Luther King. We know that people who had thoughts that some people didn't approve of have been investigated and dossiers assembled about them. We know that in some administrations, in the highest levels of government in this country, that tax returns were going to be utilized and attempts were made to utilize tax returns to take revenge upon political opponents at the highest levels of this nation, and this has taken place in recent history so we are not exempt from that history.

"We should pay the closest attention, therefore, to the kind of language that is put into any bill with particular reference to enabling the government to bring prosecution against the average citizen. And when you talk about tax returns, you're talking about the one area of government that virtually everyone fears because you are never sure whether you are doing the right thing or the correct thing. You're never quite sure that what you put down is exactly correct. You're never quite sure that something cannot be questioned and here we are giving the opportunity to a government agency then, should it choose to do so, to bring an individual into court and force that person to prove that they did not have a position which is frivolous or that they did not have a desire to delay or impede the administration of the tax laws. The administration of the tax laws! Not the tax laws themselves, but that you're interfering with the bureaucrat being able to tax you.

"It doesn't say in this language 'impede the tax laws or delay payment on your returns' but the administration. In other words, you've upset a bureaucrat in the tax department. That's what the language says.

"Mr. President, I cannot believe that this body, after due deliberation, would pass a bill like this with this kind of language and with that kind of implication. Thank you."

Senator Fernandes Salling also rose to speak against the measure as follows:

"Mr. President, I believe that another factor that we should consider before we vote on this bill is whether or not there really is a serious problem out there which necessitates us imposing this kind of penalty. According to the Tax Foundation, it appears that out of 11 million federal tax returns that were filed in California-Hawaii in 1983, 151 returns were assessed the \$500 civil penalty and, of that number, only five were filed in Hawaii. So, I submit to all of you here that I don't believe that we do have a serious problem which will necessitate us having to pass this legislation. Thank you."

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

"Mr. President, we all spoke against this bill yesterday. Perhaps it is important that we reaffirm our opposition to enabling the tax department to continue with this gradual trend towards trampling on people's rights of expression. I have been in the past a little concerned that Congress seems to be helpless or afraid to curb the excesses of the treasury department at the federal level and we are beginning to do this over here. It just seems to me that passage of this will indicate to the population that we do nothing about this gradual trend that give powers, perhaps, that should not be given to the tax departments, both at the state level and the federal level and I think defeat of this bill will indicate to the public that we are concerned about keeping control of government bureaucracies and their trend to oppress citizens.

"The definitions provided here as to what consists of frivolous returns is not quite clear in my mind as well as the minds of others and I am in complete agreement with Senator Abercrombie that perhaps this is not the time for us to pass this kind of bill. We've gotten along without it all these years, I think we can continue to do without this bill."

The motion was put by the Chair and carried, and S.B. No. 117, 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, 7 (Abercrombie, Cayetano, Cobb, Fernandes Salling, Kawasaki, McMurdo and Toguchi). Excused, 1 (Hagino).

Senate Bill No. 119, S.D. 1:

Senator Yamasaki moved that S.B. No. 119, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Mizuguchi.

Senator Kawasaki rose to speak against the measure as follows:

"Mr. President, this is another one of those bills, as I said, that continue with this trend toward giving the tax department more power to trample on the rights of citizens.

"We have today a provision that anytime a taxpayer files a fraudulent return the tax office has no limitations on the number of years it has to consider to get at that taxpayer ... examine his returns, require all information to be submitted to him relative to that return for the years we're talking about. We do have this nonrestriction of a limitation by a statute limitation so we don't need a bill like this to expand the present three-year limit on the statute of limitation to six years.

"Again, I speak against passage of this bill because this also is an incursion upon the rights of citizens in this country."

Senator Abercrombie also spoke against the measure as follows:

"Mr. President, perhaps someone who is in favor of this bill ... I speak against the bill, again. I was interested, when we stand up and be against these bills, you can't find anybody to speak in favor of it but maybe we can get it in this one. Would somebody explain to me why we need to double the time from three years to six years? I wasn't a party to the deliberations on this particular bill and I presume that the tax department or the attorney general or someone came in and was able to present a detail and compelling case that the administration of justice with respect to the tax codes and so on was in such peril, such dire peril that it was absolutely necessary for the Legislature to double the statute of limitation so that prosecutions can take place.

"Is there anyone in favor of the bill who could enlighten me on that particular point?"

The Chair inquired: "Is that a request to the body or the Chair or"

Senator Abercrombie interjected: "At this stage, Mr. President, if you want to you can ask people in the gallery but I'd prefer someone who's going to vote in favor of this would give me an answer. I'm open to any and all quarters. Thank you."

Senator Yamasaki then responded:

"Mr. President, the information, the testimony that we have received from the tax department regarding the passage of this bill is that the amendment would keep the statute open in cases of unreported income in excess of 25 percent of reported gross income. Presently, under the three-year statute, the Department of Taxation is unable to collect taxes due on the underpayment even after notification of the adjustment made by the Internal Revenue Service. These were the further comments regarding this bill that we have received from the Department of Taxation."

Senator Abercrombie then continued as follows:

"Mr. President, I appreciate that response but, Mr. President, that does not make...unfortunately, I think it bears on my comments on being against this bill because it has no relationship to this bill and the necessity for it.

"As one of the previous speakers, Senator Kawasaki, pointed out, if there is a fraudulent return than this does not apply. And, if I'm not mistaken, Mr. President, an individual was sent to prison right from this state, ostensibly connected with what has been termed organized crime, sent away for 15 years. I believe that individual served eight years of that 15-year term before being paroled...on the basis of unreported income in excess of the 25 percent over a period of time much longer than the three years involved. So, if we're talking about prosecution for fraud that's one thing, and in that instance it doesn't apply. But there apparently is no evidence that they need this bill in order to do this.

"The fact that it might be convenient, I suppose, in some theoretical basis for the tax department is one thing but that is not a reason for passing legislation.

"I've indicated several times already this term and I guess the longer I serve here in the Legislature, I don't know what we have political parties for anymore because they apparently don't stand for anything. They put up with an awful lot but they don't stand for anything, or they force the taxpayers and the citizens to put up with a lot but they don't stand for anything. And, so, maybe we have to have an independent point of view come to bear because I cannot understand why we pass legislation when the necessity for it is not there. I think the government should not be involved in people's lives anymore than it absolutely has to be in order to protect the public interest. And when it starts getting down to this level it appears that we have nothing serious to do and so, therefore, we have to go and find ways to harass our own citizens with language in bills that become laws for which there is no necessity, apparent or

otherwise.

"We don't have to pass laws. I suppose the population would come into the street and cheer us if we got through one of these sessions bragging about not how few bills got introduced but, rather, how much we avoided harassing the population by passing unnecessary laws.

"This bill is clearly unnecessary. There is no compelling reason to pass it and, therefore, we should defeat it."

Senator Cayetano also rose to speak against the bill and stated:

"Mr. President, anytime we set statutes of limitations we have policy considerations and had this bill not made an exception I suppose one could argue that the statute of limitation should be six instead of three years. But what I don't understand about this bill and, in my view, what may make this bill constitutionally infirm in terms of denial of equal protection is that..and I haven't researched that point, quite frankly ... is that the six-year statute of limitations under this bill would apply only if the underestimated income is in excess of 25 percent of the amount of the gross income.

"I quite frankly don't know what the magic is in 25 percent. I think when we look at any bill we have to look at the bill in terms of fairness and what this bill seems to be saying is that if you underestimate by less than 25 percent, three years is it for you. If you go over then it's six years. It just doesn't make sense to me."

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

"Mr. President, this measure conforms to the requirements in the federal IRS code and, also, I believe that this bill will serve as a notice to taxpayers that the department has six years to impose additional taxes, should omission of income be more than 25 percent."

Senator Cayetano then responded:

"At last ... we have the real reason. It's the Federal Government again."

The motion was put by the Chair and carried, and S.B. No. 119, 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, 17. Noes, 7 (Abercrombie, Cayetano, Cobb, Fernandes, Salling, Kawasaki, A. Kobayashi and McMurdo). Excused, 1 (Hagino).

Senate Bill No. 35:

Senator Yamasaki moved that S.B. No. 35, having been read throughout, pass Third Reading, seconded by Senator Mizuguchi.

Senator Abercrombie rose to speak against the bill as follows:

"Mr. President, perhaps before I speak against the bill, the chairman would be good enough to answer a question?"

The Chair posed the question to the chairman and Senator Yamasaki replied: "I will try to."

Senator Abercrombie continued:

"I appreciate that, Mr. President.

"Mr. President, would you see if the chairman could try to answer this question.

"If there is some reason why we should deal with this bill at this time, which I presume has to do with the June 30th, 1985 drop dead figure, is there any reason why we could not simply extend the present 14 percent limit that now exists in the law up to June 30th, 1985?"

Senator Yamasaki answered:

"Mr. President, it is possible to extend but the department has called to our attention that by placing a figure of 14 percent or 9-1/2 percent, the department has not had the opportunity to go to the bond market because of our fixed position on interest."

Senator Abercrombie then continued:

"I want to make sure he understands, Mr. President, that the department has been unable to go to the bond market at the 14 percent interest rate ... does that mean that there have been times when there has been an over 14 percent and they were unable to go to the market?"

Senator Yamasaki answered:

"Mr. President, such has not been the case, however, I believe that the department wants to have the flexibility to go into the bond market so that they would be able to go at an opportune time when the interest rate is low; however, by fixing an interest ceiling of 14 percent would present some difficulty to the department when and if they would like to go to the bond market."

Senator Abercrombie further inquired:

"Mr. President, could the chairman indicate, on the average basis of the bonds that we deal with in the market, what a one percent rise in the interest rate means in terms of what obligation the taxpayers have in the state?"

Senator Yamasaki answered:

"Mr. President, I don't have those figures but I think that we have some figures on our debt ceiling requirement in the budget and that is based on our expected average interest rate that we have been paying."

Senator Abercrombie continued:

"Mr. President, perhaps I can make it a bit clear, the committee report says: 'Expenditures for capital improvement projects are expected to continue at a rate of about \$150 million a year.' So my question is, is that a rate of a \$150 million a year? Is there an estimate as to what it cost the taxpayers everytime there is a percentage rise, a one percent rise, in the interest rate?"

Senator Yamasaki answered:

"Mr. President, I believe that the total amount of the debt service charge is reflected in the budget but I do not believe that there is any breakdown by percentages. The bond market fluctuates."

Senator Abercrombie continued:

"Thank you.

"Mr. President, I will speak against this bill and I will speak against it as vehemently as I can.

"Mr. President, I think that the chairman of the Ways and Means Committee would admit and that all the members on the floor would admit that a percentage rise in the interest rate causes substantial cost to be incurred by the taxpayers of the state. We are talking about millions and millions of dollars that must be paid, not just by you and I, Mr. President, but must be paid by your children and most likely your grandchildren.

"Anytime we go into the bond market, we have to have a purpose which is long term, which must serve the public interest because the debt service on these bonds is of a long term nature. When you put it up to 14 percent, as we have, and as you know I had a great hesitancy about that, 14 percent causes an enormous increase in the amount of money which must be provided in the operating budget up front. When some of us and virtually all of us who chair a committee are being given budget ceilings, I ask you to consider the fact that the debt service obligation gets paid first, not the elderly, not the poor, not the needy, not the children, not the abused, the debt service gets paid first.

"When we talk about flexibility for the department ... once again, I've raised it on this floor the past couple of days, I've raised it in other sessions of the Legislature, we are abdicating our responsibility as legislators. We have no business allowing a

department of budget and finance which is not elected by the people of this state to go into any bond market at over 14 percent. No project at that stage, if the interest rates are blown through the 14 percent ceiling, no project should go forward unless this Legislature meets in special session to reconsider its entire financial situation. It means the economy has gone sky high. It means the economy is in chaos throughout the country.

"This Legislature cannot go to sleep under those kinds of circumstances and let some bureaucrat in budget and finance say what difference does it make if we obligate the people of this state for the next 20 or 30 years at an interest rate, at God knows what rate. If you take the rate off that means it can be 15 or 16 or 18 or 20...it doesn't make any difference because we won't be here to stop them. You've given them permission in this law.

"On the other hand, in the marketplace if the interest rates are lower, they can go when they are lowest. Nothing, by putting on a cap, ever prevents a department from going in at the lowest possible rate, which presumably they would do.

"My argument against this bill is that we're looking in the other direction; that we're going to take the ceiling off. No responsible senator or representative should be voting for a bill that tells the department of the executive you obligate the people of the state to whatever kind of debt you please, be our guest it doesn't make any difference to us.

"I would like to know how any senator on this floor is going to go in front of any constituent body and explain to them how they have to live within their budget or when they take out a loan or when they get into a situation where they are taking out a loan or obligating themselves under a debt service interest that they don't have to pay any attention at all to what the interest rate is. How can anybody in good conscience go and tell somebody who's paying his taxes in this state that as far as we're concerned we could care less at what rate the department of budget and finance goes into the bond market for just as long as we can keep pumping those projects out and taking credit. Credit is a word that ought to be enshrined somewhere in these halls.

"There is no reason whatsoever that if you are going to pass a bill because there is a June 30th, 1985 deadline at 14 percent, no reason whatsoever, not to pass a bill extending that 14 percent limit or some other limit as judged to be suitable and that if there is any question about that 14 percent limit being passed that this Legislature be called back into special session to reconsider its position on any aspect and every aspect of the operational

and CIP budget."

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

The Senate reconvened at 12:35 o'clock p.m.

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

"Mr. President, I too join in opposing passage of this bill. One of the things that make me very proud of belonging to this Senate is the fact that here on this floor of this chamber, on occasions, we hear speeches that are the result of some very incisive, brilliant analysis of an issue on which we have to vote, and it is my privilege, I think, to have heard that very eloquent examination of what the results may be if we vote for this bill before us, in cavalier fashion, as we generally do, on some of these important issues.

"I think no one could have stated the case against this bill more eloquently than Senator Abercrombie has done. What saddens me, what has saddened me on past occasions, is that notwithstanding perhaps the most brilliant analysis of what can be the end result of something that we do here, people very casually seem to vote opposite to the presentation made.

"I have come to the conclusion this happens possibly because a lot of people don't care. Possibly because a lot of people don't understand the implications, notwithstanding a very lucid explanation of what is the result of how we're going to vote, or they don't give a damn or a combination of all of these. This makes me very sad because I take pride in the fact that here in the Senate we try to pride ourselves in trying to protect the interest of the general public.

"To me, there was no more compelling case made on this particular subject. The complete lifting of the ceiling on the interest chargeable by the state government on its floated bonds.

"You know, there was a time when the administration used to come down to us, very reluctantly, asking us to lift the ceiling that was present in those years ... a half a percent or a quarter of a one percent ... to give them 'the flexibility' to go on the open market and float bonds because this was absolutely necessary. And in the past, we very reluctantly agreed and raised the ceiling, but never, to my knowledge, was an attempt made to lift the ceiling on these bonds completely, as is recommended here.

"As the good Senator Abercrombie has said this is unprecedented. We are just giving a *carte blanche* right to the administration to go out and borrow money

at any rate of interest that is chargeable to the state. This has tremendous implications to the taxpayers of the state.

"Now if the bill provided some kind of a ceiling, even if I consider it rather high and costly, I would have voted for this bill. This bill in effect completely removes the ceiling and never was an attempt made by past administrations to have us acquiesce to such a proposition. This is absolutely ridiculous and certainly not in the best public interest.

"I don't think if you really thought out very clearly what they are asking us to do that you can go before your constituents in the elections that follow and say that you are protecting the public interest.

"As I said, no one can state the case against this bill more eloquently than Senator Abercrombie has. But, I do want to remind you that never in the past years, past administrations have ever come before us and asked us to pass a bill that completely lifts the ceiling on interest rates chargeable.

"For that reason, Mr. President, I will vote against this bill."

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

"Mr. President, I'm going to vote for this bill. The reason I am going to vote for this bill is this.

"First of all, I think that by lifting the ceiling, and this point was made by Senator Abercrombie and also, privately, by Senator Toguchi, the Legislature is in effect making a statement in terms of how it wants to deal with bonds and capital improvements and the costs thereof. But if we are truly interested in keeping the cost of government down, if we are truly interested in watching our spending then I suggest that we take stringent steps here when we prepare the budget in terms and in relation to the amount of projects that we ask the administration to seek money for. That's where the key is, right here.

"Every year we appropriate as much as we possibly can. It ranges from capital improvements for Ft. DeRussy to covered walkways. In the past, in the Senate, there have been attempts to try and bring this kind of spending under control although this has failed, primarily because of political considerations. So, to me, it really doesn't make a difference, quite frankly, whether we lift the ceiling or not, although I respect the points made by some of the speakers who are sincere about what we want to do, let's watch what we appropriate here at this level because this is where the action is. The administration really only responds to what we put in the budget.

"We can deal with the problem, I believe, in another fashion. We can put in a proviso, for example, that will limit the administration to a certain limitation on the interest rates in terms of the issuance of bonds. We can do it, I'm sure, it's legal. We can do that in the budget. So I don't see this being a particularly big problem nor do I think that this really addresses the key source of the problem which is 'us,' right here."

Senator Abercrombie then rose in rebuttal to the previous speaker as follows:

"Mr. President, I feel I must rebut. While I respect the philosophy behind the previous comment, I think that there is a message being delivered to the public in this bill which may be missed with respect to what we know.

"I've spoken previously today about what happens on this floor because we know one another, we know the process. I submit to you that the average person and taxpayer is not so thoroughly familiar with the idea of provisos and whether they may or may not come in the budget and so on and so forth but we have no assurance in this bill that there will ever be such provisos. We have no assurance that any of the rational process alluded to by the previous speaker will ever take place. What we do have is what the law allows. And my experience has been that, if the law allows it, it's likely to be taken into account by those who are going to enforce it and they need not return to us. We may not have to take the responsibility. We can always point to the law and say that's what it says.

"In this particular instance then, while I appreciate the comments of the previous speaker with respect to the good sense that he asks us to utilize, that, that unfortunately is not what's before us. What's before us is this bill. This bill in the end, as indicated by Senator Kawasaki, says that we are going to allow, whether or not it's a good idea, whether or not it is based on our judgment in this Legislature, whether or not we have a governor that is going to take these economic and social circumstances into account, we're going to allow this department to go to the bond market, at any given day, at any given time, based on what has been passed in this Legislature with respect to CIP, general obligation bonds of the State of Hawaii, and do as that department damn well pleases as opposed to coming back into session if necessary to discuss whether or not we want to go forward with any project or all projects and under what circumstances we want to, should the economy be in a position as it is up until June of this year ... 14 percent.

"I conclude by saying this, Mr. President.

If the Democratic Party is going to pass a bill like this and it's going to be the Democratic Party that passes it whether it has the acquiescence of the Republican Party or not on this floor, the Democratic Party is going to have very, very serious problems in explaining to the people of the state how it, in any way, shape or form, deserves to have their confidence in this upcoming election or any other election because the Democratic Party does not seem to have the slightest idea of what is in the public interest any longer and does not seem to have any resolve whatsoever to come to grips with problems, real problems that people have to face, and seems perfectly willing to obligate or take the chance, the chance of obligating the children and grandchildren who will have to be paying for what happens with these bonds ... take that chance regardless of what it might mean to them in terms of cost.

"Precisely because we cannot foresee exactly what's going to happen in the future, that's why we put these limits on. It's a limit on us because we're human beings and subject to all the foibles and all the illusions and delusions that human beings have and so we put these numbers into the law to try and be a checkmate on ourselves, to call us up short so that we take an accounting or reaccounting of our position when necessary. And when you remove these checks, when you remove these balances in the law, we remove any obligation on the part of ourselves or on the people in the executive to be accountable and to be responsible and that's what I don't think that we should be doing and that's why I think that this bill should not be passed and that's why I would be perfectly willing if the bill is recommitted and came back out. We have enough time for that ... to extend this 14 percent limit even though I think that's a little high ... I'm perfectly willing and I assume other people that oppose it might be willing too. We have enough time to work on it until we can maybe get a more compelling argument, should one exist, for why there should be no limit whatsoever.

"No limit means no thought. No limit means no further consideration. No limit means that we need not take any further interest in what happens. That's going to be the practical effect and if that is the effect then I tell you that the Democratic Party is going to have plenty to answer for to the electorate and if the Republican Party goes along then they're going to have plenty to answer for to their electorate and so the parties, again as I say, are under scrutiny in this Legislature as never before. And whether they deserve to have a leadership role in the political destiny of this state is being determined in this session and the session to come."

The motion was put by the Chair and

carried, and S.B. No. 35, entitled: "A BILL FOR AN ACT RELATING TO GENERAL OBLIGATION BONDS OF THE STATE OF HAWAII," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 20. Noes, 4 (Abercrombie, Fernandes Salling, Kawasaki and McMurdo). Excused, 1 (Solomon).

RE-REFERRAL OF A SENATE BILL

The President made the following re-referral of a Senate bill:

Senate Bill Referred to:

No. 661 Committee on Consumer Protection and Commerce

At this time, Senator B. Kobayashi, Chairman of the Committee on Health, requested a waiver of the 48-hour Notice of a Public Hearing on the following measures:

S.B. No. 634, entitled: "A BILL FOR AN

ACT RELATING TO LITTER LAW VIOLATION PENALTIES," and

S.B. No. 906, entitled: "A BILL FOR AN ACT RELATING TO PESTICIDES,"

and the President granted the waiver.

Senator Hagino, Vice Chairman of the Committee on Agriculture, requested a waiver of the 48-hour Notice of a Public Hearing on the following resolution:

S.R. No. 27, entitled: "SENATE RESOLUTION REQUESTING CONGRESS TO INCLUDE A SUGAR PRICE SUPPORT PROGRAM IN THEIR 1985 FARM BILL,"

and the President granted the waiver.

ADJOURNMENT

At 12:58 o'clock p.m., on motion by Senator Cobb, seconded by Senator Soares and carried, the Senate adjourned until 11:30 o'clock a.m., Wednesday, March 6, 1985.