

FORTY-SEVENTH DAY

Monday, April 1, 1985

The Senate of the Thirteenth Legislature of the State of Hawaii, Regular Session of 1985, convened at 11:00 o'clock a.m., with the President in the Chair.

The Divine Blessing was invoked by the Reverend Robert Owens, Senior Pastor, First Presbyterian Church of Honolulu, after which the Roll was called showing all Senators present.

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

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 277 to 286) were read by the Clerk and were disposed of as follows:

Gov. Msg. No. 277, submitting for consideration and confirmation to the Education Commission of the States, the nomination of Joseph W. Lapilio, III, term to expire December 31, 1988, was referred to the Committee on Education.

Gov. Msg. No. 278, submitting for consideration and confirmation to the Hawaii Education Council, the nominations of Doris M. Ching and John L. Knorek, terms to expire December 31, 1988, was referred to the Committee on Education.

Gov. Msg. No. 279, submitting for consideration and confirmation to the Statewide Health Coordinating Council, the nomination of Reverend Kenneth W. Smith, term to expire December 31, 1988, was referred to the Committee on Health.

Gov. Msg. No. 280, submitting for consideration and confirmation to the Central Oahu Subarea Health Planning Council, the nominations of Bernadette Ledesma, Patty Yamamoto and John A. Rabanal, terms to expire December 31, 1988, was referred to the Committee on Health.

Gov. Msg. No. 281, submitting for consideration and confirmation to the Waianae Coast Subarea Health Planning Council, the nominations of the following:

Robert K. Mole, term to expire December 31, 1985;

Stanley E. Rodrigues, Sr., Merrie K. Aipoalani and Karen G.S. Shimabukuro, terms to expire December 31, 1988; and

Kiyoko Akase, term to expire December 31, 1987,

was referred to the Committee on Health.

Gov. Msg. No. 282, submitting for consideration and confirmation to the Windward Oahu Subarea Health Planning Council, the nominations of the following:

Kathryn N. Kato, Saburo Ebisu, Ralph J. Kiessler, Roger E. Roach and James R. Yano, terms to expire December 31, 1988; and

Edward C. McCrea and Loretta T. Schuler, terms to expire December 31, 1986,

was referred to the Committee on Health.

Gov. Msg. No. 283, submitting for consideration and confirmation to the Technical Advisory Committee on Pesticides, the nominations of the following:

Kazu Hayashida, L. Stephen Lau, Ph.D., and James J. Nakatani, terms to expire December 31, 1985, or upon the expiration of the board, whichever occurs sooner;

Melvin Koizumi, Susumu Ono and Jack K. Suwa, terms to expire December 31, 1986, or upon the expiration of the board, whichever occurs sooner; and

James W. Morrow, Samuel S.H. Lee and Jacqueline Parnell, terms to expire December 31, 1987, or upon the expiration of the board, whichever occurs sooner,

was referred to the Committee on Health.

Gov. Msg. No. 284, submitting for consideration and confirmation to the Hawaii Housing Authority, the nomination of Fred K. Kwock, term to expire December 31, 1988, was referred to the Committee on Housing and Community Development.

Gov. Msg. No. 285, submitting for consideration and confirmation to the Commission on the Status of Women, the nominations of the following:

Juliette T. Sarmiento and Sharon N. Chiba, terms to expire December 31, 1985; and

Linda M. Colburn, Andrea L. Simpson, Rosie Chang, Sharon S. Narimatsu and Walette G. Pellegrino, terms to expire December 31, 1988,

was referred to the Committee on Human Services.

Gov. Msg. No. 286, submitting for consideration and confirmation to the Hawaii Criminal Justice Commission, the nominations of Joe S. Tanaka, Herbert K. Apaka, Jr., Cora K. Lum, Frank D. Slocum, George Iranon, Roland D. Sagum, Roy Chang and Harold J. Falk, terms to expire June 30, 1989, or upon the expiration of the board, whichever occurs sooner, was referred to the Committee on Judiciary.

SENATE CONCURRENT RESOLUTIONS

The following concurrent resolutions (S.C.R. Nos. 63 to 69) were read by the Clerk and were disposed of as follows:

S.C.R. No. 63, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE STATE TO VETO ANY FURTHER USE OF DBCP ON MAUI PINEAPPLE FIELDS," was offered by Senators A. Kobayashi, Cayetano, Chang, Young, Hee, Fernandes Salling, Hagino, Cobb, McMurdo, Matsuura, Kawasaki, Aki, Mizuguchi, Toguchi and Abercrombie.

By unanimous consent, S.C.R. No. 63 was referred to the Committee on Health.

S.C.R. No. 64, entitled: "SENATE CONCURRENT RESOLUTION URGING THE PRESIDENT OF THE UNITED STATES AND THE GENERAL SECRETARY OF THE COMMUNIST PARTY OF THE SOVIET UNION TO MEET AT LEAST ONCE A YEAR FOR PURPOSES OF NEGOTIATIONS," was offered by Senators Chang, Cayetano, A. Kobayashi, Matsuura, Henderson, Soares, Abercrombie, Hee, Aki, Kuroda, Hagino, Fernandes Salling, Holt, Yamasaki, McMurdo, Cobb, Young, Solomon, Toguchi, Machida and Mizuguchi.

By unanimous consent, S.C.R. No. 64 was referred to the Committee on Government Operations.

S.C.R. No. 65, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE LEGISLATIVE AUDITOR TO STUDY PROBLEMS RELATING TO THE PROCEDURES NOW FOLLOWED IN COMPENSATING WITNESSES SUBPOENAED TO TESTIFY IN CRIMINAL PROCEEDINGS," was offered by Senators Chang, Cayetano, A. Kobayashi, George, Matsuura, Henderson, Abercrombie, Cobb, Hee, Young, Aki, Kuroda, Solomon, Hagino, Toguchi, Fernandes Salling, Holt, Soares, Yamasaki, Kawasaki, Matsuura and Machida.

By unanimous consent, S.C.R. No. 65 was referred to the Committee on Judiciary.

S.C.R. No. 66, entitled: "SENATE CONCURRENT RESOLUTION URGING A STUDY ON THE FEASIBILITY OF DESIGNATING THE WATERS OF MAKAIWA BAY, SOUTH KOHALA,

HAWAII, AS A MARINE LIFE CONSERVATION DISTRICT," was offered by Senators Solomon, Fernandes Salling, Hagino, Holt, McMurdo, Matsuura, Aki, Soares, Young, Kuroda, Mizuguchi, George, Henderson, Machida, A. Kobayashi, Hee, Abercrombie, Cobb and Cayetano.

By unanimous consent, S.C.R. No. 66 was referred to the Committee on Economic Development.

S.C.R. No. 67, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING A STUDY ON THE FEASIBILITY OF ESTABLISHING A HAWAII ISLAND TRANSPORTATION AUTHORITY," was offered by Senators Matsuura, Solomon, Henderson, Soares and Aki.

By unanimous consent, S.C.R. No. 67 was referred to the Committee on Transportation.

S.C.R. No. 68, entitled: "SENATE CONCURRENT RESOLUTION COMMENDING THE UNIVERSITY OF HAWAII SEA GRANT COLLEGE PROGRAM," was offered by Senator Matsuura.

By unanimous consent, S.C.R. No. 68 was referred to the Committee on Higher Education.

S.C.R. No. 69, entitled: "SENATE CONCURRENT RESOLUTION SUPPORTING THE EXTENSION OF FEDERAL ENERGY TAX CREDITS," was offered by Senator Matsuura.

By unanimous consent, S.C.R. No. 69 was referred to the Committee on Energy.

SENATE RESOLUTIONS

The following resolutions (S.R. Nos. 82 to 89) were read by the Clerk and were disposed of as follows:

S.R. No. 82, entitled: "SENATE RESOLUTION REQUESTING THE STATE TO VETO ANY FURTHER USE OF DBCP ON MAUI PINEAPPLE FIELDS," was offered by Senators A. Kobayashi, Cayetano, B. Kobayashi, Machida, Young, Fernandes Salling, Hagino, Abercrombie, Hee, Chang, McMurdo, Matsuura, Cobb, Kawasaki, Aki, Mizuguchi and Toguchi.

By unanimous consent, S.R. No. 82 was referred to the Committee on Health.

S.R. No. 83, entitled: "SENATE RESOLUTION REQUESTING THE BOARD OF EDUCATION TO REPORT ON PAY INEQUITIES IN THE DEPARTMENT OF EDUCATION," was offered by Senators Machida, Yamasaki, Henderson, Holt, Abercrombie and A. Kobayashi.

By unanimous consent, S.R. No. 83 was referred to the Committee on Education.

S.R. No. 84, entitled: "SENATE RESOLUTION URGING THE PRESIDENT OF THE UNITED STATES AND THE GENERAL SECRETARY OF THE COMMUNIST PARTY OF THE SOVIET UNION TO MEET AT LEAST ONCE A YEAR FOR PURPOSES OF NEGOTIATIONS," was offered by Senators Chang, Cayetano, A. Kobayashi, Matsuura, Henderson, Soares, Abercrombie, Hee, Kuroda, Solomon, Hagino, Toguchi, Fernandes Salling, Holt, Yamasaki, Cobb, Machida, Mizuguchi and McMurdo.

By unanimous consent, S.R. No. 84 was referred to the Committee on Government Operations.

S.R. No. 85, entitled: "SENATE RESOLUTION REQUESTING THE LEGISLATIVE AUDITOR TO STUDY PROBLEMS RELATING TO THE PROCEDURES NOW FOLLOWED IN COMPENSATING WITNESSES SUBPOENAED TO TESTIFY IN CRIMINAL PROCEEDINGS," was offered by Senators Chang, Cayetano, A. Kobayashi, George, Matsuura, Henderson, Abercrombie, Cobb, Hee, Young, Aki, Kuroda, Solomon, Hagino, Toguchi, Fernandes Salling, Holt, Soares, Yamasaki, Kawasaki and Machida.

By unanimous consent, S.R. No. 85 was referred to the Committee on Judiciary, then to the Committee on Legislative Management.

S.R. No. 86, entitled: "SENATE RESOLUTION URGING A STUDY ON THE FEASIBILITY OF DESIGNATING THE WATERS OF MAKAIWA BAY, SOUTH KOHALA, HAWAII, AS A MARINE LIFE CONSERVATION DISTRICT," was offered by Senators Solomon, Fernandes Salling, Hagino, Holt, McMurdo, Matsuura, Aki, Young, Kuroda, Cayetano, Mizuguchi, George, Henderson, A. Kobayashi, Hee, Abercrombie and Cobb.

By unanimous consent, S.R. No. 86 was referred to the Committee on Economic Development.

S.R. No. 87, entitled: "SENATE RESOLUTION REQUESTING A STUDY ON THE FEASIBILITY OF ESTABLISHING A HAWAII ISLAND TRANSPORTATION AUTHORITY," was offered by Senators Matsuura, Solomon, Henderson, Soares and Aki.

By unanimous consent, S.R. No. 87 was referred to the Committee on Transportation.

S.R. No. 88, entitled: "SENATE RESOLUTION COMMENDING THE UNIVERSITY OF HAWAII SEA GRANT

COLLEGE PROGRAM," was offered by Senator Matsuura.

By unanimous consent, S.R. No. 88 was referred to the Committee on Higher Education.

S.R. No. 89, entitled: "SENATE RESOLUTION SUPPORTING THE EXTENSION OF FEDERAL ENERGY TAX CREDITS," was offered by Senator Matsuura.

By unanimous consent, S.R. No. 89 was referred to the Committee on Energy.

STANDING COMMITTEE REPORTS

Senator Chang, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 941) recommending that the Senate consent to the nomination of Wilfred K. Watanabe, as Judge, to the First Circuit Court, for a term of ten years, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, and in accordance with Gov. Msg. No. 197.

In accordance with Senate Rule 33, action on Stand. Com. Rep. No. 941 and Gov. Msg. No. 197 was deferred until Tuesday, April 2, 1985.

Senator Chang, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 942) recommending that the Senate consent to the nomination of Frank Tokio Takao, as Judge, to the First Circuit Court, for a term of ten years, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, and in accordance with Gov. Msg. No. 199.

In accordance with Senate Rule 33, action on Stand. Com. Rep. No. 942 and Gov. Msg. No. 199 was deferred until Tuesday, April 2, 1985.

Senator Chang, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 943) recommending that the Senate consent to the nomination of E. John McConnell, Jr., as Judge, to the Second Circuit Court, for a term of ten years, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, and in accordance with Gov. Msg. No. 198.

In accordance with Senate Rule 33, action on Stand. Com. Rep. No. 943 and Gov. Msg. No. 198 was deferred until Tuesday, April 2, 1985.

ORDER OF THE DAY

MATTER DEFERRED FROM
FRIDAY, MARCH 29, 1985

THIRD READING

House Bill No. 421:

On motion by Senator Cobb, seconded by Senator B. Kobayashi and carried, H.B. No. 421, entitled: "A BILL FOR AN ACT RELATING TO MEDICINE," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, none. Excused, 4 (Chang, Henderson, Kawasaki and Toguchi).

THIRD READING

House Bill No. 264, S.D. 1:

On motion by Senator Cayetano, seconded by Senator Abercrombie and carried, H.B. No. 264, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO RECIPROCAL ENFORCEMENT OF SUPPORT," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, none. Excused, 4 (Chang, Henderson, Kawasaki and Toguchi).

House Bill No. 29, H.D. 1, S.D. 1:

By unanimous consent, action on H.B. No. 29, H.D. 1, S.D. 1, was deferred to the end of the calendar.

House Bill No. 267, H.D. 1, S.D. 2:

On motion by Senator Cayetano, seconded by Senator Abercrombie and carried, H.B. No. 267, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO CHILD SUPPORT," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, none. Excused, 4 (Chang, Henderson, Kawasaki and Toguchi).

House Bill No. 268, S.D. 1:

On motion by Senator Cayetano, seconded by Senator Abercrombie and carried, H.B. No. 268, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CHILD SUPPORT," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, none. Excused, 4 (Chang, Henderson, Kawasaki and Toguchi).

House Bill No. 382, S.D. 1:

On motion by Senator Cayetano, seconded by Senator Abercrombie and carried, H.B. No. 382, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO JURORS' MILEAGE FEE," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, none. Excused, 4 (Chang,

Henderson, Kawasaki and Toguchi).

House Bill No. 266, H.D. 1, S.D. 1:

On motion by Senator Cayetano, seconded by Senator Abercrombie and carried, H.B. No. 266, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CHILD SUPPORT," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, none. Excused, 4 (Chang, Henderson, Kawasaki and Toguchi).

Stand. Com. Rep. No. 815 (H.B. No. 171, S.D. 1):

On motion by Senator Cayetano, seconded by Senator Abercrombie and carried, Stand. Com. Rep. No. 815 was adopted and H.B. No. 171, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MENTAL HEALTH," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, none. Excused, 4 (Chang, Henderson, Kawasaki and Toguchi).

House Bill No. 1162, H.D. 1, S.D. 1:

On motion by Senator Cayetano, seconded by Senator Abercrombie and carried, H.B. No. 1162, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO RIGHTS OF VICTIMS AND SURVIVING IMMEDIATE FAMILY MEMBERS TO NOTIFICATION OF PAROLE OR RELEASE OF A PRISONER," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, none. Excused, 4 (Chang, Henderson, Kawasaki and Toguchi).

House Bill No. 460, H.D. 1, S.D. 1:

On motion by Senator Cayetano, seconded by Senator Abercrombie and carried, H.B. No. 460, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ATTORNEY'S FEES, COSTS, AND EXPENSES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, none. Excused, 4 (Chang, Henderson, Kawasaki and Toguchi).

House Bill No. 239, S.D. 1:

On motion by Senator Cayetano, seconded by Senator Abercrombie and carried, H.B. No. 239, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO BOARDS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, none. Excused, 4 (Chang, Henderson, Kawasaki and Toguchi).

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

On motion by Senator Young, seconded by Senator Hee and carried, H.B. No. 921, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 20. Noes, 1 (George). Excused, 4 (Chang, Henderson, Kawasaki and Toguchi).

House Bill No. 1257, S.D. 1:

By unanimous consent, action on H.B. No. 1257, S.D. 1, was deferred to the end of the calendar.

House Bill No. 355, S.D. 1:

On motion by Senator Cayetano, seconded by Senator Abercrombie and carried, H.B. No. 355, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE JUDICIARY," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, none. Excused, 4 (Chang, Henderson, Kawasaki and Toguchi).

House Bill No. 232, H.D. 1, S.D. 1:

On motion by Senator Cobb, seconded by Senator B. Kobayashi and carried, H.B. No. 232, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE BOARD OF MASSAGE," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Chang, Kawasaki and Toguchi).

House Bill No. 352, S.D. 1:

On motion by Senator Cobb, seconded by Senator B. Kobayashi and carried, H.B. No. 352, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO SOLICITATION OF FUNDS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Chang, Kawasaki and Toguchi).

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

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

Ayes, 22. Noes, none. Excused, 3 (Chang, Kawasaki and Toguchi).

House Bill No. 104, H.D. 2, S.D. 1:

On motion by Senator Cayetano, seconded by Senator Abercrombie and carried, H.B. No. 104, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO NAMES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Chang, Kawasaki and Toguchi).

House Bill No. 1231, H.D. 2, S.D. 1:

By unanimous consent, action on H.B. No. 1231, H.D. 2, S.D. 1, was deferred to the end of the calendar.

House Bill No. 465, S.D. 1:

On motion by Senator B. Kobayashi, seconded by Senator Machida and carried, H.B. No. 465, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO LITTER CONTROL," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Chang, Kawasaki and Toguchi).

House Bill No. 488, H.D. 1, S.D. 1:

On motion by Senator B. Kobayashi, seconded by Senator Machida and carried, H.B. No. 488, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HEALTH," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Chang, Kawasaki and Toguchi).

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

By unanimous consent, action on H.B. No. 479, H.D. 1, S.D. 1, was deferred to the end of the calendar.

House Bill No. 502, S.D. 1:

On motion by Senator Cobb, seconded by Senator B. Kobayashi and carried, H.B. No. 502, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Chang, Kawasaki and Toguchi).

House bill No. 236, H.D. 2, S.D. 1:

On motion by Senator Cob, seconded by Senator B. Kobayashi and carried, H.B. No. 236, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TIME SHARING,"

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

Ayes, 22. Noes, none. Excused, 3 (Chang, Kawasaki and Toguchi).

House Bill No. 160, S.D. 1:

On motion by Senator B. Kobayashi, seconded by Senator Machida and carried, H.B. No. 160, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HANSEN'S DISEASE," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Chang, Kawasaki and Toguchi).

House Bill No. 1243, S.D. 1:

On motion by Senator Solomon, seconded by Senator Hagino and carried, H.B. No. 1243, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO AQUACULTURE COOPERATIVE ASSOCIATIONS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Chang, Kawasaki and Toguchi).

House Bill No. 112:

On motion by Senator Solomon, seconded by Senator Hagino and carried, H.B. No. 112, entitled: "A BILL FOR AN ACT RELATING TO CHICKEN EGGS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Chang, Kawasaki and Toguchi).

House Bill No. 492, H.D. 1, S.D. 1:

On motion by Senator Solomon, seconded by Senator Hagino and carried, H.B. No. 492, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO BEES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Chang, Kawasaki and Toguchi).

House Bill No. 111, H.D. 1, S.D. 1:

On motion by Senator Solomon, seconded by Senator Hagino and carried, H.B. No. 111, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PLANT AND NON-DOMESTIC ANIMAL QUARANTINE," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Chang, Kawasaki and Toguchi).

House Bill No. 176, S.D. 1:

On motion by Senator Machida, seconded by Senator Abercrombie and carried, H.B. No. 176, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE COMMISSION ON MANPOWER AND FULL EMPLOYMENT," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Chang, Kawasaki and Toguchi).

House Bill No. 674, H.D. 1, S.D. 1:

On motion by Senator Machida, seconded by Senator Abercrombie and carried, H.B. No. 674, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO REEMPLOYMENT AND RECALL LISTS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Chang, Kawasaki and Toguchi).

House Bill No. 522, H.D. 1, S.D. 1:

On motion by Senator Machida, seconded by Senator Abercrombie and carried, H.B. No. 522, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MANDATORY RETIREMENT," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Chang, Kawasaki and Toguchi).

House Bill No. 989, S.D. 1:

On motion by Senator Aki, seconded by Senator Matsuura and carried, H.B. No. 989, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC LANDS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 20. Noes, 2 (A. Kobayashi and McMurdo). Excused, 3 (Chang, Kawasaki and Toguchi).

House Bill No. 188, S.D. 1:

On motion by Senator Aki, seconded by Senator Matsuura and carried, H.B. No. 188, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO FISHING," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Chang, Kawasaki and Toguchi).

House Bill No. 195, S.D. 1:

By unanimous consent, action on H.B. No. 195, S.D. 1, was deferred to the end of the calendar.

House Bill No. 1547, H.D. 1, S.D. 1:

On motion by Senator Aki, seconded by Senator Matsuura and carried, H.B. No. 1547, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO FISHING REGULATIONS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 20. Noes, 2 (A. Kobayashi and Cayetano). Excused, 3 (Chang, Kawasaki and Toguchi).

House Bill No. 1054, H.D. 1, S.D. 1:

On motion by Senator Aki, seconded by Senator Matsuura and carried, H.B. No. 1054, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC UTILITIES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Chang, Kawasaki and Toguchi).

House Bill No. 223, H.D. 1, S.D. 1:

On motion by Senator Cobb, seconded by Senator B. Kobayashi and carried, H.B. No. 223, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE UNIFORM SECURITIES ACT (MODIFIED)," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Chang, Kawasaki and Toguchi).

House Bill No. 231, S.D. 1:

On motion by Senator Cobb, seconded by Senator B. Kobayashi and carried, H.B. No. 231, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE MOTOR VEHICLE INDUSTRY," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Chang, Kawasaki and Toguchi).

House Bill No. 353, S.D. 1:

By unanimous consent, action on H.B. No. 353, S.D. 1, was deferred to the end of the calendar.

House Bill No. 1270, H.D. 1, S.D. 1:

On motion by Senator Cobb, seconded by Senator B. Kobayashi and carried, H.B. No. 1270, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO REAL ESTATE," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Chang,

Kawasaki and Toguchi).

Stand. Com. Rep. No. 850 (H.B. No. 129, S.D. 1):

On motion by Senator Cayetano, seconded by Senator Abercrombie and carried, Stand. Com. Rep. No. 850 was adopted and H.B. No. 129, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE BOARD OF EDUCATION," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Chang, Kawasaki and Toguchi).

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

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

Ayes, 22. Noes, none. Excused, 3 (Chang, Kawasaki and Toguchi).

House Bill No. 33, H.D. 1, S.D. 1:

On motion by Senator Cayetano, seconded by Senator Abercrombie and carried, H.B. No. 33, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO SENTENCING," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Chang, Kawasaki and Toguchi).

Stand. Com. Rep. No. 853 (H.B. No. 463, H.D. 2, S.D. 2):

By unanimous consent, action on Stand. Com. Rep. No. 853 and H.B. No. 463, H.D. 2, S.D. 2, was deferred to the end of the calendar.

Stand. Com. Rep. No. 854 (H.B. No. 1, H.D. 1, S.D. 1):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Stand. Com. Rep. No. 854 was adopted and H.B. No. 1, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE STATE BUDGET," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 20. Noes, 2 (George and A. Kobayashi). Excused, 3 (Chang, Kawasaki and Toguchi).

Stand. Com. Rep. No. 855 (H.B. No. 404, H.D. 2, S.D. 1):

On motion by Senator Yamasaki, seconded

by Senator Mizuguchi and carried, Stand. Com. Rep. No. 855 was adopted and H.B. No. 404, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 856 (H.B. No. 99, H.D. 1, S.D. 2):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Stand. Com. Rep. No. 856 was adopted and H.B. No. 99, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE JUDICIARY," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, 2 (George and A. Kobayashi). Excused, 2 (Kawasaki and Toguchi).

Stand. Com. Rep. No. 857 (H.B. No. 60, H.D. 2, S.D. 2):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Stand. Com. Rep. No. 857 was adopted and H.B. No. 60, H.D. 2, S.D. 2, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR SUGAR RESEARCH AND DEVELOPMENT," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 858 (H.B. No. 184, H.D. 2, S.D. 2):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Stand. Com. Rep. No. 858 was adopted and H.B. No. 184, H.D. 2, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE AQUACULTURE ADVISORY COUNCIL," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 18. Noes, 5 (Abercrombie, Cayetano, George, Hee and A. Kobayashi). Excused, 2 (Kawasaki and Toguchi).

Stand. Com. Rep. No. 859 (H.B. No. 39, H.D. 2, S.D. 2):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Stand. Com. Rep. No. 859 was adopted and H.B. No. 39, H.D. 2, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO BUSINESS REGISTRATION," having been read throughout, passed Third Reading on the

following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 860 (H.B. No. 1056, H.D. 1, S.D. 1):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Stand. Com. Rep. No. 860 was adopted and H.B. No. 1056, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EXAMINATIONS OF INSURERS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 861 (H.B. No. 1059, H.D. 1, S.D. 2):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Stand. Com. Rep. No. 861 was adopted and H.B. No. 1059, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR A REVIEW OF HAWAII'S INSURANCE LAWS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 862 (H.B. No. 1271, H.D. 2, S.D. 1):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Stand. Com. Rep. No. 862 was adopted and H.B. No. 1271, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO REAL ESTATE," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 863 (H.B. No. 1275, H.D. 1, S.D. 2):

Senator Yamasaki moved that Stand. Com. Rep. No. 863 be adopted and H.B. No. 1275, H.D. 1, S.D. 2, having been read throughout, pass Third Reading, seconded by Senator Mizuguchi.

Senator Abercrombie rose to speak against the measure as follows:

"Mr. President, you will note in the committee report, in the third paragraph: 'Your Committee finds that this bill is only one example of many this session converting temporary personnel to permanent civil service personnel with all rights and benefits appertaining thereto. It has

become a way of doing business for state government to hire individuals on a temporary or non-civil service basis for a period of three, four, or five or more years, and then "reward" them with permanent civil service status. Your Committee finds that this method of operating state government must be studied during the 1985 interim and that your Committee on Ways and Means and the Committee on Labor and Employment should study this problem and related civil service procedures governing temporary and permanent positions.¹

"Mr. President, the reason I'm voting against this bill and, I believe, I voted this way in similar bills is that the individuals involved are in temporary positions even though they have passed examinations, that is to say, they are qualified. Nonetheless, they are temporary positions; they've been put into those positions without the opportunity for others to compete for that position.

"The principal reason that I find that unfair and the principal reason that I offer in support of that is in other areas of our employment in government, for example, in the university system you may hold a temporary position ... if that position is made permanent, no matter how long you've held that position, how many years, the fact that it is a temporary position means that you must go back to scratch. You must go back to step 1 and compete with anybody else who wants that position. You have no rights; you have no privileges; you have nothing that enables you to be protected even though your experience may qualify you for the job. Persons of equal experience in other jobs or in other places, in other states even, are able to compete for that job, and the choice is made.

"So, I don't think that it's fair then to argue that individuals should be 'rewarded,' as we say we are in fact doing in the committee report.

"I have sympathy for the individual involved, but, nonetheless, they know perfectly well what their situation is and it's the kind of thing that we should not be condoning at the very time we say that it's a problem, and it shouldn't occur, and that we should take steps to see that it doesn't happen.

"We, nonetheless, are going ahead and doing it. I don't think that's the correct procedure, most particularly when there are other individuals in the state in similar circumstances who do not have the same advantage nor will they ever have the same advantage.

"If the university can do it, it seems to me the rest of the State Government can do

it."

Senator McMurdo then remarked:

"Mr. President, I share the previous speaker's feelings on this. I will vote for the bill, but I do hope that we will remember and perhaps do some kind of study or something on this before this continues."

Senator Soares spoke against the measure as follows:

"Mr. President, I'd like to rise to speak against the bill and ask the Clerk to incorporate the comments made by Senator Abercrombie as my own. I will vote 'no.'"

The motion was put by the Chair and carried, Stand. Com. Rep. No. 863 was adopted and H.B. No. 1275, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE PUBLIC UTILITIES COMMISSION," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 18. Noes, 5 (Abercrombie, Cayetano, Hee, Henderson and Soares). Excused, 2 (Kawasaki and Toguchi).

Stand. Com. Rep. No. 864 (H.B. No. 1246, H.D. 1, S.D. 2):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Stand. Com. Rep. No. 864 was adopted and H.B. No. 1246, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 865 (H.B. No. 614, H.D. 1, S.D. 1):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Stand. Com. Rep. No. 865 was adopted and H.B. No. 614, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE PUBLIC OFFICERS AND EMPLOYEES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 866 (H.B. No. 1131, H.D. 2, S.D. 1):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Stand. Com. Rep. No. 866 was adopted and H.B. No. 1131, H.D. 2, S.D. 1, entitled: "A BILL

FOR AN ACT RELATING TO CHAPTER 42," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 19. Noes, 4 (George, Henderson, McMurdo and Soares). Excused, 2 (Kawasaki and Toguchi).

Stand. Com. Rep. No. 867 (H.B. No. 166, H.D. 2, S.D. 2):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Stand. Com. Rep. No. 867 was adopted and H.B. No. 166, H.D. 2, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO HEALTH," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 868 (H.B. No. 263, H.D. 1, S.D. 1):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Stand. Com. Rep. No. 868 was adopted and H.B. No. 263, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO RETENTION OF STATE TAX REFUNDS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 869 (H.B. No. 354, H.D. 2, S.D. 2):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Stand. Com. Rep. No. 869 was adopted and H.B. No. 354, H.D. 2, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE JUDICIARY," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 870 (H.B. No. 208, H.D. 2, S.D. 1):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Stand. Com. Rep. No. 870 was adopted and H.B. No. 208, H.D. 2, 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, 1 (George). Excused, 2 (Kawasaki and Toguchi).

Stand. Com. Rep. No. 871 (H.B. No. 209, H.D. 1, S.D. 1):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Stand. Com. Rep. No. 871 was adopted and H.B. No. 209, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TAX INCREMENT FINANCING," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 872 (H.B. No. 997, H.D. 1, S.D. 1):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Stand. Com. Rep. No. 872 was adopted and H.B. No. 997, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR THE STATE'S RENTAL ASSISTANCE PROGRAM," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 873 (H.B. No. 49, H.D. 2, S.D. 2):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Stand. Com. Rep. No. 873 was adopted and H.B. No. 49, H.D. 2, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO CARE FOR THE ELDERLY," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 874 (H.B. No. 101, H.D. 1, S.D. 2):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Stand. Com. Rep. No. 874 was adopted and H.B. No. 101, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO AN OFFICE OF COMMUNITY SERVICES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 875 (H.B. No. 436, H.D. 2, S.D. 2):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Stand. Com. Rep. No. 875 was adopted and H.B. No. 436, H.D. 2, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO PERSONAL CARE SERVICES," having been read

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

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

Stand. Com. Rep. No. 876 (H.B. No. 134, H.D. 1, S.D. 1):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Stand. Com. Rep. No. 876 was adopted and H.B. No. 134, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR COLLECTIVE BARGAINING COST ITEMS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 877 (H.B. No. 144, H.D. 1, S.D. 1):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Stand. Com. Rep. No. 877 was adopted and H.B. No. 144, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR COLLECTIVE BARGAINING COST ITEMS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 878 (H.B. No. 146, H.D. 1, S.D. 1):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Stand. Com. Rep. No. 878 was adopted and H.B. No. 146, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO STATE OFFICERS AND EMPLOYEES EXCLUDED FROM COLLECTIVE BARGAINING AND MAKING APPROPRIATIONS AND OTHER ADJUSTMENTS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 879 (H.B. No. 147, H.D. 1, S.D. 1):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Stand. Com. Rep. No. 879 was adopted and H.B. No. 147, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII PUBLIC EMPLOYEES HEALTH FUND," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 880 (H.B. No. 174, H.D. 1, S.D. 1):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Stand. Com. Rep. No. 880 was adopted and H.B. No. 174, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EMPLOYMENT RELATIONS BOARDS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 881 (H.B. No. 89, H.D. 1, S.D. 2):

By unanimous consent, action on Stand. Com. Rep. No. 881 and H.B. No. 89, H.D. 1, S.D. 2, was deferred to the end of the calendar.

Stand. Com. Rep. No. 882 (H.B. No. 281, H.D. 2, S.D. 2):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Stand. Com. Rep. No. 882 was adopted and H.B. No. 281, H.D. 2, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE STATE HIGHWAY FUND," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 883 (H.B. No. 363, H.D. 1, S.D. 1):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Stand. Com. Rep. No. 883 was adopted and H.B. No. 363, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO DRIVERS' EDUCATION FUND UNDERWRITERS' FEE," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 884 (H.B. No. 1350, H.D. 1, S.D. 1):

Senator Yamasaki moved that Stand. Com. Rep. No. 884 be adopted and H.B. No. 1350, H.D. 1, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Mizuguchi.

Senator Soares rose to speak against the measure as follows:

"Mr. President, I rise to speak against this bill. I'd like to refer the members to page 6 of the committee report on the bill.

"It reads: 'In addition, such a tax increase will result in a large amount of revenues above the expenditure ceiling. The ceiling may be exceeded by a two-thirds vote of the legislature. As the Committee on Taxation and Finance of the 1978 Constitutional Convention stated in its committee report' it goes to say, and finally at the last part of the paragraph, 'In a revenue surplus situation, how can we justify such a need?'

"The committee report actually refers to a large surplus at the end of the next two years, and the fact is that we are going to be in a very positive position, Mr. President, instead of having to ask for a tax increase. So I stand again, consistent with my previous statements, that we do not need any kind of tax increase.

"I am happy to see the committee report actually agreeing with me. I just can't see us, again, going into conference with a tax package, knowing full well that we are going through a very healthy first quarter and it looks as though the trend is the same for an economic gain in the second quarter.

"I ask all Senators to vote 'no.'"

Senator Abercrombie spoke in support of the measure as follows:

"Mr. President, speaking in favor of it, I would commend the previous speaker's attention and those who have similar concerns to the rest of the committee report, in fact the rest of the paragraph being cited. I think that's only fair. It will indicate that the situation that the good Senator was speaking of is being corrected in this tax revenue measure, and I will quote that, if I may: 'To this end, your Committee is amending this bill to provide new revenues, while at the same time providing some tax relief to our citizens and reducing the total tax burden for individuals, creating more equity in the system, and encouraging businesses to do business in Hawaii which will result in more revenues to the State.'

"In other words, Mr. President, I would put forward the idea behind this tax package, which must go into conference, is to provide tax reform and the idea is to bring tax relief to our citizens and find new methods of raising revenues which will sustain the public treasury for the various needs which are deemed to be in the public interest. This is a tax relief measure, not a tax increase measure."

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

"Mr. President, I agree with the last speaker that the section of the committee report that was cited by the Senator from 11th District was the Ways and Means explanation of the House version of the bill, and all of the sections of the House bill is explained in the first section of the committee report up to page 6, in the middle of the page, and as the last speaker has said, we have amended the bill to provide the Senate position on the tax measures that we have sent individually over to the House.

"So, therefore, I'd like to request there be a better understanding of what we're trying to do in the Senate version of House Bill 1350.

"I urge everyone to vote for the bill."

Senator Soares then asked if the chairman of the Ways and Means Committee would yield to a question. The Chair posed the question and Senator Yamasaki having answered in the affirmative, Senator Soares asked:

"Mr. President, will the chairman give us a ball park figure as to what he expects this biennium surplus to be. How much our surplus will be at the end of these two years?"

Senator Yamasaki answered:

"Mr. President, right now, I think according to our projections it's close to \$75-\$100 million."

Senator Soares further inquired:

"\$75-100 million before the first quarter?"

Senator Yamasaki answered:

"According to the financial plan that we have based, on the bills that we have sent over to the House."

Senator Soares continued:

"What does the Governor's budget reflect in the next two years for the surplus?"

Senator Yamasaki answered:

"I think it's more than that."

The motion was put by the Chair and carried, Stand. Com. Rep. No. 884 was adopted and H.B. No. 1350, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, 2 (George and Soares). Excused, 1 (Kawasaki).

House Bill No. 490, H.D. 1:

On motion by Senator Cayetano, seconded by Senator Toguchi and carried, H.B. No. 490, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EXAMINATION OF APPLICANTS FOR HAWAII DRIVER'S LICENSE," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 720, H.D. 1:

On motion by Senator Cayetano, seconded by Senator Toguchi and carried, H.B. No. 720, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MOTOR AND OTHER VEHICLES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 838, H.D. 2:

On motion by Senator Cayetano, seconded by Senator Toguchi and carried, H.B. No. 838, H.D. 2, entitled: "A BILL FOR AN ACT RELATING TO TRAILER REGISTRATIONS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 284:

On motion by Senator Cayetano, seconded by Senator Toguchi and carried, H.B. No. 284, entitled: "A BILL FOR AN ACT RELATING TO DRAWBRIDGE ACROSS SECOND CHANNEL INTO HONOLULU HARBOR," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 519, S.D. 1:

On motion by Senator Cayetano, seconded by Senator Toguchi and carried, H.B. No. 519, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MOTOR AND OTHER VEHICLES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 776, H.D. 2, S.D. 1:

On motion by Senator Abercrombie,

seconded by Senator Yamasaki and carried, H.B. No. 776, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CHILD CARE," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 434, H.D. 1, S.D. 1:

On motion by Senator Abercrombie, seconded by Senator Yamasaki and carried, H.B. No. 434, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO DOMICILIARY CARE," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 108, H.D. 2, S.D. 1:

On motion by Senator Fernandes Salling, seconded by Senator Hee and carried, H.B. No. 108, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO RETENTION OF CASHED WARRANTS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 214, H.D. 1, S.D. 1:

On motion by Senator Fernandes Salling, seconded by Senator Senator Hee and carried, H.B. No. 214, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO COMMITTEE MEMBERSHIP," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 824, H.D. 1, S.D. 1:

On motion by Senator Fernandes Salling, seconded by Senator Hee and carried, H.B. No. 824, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PAYMENT FOR GOODS AND SERVICES UNDER SECTION 103-10, HAWAII REVISED STATUTES, AS AMENDED," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 401, S.D. 1:

On motion by Senator Chang, seconded by Senator Cayetano and carried, H.B. No. 401, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ANIMALS," having been read

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

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

House Bill No. 153, S.D. 1:

By unanimous consent, action on H.B. No. 153, S.D. 1, was deferred to the end of the calendar.

Stand. Com. Rep. No. 899 (H.B. No. 194, H.D. 1, S.D. 2):

On motion by Senator Chang, seconded by Senator Cayetano and carried, Stand. Com. Rep. No. 899 was adopted and H.B. No. 194, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO ACCRETION," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, 3 (George, Henderson and Soares). Excused, 1 (Kawasaki).

House Bill No. 949, S.D. 1:

By unanimous consent, action on H.B. No. 949, S.D. 1, was deferred to the end of the calendar.

House Bill No. 193, H.D. 2, S.D. 1:

On motion by Senator Aki, seconded by Senator Matsuura and carried, H.B. No. 193, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO WILDLIFE," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 1163, H.D. 2, S.D. 1:

On motion by Senator Chang, seconded by Senator Cayetano and carried, H.B. No. 1163, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CHILD VICTIMS AND WITNESSES; RIGHTS AND SERVICES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 1166, H.D. 2, S.D. 1:

On motion by Senator Chang, seconded by Senator Cayetano and carried, H.B. No. 1166, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO VICTIM NOTIFICATION REQUIREMENTS OF CONDITIONAL RELEASE CENTERS; FURLOUGHS FOR PRISONERS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1

(Kawasaki).

Stand. Com. Rep. No. 904 (H.B. No. 329, H.D. 1, S.D. 2):

On motion by Senator Chang, seconded by Senator Cayetano and carried, Stand. Com. Rep. No. 904 was adopted and H.B. No. 329, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 333, H.D. 1, S.D. 1:

On motion by Senator Chang, seconded by Senator Cayetano and carried, H.B. No. 333, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO DISPOSITION OF DEFENDANTS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 28, H.D. 1, S.D. 1:

On motion by Senator Chang, seconded by Senator Cayetano and carried, H.B. No. 28, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EVIDENCE," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

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

On motion by Senator Aki, seconded by Senator Matsuura and carried, H.B. No. 1239, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE LAND USE COMMISSION," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 1393, H.D. 2, S.D. 1:

On motion by Senator Cayetano, seconded by Senator Toguchi and carried, H.B. No. 1393, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CIVIL AIR PATROL," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 453, H.D. 1, S.D. 1:

On motion by Senator Cayetano, seconded by Senator Toguchi and carried, H.B. No. 453, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE METROPOLITAN PLANNING ORGANIZATION," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 40, S.D. 1:

By unanimous consent, action on H.B. No. 40, S.D. 1, was deferred to the end of the calendar.

House Bill No. 227, H.D. 1, S.D. 1:

On motion by Senator Cobb, seconded by Senator B. Kobayashi and carried, H.B. No. 227, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CEMETERIES AND MORTUARIES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 230, H.D. 1, S.D. 1:

On motion by Senator Cobb, seconded by Senator B. Kobayashi and carried, H.B. No. 230, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE MOTOR VEHICLE INDUSTRY," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 234, H.D. 2, S.D. 1:

On motion by Senator Cobb, seconded by Senator B. Kobayashi and carried, H.B. No. 234, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO OPTOMETRY," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 311, H.D. 1, S.D. 1:

On motion by Senator Cobb, seconded by Senator B. Kobayashi and carried, H.B. No. 311, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MOTOR CARRIERS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 557, H.D. 1, S.D. 1:

On motion by Senator Cobb, seconded by Senator B. Kobayashi and carried, H.B. No. 557, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MOTOR VEHICLE REPARATIONS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, 1 (Fernandes Salling). Excused, 1 (Kawasaki).

House Bill No. 743, H.D. 1, S.D. 1:

On motion by Senator Cobb, seconded by Senator B. Kobayashi and carried, H.B. No. 743, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII INSURANCE LAW," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 757, S.D. 1:

On motion by Senator Cobb, seconded by Senator B. Kobayashi and carried, H.B. No. 757, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ELEVATOR MECHANICS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 759, S.D. 1:

On motion by Senator Cobb, seconded by Senator B. Kobayashi and carried, H.B. No. 759, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PHARMACY," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 839, H.D. 1, S.D. 1:

On motion by Senator Cobb, seconded by Senator B. Kobayashi and carried, H.B. No. 839, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CONSUMER PROTECTION," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, 2 (Abercrombie and Soares). Excused, 1 (Kawasaki).

House Bill No. 995, H.D. 2, S.D. 1:

On motion by Senator Cobb, seconded by Senator B. Kobayashi and carried, H.B. No. 995, H.D. 2, S.D. 1, entitled: "A BILL FOR

AN ACT RELATING TO MASSAGE," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 1354, H.D. 1, S.D. 1:

On motion by Senator Cobb, seconded by Senator B. Kobayashi and carried, H.B. No. 1354, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HORIZONTAL PROPERTY REGIMES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 1356, S.D. 1:

On motion by Senator Cobb, seconded by Senator B. Kobayashi and carried, H.B. No. 1356, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO BOARDS AND COMMISSIONS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 1357, H.D. 1, S.D. 1:

By unanimous consent, action on H.B. No. 1357, H.D. 1, S.D. 1, was deferred to the end of the calendar.

House Bill No. 1360, H.D. 1:

By unanimous consent, action H.B. No. 1360, H.D. 1, was deferred to the end of the calendar.

House Bill No. 1366, S.D. 1:

By unanimous consent, action on H.B. No. 1366, S.D. 1, was deferred to the end of the calendar.

House Bill No. 1489, H.D. 1, S.D. 1:

By unanimous consent, action on H.B. No. 1489, H.D. 1, S.D. 1, was deferred to the end of the calendar.

House Bill No. 346, H.D. 1, S.D. 1:

On motion by Senator Cobb, seconded by Senator B. Kobayashi and carried, H.B. No. 346, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CORPORATIONS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 347, H.D. 1, S.D. 1:

On motion by Senator Cobb, seconded by Senator B. Kobayashi and carried, H.B. No. 347, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CORPORATIONS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 240, H.D. 1, S.D. 1:

By unanimous consent, action on H.B. No. 240, H.D. 1, S.D. 1, was deferred to the end of the calendar.

House Bill No. 755, S.D. 1:

On motion by Senator Cobb, seconded by Senator B. Kobayashi and carried, H.B. No. 755, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO OSTEOPATHIC EXAMINERS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 1285, H.D. 2, S.D. 1:

On motion by Senator Chang, seconded by Senator Cayetano and carried, H.B. No. 1285, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CRIMINAL RECORD CLEARANCE," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 932 (H.B. No. 697, H.D. 1, S.D. 2):

Senator Chang moved that Stand. Com. Rep. No. 932 be adopted and H.B. No. 697, H.D. 1, S.D. 2, having been read throughout, pass Third Reading, seconded by Senator Cayetano.

Senator Cayetano spoke on the measure as follows:

"Mr. President, I'm going to vote for this bill, but I would like to just make note of the fact that this requirement is only required of employees of the Department of Education.

"In my view, if DOE employees are required to do this, next session we should consider introducing a measure which would impose this duty on all state employees."

The motion was put by the Chair and carried, Stand. Com. Rep. No. 932 was

adopted and H.B. No. 697, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO REPORTING OF PENAL CODE OFFENSES OCCURRING IN PUBLIC SCHOOLS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

Stand. Com. Rep. No. 933 (H.B. No. 830, H.D. 1, S.D. 1):

On motion by Senator Chang, seconded by Senator Cayetano and carried, Stand. Com. Rep. No. 933 was adopted and H.B. No. 830, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PROHIBITED MOTOR AND OTHER VEHICLE EQUIPMENT," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 558, H.D. 1, S.D. 1:

On motion by Senator Chang, seconded by Senator Cayetano and carried, H.B. No. 558, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MOTOR VEHICLE ACCIDENT REPARATIONS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 265, H.D. 1, S.D. 1:

By unanimous consent, action on H.B. No. 265, H.D. 1, S.D. 1, was deferred to the end of the calendar.

House Bill No. 229, H.D. 2, S.D. 1:

On motion by Senator Cobb, seconded by Senator B. Kobayashi and carried, H.B. No. 229, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO COMMERCIAL EMPLOYMENT AGENCIES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

House Bill No. 235, S.D. 1:

On motion by Senator Cobb, seconded by Senator B. Kobayashi and carried, H.B. No. 235, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PHARMACISTS AND PHARMACY," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Fernandes Salling).

At 11:05 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:07 o'clock a.m.

House Bill No. 509, S.D. 1:

On motion by Senator Cobb, seconded by Senator B. Kobayashi and carried, H.B. No. 509, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MOTOR VEHICLES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 520, H.D. 1, S.D. 1:

On motion by Senator Cobb, seconded by Senator B. Kobayashi and carried, H.B. No. 520, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HORIZONTAL PROPERTY REGIMES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Abercrombie).

House Bill No. 761, S.D. 1:

Senator Cobb moved that H.B. No. 761, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator B. Kobayashi.

Senator Abercrombie asked:

"Mr. President, would the chairman yield to a question, please?"

The Chair posed the question and Senator Cobb having answered in the affirmative, Senator Abercrombie asked:

"Mr. President, would you ask the chairman, with respect to page 7 of the H.B. 761, Senate draft 1, is it his understanding that this bill will be worked on in conference with respect to the additional language on page 7 starting with '... the board shall also ...' finishing with '... performance of administrators;' with the idea of determining exactly what the object of the arrangements are to be in the sharing of information with respect to the DSSH and the Department of Health?"

Senator Cobb answered:

"Mr. President, in response to the question, the answer is 'yes.' A request is being made for conference on this.

"I cannot speak for the House but we're certainly relaying the request for conference along with the reason thereof in terms of the language."

At this time, the Chair interjected:

"Members of the Senate, before taking a short recess, it is the Chair's intent to continue the discussion until the business at hand is concluded."

At 12:10 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:46 o'clock p.m.

On motion by Senator Cobb, seconded by Senator B. Kobayashi and carried, H.B. No. 761, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO NURSING HOME ADMINISTRATORS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

MATTERS DEFERRED FROM EARLIER ON THE CALENDAR

THIRD READING

House Bill No. 29, S.D. 1, H.D. 1:

By unanimous consent, action on H.B. No. 29, S.D. 1, H.D. 1, was deferred to the end of the calendar.

House Bill No. 1257, S.D. 1:

By unanimous consent, action on H.B. No. 1257, S.D. 1, was deferred to the end of the calendar.

House Bill No. 1231, H.D. 2, S.D. 1:

Senator B. Kobayashi moved that H.B. No. 1231, H.D. 2, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Machida.

Senator Fernandes Salling spoke on the measure as follows:

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

"As I understand the problem right now, what we're going to do is to mandate that the counties shall take over the responsibility and the administrative control for sewage and wastewater treatment systems.

"Whenever we mandate counties to administer a program presently handled by the state, it follows by constitution that we should provide those counties the funds to appropriately administer these programs. I notice on page 3 of the bill, however, that the Department of Health shall have the duty to administer from the effective date of the act, which is 1985, until July 1, 1987, '... or until such time as the counties receive sufficient funding ... whichever comes first.'

"As I understand it, in 1987, should we be unable to provide the funding to the counties, the Department of Health will no longer be responsible for administering this sewage treatment system, and the function will be turned over to the counties despite the fact we may not have provided the funding to them as mandated by the constitution.

"In light of this, I would like to suggest to the committee chairman in conference that he consider removing the provision relating to the July 1, 1987 clause and let it state that the Department of Health will be responsible for the administration of this system until such time that the counties are provided the necessary funds to administer them."

The motion was put by the Chair and carried and H.B. No. 1231, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ENVIRONMENTAL QUALITY," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

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

Senator Kuroda moved that H.B. No. 479, H.D. 1, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator McMurdo.

Senator Kuroda spoke on the measure as follows:

"Mr. President, I have been accused of backing off from a position on this measure. The House has selected the humuhumunukunuaapuaa but there are some members of this body who disagree with that choice and in the ensuing discussion some of the Senators have turned to me and called me a 'manini,' and I think that that is uncalled for.

"Mr. President, recess please."

Senator Cayetano interjected:

"Mr. President, recess or not, I'm sick of all this. I move that we reorganize the Senate."

Whereupon, all Senators adjourned to the Minority caucus room.

At 12:50 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

At 12:55 o'clock p.m., the Senators re-emerged from the Minority caucus room. Senator Abercrombie took the podium, Senator Soares sat in the Majority Floor Leader's chair, Senator Cayetano sat in the Minority Floor Leader's seat, and Senator Wong was relegated to Senator

Abercrombie's seat.

Senator Abercrombie then remarked:

"Members of the Senate, we thank Senator Wong for being as gracious in his defeat as I was in mine when I was removed from power. This is government as Senator Kuroda has said, we've had a good discussion.

"We've heard one side and we've heard the other side. We've heard pros and we've heard cons. I think you all remember Senator Kuroda saying that. That's why we've tried to maintain him here as the Majority Leader.

"I'd just like to say in conclusion that we really appreciate the opportunity to play this April Fool joke on Dickie Wong."

At 12:57 o'clock p.m., the Senate reconvened with all Senators in their proper seats.

At this time, Senator Kuroda rose to speak in support of H.B. No. 479, H.D. 1, S.D. 1, as follows:

"Mr. President, the Senate has amended the bill. The House selected the humuhumunukunukuapuaa but the testimony during our committee hearing indicated that there should be a time limit in the naming of the state fish inasmuch as there are many other people who have come forward with names of other fish and the consensus among adults that a more scientific name should be applied.

"Although the word 'manini' is not a scientific word, there is considerable support for the manini; therefore, the committee has decided that the humuhumunukunukuapuaa should be the state fish for a period of five years."

Senator Kawasaki then said:

"Mr. President, while I'm voting for this bill, I do so with reluctance and sometimes I think I'm not doing the right thing here on these rare occasions.

"While the humuhumunukunukuapuaa has a very colorful and long name, longer than the fish itself, it is a very poor swimmer; it just waddles along in the water, and I should know, I've been skin-diving for perhaps two decades.

"Less the public gets the wrong impression, the humuhumunukunukuapuaa is the most inedible of fishes that frequent the Hawaiian waters.

"I hope the public is guided by the opinion of people who know fish. As a matter of fact, it is said that parts of the fish are poisonous so I would not suggest that you

cook this with black bean sauce, Chinese style, because you're going to be a very sick person after that."

Senator Hee then remarked:

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

"Precisely for the reason Senator Kawasaki mentioned, there are some of us who waddle around here and are quite venomous, but that, nonetheless, being the choice of the constituency, the humuhumu should prevail."

Senator Matsuura also spoke on the measure as follows:

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

"As some of you know, I was a co-introducer to this famous resolution. There's a remark that I placed in the House Journal that I would like to place in the Senate Journal.

"When the resolution was first introduced, I made sure that the 'unagi' not be a contestant. That is what I want to put in the Senate Journal."

Senator Abercrombie then remarked as follows:

"Mr. President, speaking in favor of it. I think everyone has had a good time with this issue, but something really marvelous has happened as a result of it.

"For those of us who have had the opportunity to attend various functions, for example, at the Waikiki Aquarium, a tremendous job that the aquarium has done ... Dr. Leighton Taylor at the aquarium, Friends of the Aquarium, school teachers and young people throughout the state ... you've seen the tremendous displays that have been made, including even the muppet type representations of the various fish. Contests were held; our local businesses participated; we've gotten posters out. The end result has been that great numbers of our young people as well as many of our older citizens have received a tremendous education in marine affairs that they've never had previously.

"We speak of ourselves, ours as an ocean state. We pass numerous bills including bills today with respect to aquaculture and marine affairs of one kind and another, right on up to and including the university.

"So, this has been a tremendous process for everyone in the state and I feel that especially since we turned the situation loose, if you will, to the public at large, especially to our young people across the

whole state, we must keep faith with them and be voting for the humuhumu.

"I might say, in conclusion, that I think in terms of public relations with the rest of the country and the rest of world, the song that incorporates the humuhumu into it have made that name familiar to people the world over. I think it will bring a smile to the faces of many, many people throughout the state, the country and the world when they become more familiar with it.

"So, as an educational device, as a marketing device, as an opportunity for us to celebrate those things that we all enjoy in Hawaii, I think the humuhumu is a good choice.

"It also does not prevent the aquarium itself, for example, of maintaining the lawiliwili as the symbol of the aquarium.

"So we can have an official state fish and we can represent perhaps some of the other fish that are popular in public mind in other ways and in other manners that keep them prominent as far as being able to be cited as being fishes in Hawaiian waters and near and dear to all of us for one reason and another."

Senator McMurdo then added:

"Mr. President, I just want to say that during the public hearing that we had, the school children showed that they had learned an awful lot about fish.

"I'm speaking in favor of the change that we made on the five years that the humuhumu will reign. I think this gives the next five years ... the school children down the line another opportunity to learn all of this. It was nice that the committee's open hearing went so swimmingly and I can assure you there was nothing fishy about the way the report came out."

Senator Holt then asked:

"Mr. President, will the chairman of the Tourism Committee respond to a question?"

The Chair posed the question and Senator Kuroda having answered in the affirmative, Senator Holt asked:

"Will the passage of this bill, and the reason I'm asking this question is because I have been, on occasion, bottom fishing and we happen to come across quite a few humuhumunukunukuapuaa. Will the passage of this bill mean that it would be illegal for me to catch the humuhumu?"

Senator Kuroda answered:

"Mr. President, that would not be so. It's only the naming of the state fish. There's no prohibition on catching the state fish."

Senator Holt continued:

"Thank you, Mr. Chairman. The only reason I ask that is because I just want to state, on behalf of all the other fishermen in the state, that we can go ahead and continue our fishing despite the fact that very often we will be catching the state fish. Thank you."

Senator Kawasaki then added:

"Mr. President, I just want to inform Senator Holt, as I said, this is the most inedible of all fish. For what reason would people want to catch it?"

Senator Holt answered:

"Mr. President, in response, the humuhumu does not live up to its name. When you put the bait in the water, it does not go swimming by. It is not what we want to catch."

Senator Toguchi then said:

"Mr. President, I am voting for this measure.

"I do quite a bit of recreational fishing and I just want to assure Senator Kawasaki that every humuhumu that I catch, I'll be giving to Senator Kuroda."

The motion was put by the Chair and carried and H.B. No. 479, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE STATE FISH," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 195, S.D. 1:

On motion by Senator Aki, seconded by Senator Matsuura and carried, H.B. No. 195, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE ENFORCEMENT PROGRAM OF THE DEPARTMENT OF LAND AND NATURAL RESOURCES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 353, S.D. 1:

Senator Cobb moved that H.B. No. 353, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator B. Kobayashi.

Senator Abercrombie spoke against the measure as follows:

"Mr. President, I refer you to the second page of the bill, and I find it incomprehensible that we can have it before

us and would hope by the end of the discussion that the chairman will consider recommitting this bill.

"We have two different sections operating here, Mr. President, and I always think that's a bad way to do things. I call your attention to page 2, as I said, and on to page 3.

"In the one hand we're talking about 'Forfeiture, warning, notice to vacate, refunds.' and we go into a definition of a 'common nuisance.' And on page 3 we talk about 'Pets in rental units.' Even that, we're now down to, if you can believe this, seven points under 'Pets and rental units.'

"We talk about over regulation in government. It's absolutely incredible to me that we can get into that. You look on page 4 and it says 'The tenants may keep only those types of pets which may be permitted by the owner;'.
 "There are hundreds of categories of dogs, alone, that exist today. Is all that going to be enumerated?

"We're now down to types of pets. It seems to me it could be written a lot simpler, if what you want to do is deal with pet control in rental units. And we've managed to get through how many years of human existence without us having to write a bill about pets in rental units. That could be put right into your lease agreement, all the rest of these things right now.

"Why we have to pass a bill on it is absolutely beyond me. I'm sure my colleague to the right cannot possibly be for this kind of regulation when it is already possible for it to be done. So, there's no compelling need to do that.

"I would be against the bill not only because of those indications, but, Mr. President, I would like you or the chairman or anyone to define for me what this 'common nuisance' is beyond that which appears here.

"If you look on page 2, it says, '... within or upon the rented premises which act or condition ...' and then there's a bracketing out 'is defined as the offense of' and the word 'constitutes a' is substituted, and the phrase 'common nuisance' and you'll notice that bracketed out is 'in section 727-1.'

"Information given to us by our attorneys is that that was an obsolete reference, and I can understand why it is obsolete. I hope that people who have not had the opportunity to read it ... people in the gallery ... let me tell you what you're going to be involved in if you are a renter.

"A common nuisance is defined as the endangering of the public personal safety or

health; or doing, causing, promoting, maintaining, or continuing what is offensive, or annoying and vexatious, or plainly hurtful to the public;'

"Now, I'll have you define what is 'plainly hurtful to the public' ... and if you're going to talk about being 'offensive, or annoying and vexatious' that applies to everybody in the room at one time or another, and most certainly when it comes to, for example, someone trying to deal with small children who may be crying, who may be ill. That may be vexatious to other people and it may certainly be annoying. I was saying that this then is grounds of notice to vacate because you have a sick child?.

"I think it's outrageous to try and put across this kind of language ... 'or is a public outrage against common decency' ... a public outrage against common decency. I can't believe that any of this is enforceable. What constitutes 'a public outrage against common decency'?

"What if you were seen bringing a book that somebody disapproved of in terms of your reading it into a building. Is that a public outrage against common decency? 'Or common morality,' I would hesitate to even begin to describe what constitutes common morality. 'Or tends plainly and directly to the corruption of the morals, honest, and good habits of the people' ... does that mean we cannot eat fattening food? Does that mean that we cannot engage in whatever habit is considered by somebody to be a bad habit that you consider a good habit, for example, smoking?

"If the landlord feels that it is not a good habit to smoke, that that is a corruption of morals and most certainly is plainly hurtful to the public because the smoke would drift out and I might have to breathe it. Does that constitute grounds for notice to vacate?

"What I'm saying, Mr. President, is that this kind of language was removed for good reason because it is arcane, because it is obscure, because it tends towards abuse and most certainly it tends toward arbitrary and capricious enforcement.

"I maintain that it is impossible for anybody in this room, attorney or not, to tell me what the plain meaning of all that language is in terms of your tenancy. I can, however, say that if it is passed, it's liable to end up in a lot of harrassment for people who otherwise do not deserve it.

"Now, if there is a problem with people being a nuisance, why cannot that be written, what the rules and regulations are with respect to apartments?

"I'm signing a lease agreement with my mother right now for the apartment that she's moving into in the next month. My

nephew has just signed a lease for an apartment and there is a rule that they had to appear in front of a group of other apartment owners. The rules were laid down in a face to face meeting, as well as in writing, as to what you could do and what you couldn't do. You have the choice of whether you want to move in or not with respect to what constitutes a nuisance to other people. All those things were laid out. Why do we need a law of this kind with the kind of abuse that's likely to happen?

"Mr. President, the final phrase there with all of the other things that I quoted to you is 'without authority or justification by law'. Is this going to be a situation where tenants are going to find themselves, or landlords for that matter, involved in annoying, offensive and vexatious suits, because of this language? I don't think it makes any sense.

"Mr. President, the Democratic Party is supposed to be the party of people. It is not supposed to be the party of property in the sense of the arbitrary assertion of property against people. The Republican Party certainly asserts itself these days as having similar inclinations and goals.

"What possible good use can this law be put to if it passes, and what mischief might be worked if this law passes, and that use is the use that is put in terms of people arbitrarily or capriciously utilizing this kind of language to carry out whatever designs they have on somebody they don't particularly care for. There is no justification for this kind of language. I do not believe there is an attorney, including our own, that can tell us what it means other than causing more trouble than the law is meant to deal with.

"Thank you."

The motion was put by the Chair and carried and H.B. No. 353, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO LANDLORD AND TENANT," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, 4 (Abercrombie, Hee, Kawasaki and Soares).

Stand. Com. Rep. No. 853 (H.B. No. 463, H.D. 2, S.D. 2):

Senator Yamasaki moved that Stand. Com. Rep. No. 853 be adopted and H.B. No. 463, H.D. 2, S.D. 2, having been read throughout, pass Third Reading, seconded by Senator Mizuguchi.

Senator Fernandes Salling spoke on the measure as follows:

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

the bill.

"In doing so, I would like to express some of my reservations and also my hopes for the bill in conference committee.

"I think we all recognize the importance of this bill. All the interests have come to visit us to tell us how the present law affects them and how badly the law needs reform. They all offer a point of view and a solution. But in offering this point of view, I feel that lost in all the discussions, all the lobbying by business, labor, insurance companies, health care providers, lost because of the squabbling over particular provisions that may or may not decrease cost, is the philosophy behind our workers' compensation plan. And this is what I would like to focus briefly on today.

"The business community has embraced Mr. Haldi's specifics as if they were definitive answers to our escalating workers' comp costs. While the report has been helpful to their point of view, we must remember that Haldi himself cautioned that true cost savings will never be realized unless some basic considerations of workers' compensation laws are first addressed.

"Foremost of these considerations is the objective of our workers' compensation program. I think everyone will agree that the primary objective is to compensate those workers who suffer injury at the work place. As Haldi mentions, the way to achieve this objective is through an effective and efficient program.

"I quote from page 69 of the Haldi report: 'an effective system should provide (1) broad coverage for the working population, (2) coverage for all work related injuries and diseases; (3) sufficient medical care and rehabilitation services to achieve maximum and prompt restoration of the injured workers' physical condition and earning capacity; (4) substantial and prompt protection against interruption of income; (5) fair and equitable replacement of a high proportion of the spendable income lost by workers who suffer permanent disabilities; and (6) correct incentives to all concerned parties, i.e., injured workers, employers, insurance carriers and providers of rehabilitation services.

'An efficient system requires that: (1) a substantial portion of all outlays for workers' compensation should be used to rehabilitate injured workers and provide for their losses; (2) rehabilitation services be provided in a cost-effective manner; (3) the law, inclusive of all implementing rules and guidelines should seek to minimize the number of disputes and the cost of resolving fairly and equitably those genuine disputes that do arise; and (4) the system be administered effectively, with lowest

feasible overhead costs.'

"Given that these are the objectives of our program, let us examine how our current S.D. 2 addresses them, and for the sake of brevity, I will address mainly those provisions that have stirred the greatest disagreement.

"Waiting period and retroactivity — Hawaii has the shortest waiting period in the United States. Haldi has identified this short period plus the short retroactive period as one of the reasons for the large number of cases which involve indemnity payments. It is very possible and highly likely that people with minor injuries are encouraged to 'stretch out' their healing period in order to receive wage loss payments. Under our current system of determining wage loss indemnity payments, a large number of people with short-term disabilities actually receive more after tax income for not working than for working. Combined with any type of private wage supplements provided by employers, this amount can far exceed normal take-home pay. This is hardly the type of incentive that we should see in a system that wishes to encourage workers to return to work as soon as possible.

"The current S.D. 2 could conceivably make this problem worse, and has little chance of rectifying the problem. The language of the current draft allows retroactive payments if the 'injured employee had not received or become entitled to any type of full wage loss replacement for the duration of the waiting period.' Not only is this provision confusing in its tenses, but it is also nebulous enough to allow an employee who is temporarily disabled to continue collecting both workers' compensation wage-loss payments along with any payments made through an employers wage-loss plans, if the employers plan does not cover the entire waiting period. If we insist on maintaining retroactive payments for waiting periods, we should prorate any payments to exclude those days covered by private sick-leave or wage-loss payments. Otherwise, I ask, if we are providing the proper incentives for workers to return to work as soon as they are able.

"The presumption clause — I think we would all agree that it is better to err by compensating a possibly invalid claim than to err by failing to compensate a claim that was valid. And because the employee has no right to tort action, workers' comp should cover 'every type of injury or illness that is known to be caused by work, and any afflictions which may reasonably be related to work but which are not yet known to be caused by work.'

"It should not be our 'intent to include

such occurrences as: (1) illnesses caused by hereditary factors or by communicable or mental diseases that are not work related; (2) health problems arising from the normal aging process or life style; (3) injuries sustained from non-work-related accidents.' If we compensate workers for these types of illnesses or injuries it will convert the workers' compensation program into a broad-based system of unlimited health care plus income continuation for all workers, virtually without regard to cause. Although these types of claims are currently only responsible for a small percentage of the total costs, they have a great potential to add to costs in the future.

"In light of this, I feel that we need to change the presumption clause in regard to these types of injuries or illnesses to allow the system a chance to achieve equity in this area. Not only must we make our intent clear to the courts and the workers concerning this statutory change, but also to the disability compensation division's hearing officers. It is these officers who apply the presumption clause and 'whose decisions become the *de facto* decision in over 90% of all cases.' Because detailed written decisions are not required of these hearing officers, we have no way of knowing whether they interpret or apply presumption within evidentiary guidelines laid down by the court, or in a manner which goes far beyond the intent of the court. This leads me to the next item.

"The State Fund — although Haldi felt no need for a state fund, I feel that such a fund is both timely and essential. After speaking with a director of the California state fund, I realized that we are not able to make truly informed decisions on workers' compensation reform because we lack the necessary information to do so. The California system requires that hearing officers submit written decisions, that insurance and health care providers submit detailed reports and that any other participants in the system be included in some way in their data base.

"This allows the California state fund to instantly identify abuses by particular employees, employers, health-care providers, doctors, insurance companies, or hearing officers. They are able to use this data to correct problems that increase costs and abuse of the system. Hawaii keeps no such comprehensive records, has no system to interrelate such records, and doesn't even require hearing officers to submit detailed reports. How can we reform a system from which we can't elicit the relevant data to make our decisions? I am in favor of a state fund that would provide us with such information.

"A state fund that is administered by a private enterprise administration would also

contribute to controlling rates because (1) it would be non-profit; (2) it would include investment income reserves as part of the funds income; (3) it would enable us to get a true picture of the type of profits the private insurers are realizing, a picture we are not able to see due to the unfathomable accounting systems they use; (4) it could provide refunds of premiums paid; (5) it would provide for less delay or contest of worthy claims, while those that truly needed to be contested could be handled more effectively; (6) it would enable these small business who have demonstrated safety consciousness and effective safety records to pay rates that reflect these savings to the program; and (7) it will provide a model for the industry to determine minimum rates.

"I speak in favor of a state fund for unemployment insurance, but I have no desire to see this turn into an unlimited health care insurance fund that would be financially hazardous. Therefore, if we do establish such a fund, we must also enact the other necessary reforms to the system that would give such a fund a chance at survival. We must eliminate the incentives and disincentives that lead 'injured workers and claimants, employers, service providers, insurers, program administrators, appeals board to behave in ways that substantially raise costs without increasing the efficiency or improving the equity of the system.' The state fund should be set up and administered to ensure that valid claims are rapidly and equitably handled, and that specious claims are efficiently adjudicated. It is essential to the success of the state fund that all parties involved perceive it as being both impartial and effective, and not wasteful.

"The final provision I will comment on is the formation of an office of a business advocate. Although business has not requested such an advocate, I feel this office may contribute to the general well-being of the system. This office may provide for greater dissemination of information regarding rates and benefits, thus contributing to our decision-making. It may help keep rates down by serving as a watchdog on insurance companies, assuring that rates are neither excessive nor inadequate, and it will make sure that total returns to insurance companies are considered by the insurance commissioner when making premium rate decisions.

"In closing, let me say that many other changes to the current statute have been considered by this body as well as by our counterparts in the House. We have all heard many different figures that have been bandied about concerning savings to be realized if we adopt this or that provision. But what we as public servants must remember as we consider this bill in conference committee is that only a bill

which is fair to all concerned in the system will work. If there is any one group that feels cheated or neglected, it will create repercussions throughout the system.

"True workers' compensation reform must provide sufficient benefits to those who are deserving while at the same time deny those who would abuse the system. We must remove any incentives to anyone, be they workers, providers, employers, or insurers to subvert this purpose. Toward this end, we need to develop a common philosophy about workers' compensation in the conference draft. We can no longer afford the luxury of an antagonistic relationship between workers and employers, because it is the consumers, our constituents who finally foot the bill for this luxury. We need to see this spirit of cooperation toward this common purpose, or any nominal reform will be meaningless.

"This is my hope for the conference committee. It is a tall order but I hope they are successful.

"Thank you."

Senator McMurdo then said:

"Mr. President, I have great misgivings about this bill and I have considered voting 'yes' and to see what comes out of the conference committee. If I felt at all sure that this workers' comp bill would emerge from conference with a decent resemblance to the Haldi report or even better, I would vote for it. Since I have no hope that this will happen, I have no choice but to say I cannot support this bill."

Senator Henderson then spoke on the measure as follows:

"Mr. President, I rise to speak in favor of H.B. 463, S.D. 2, with some reservations.

"I call you attention to Standing Committee Report No. 853.

"On the first page, under the Purpose section, the report states that the purpose of this bill is to address a major insurance crisis brought about by the skyrocketing costs of workers' compensation insurance coverage in recent years. In fact, Mr. President, the stated purpose should be to address a major crisis brought about by skyrocketing costs of workers' compensation. Medical costs, wage replacement costs, and indemnity costs, all these actual payments, Mr. President, have increased on the average 20% per year, compounded for the last five years. As a symptom of this problem, Mr. President, insurance premiums have also risen an average of 20% per year, over the same five-year period.

"In this same section, Mr. President, the next sentence refers to a 54% premium increase in 1983, noting parenthetically that the 54% was 29% plus a 25% 'swing'. What the report fails to note is that a 25% swing works both ways: for some employers there was a 4% increase; for some employers there was a 54% increase. This sort of misstatement, Mr. President, discredits the committee report and causes all the findings to be suspect.

"The second paragraph of this section, Mr. President, continues the fiction that increases in insurance premiums are excessive and unwarranted.

"Under the section titled 'the Insurance Problem,' the report states that the fundamental cause of rising insurance premiums was a failure by insurance companies to consider investment income from insurance reserve funds in the rate-making process. The Twelfth Legislature amended the law to require the Insurance Commissioner to consider investment income in rate setting, but the commissioner has been unable to comply since the Legislature also required the moratorium on premium increases. However, if the fundamental cause of the problem has been corrected, perhaps insurance companies should be allowed to show what effect the so-called change in practice has had.

"Mr. President, the section titled 'A Non-Profit Competitive Fund' continues the fiction that insurance is the problem rather than the symptom. The report notes that California, Arizona, and other competitive state funds were established at the turn of the century. Thus, the funds were able to amass huge amounts over the years for investment. The California State Fund has a \$1.8 billion reserve fund; the Arizona State Fund has a \$400 million reserve fund; the Hawaii market, according to the report, is 'comparable to Arizona's' or equal to \$130 million, annually. If the market in Arizona is comparable to Hawaii, it would appear that the reserves should be comparable to Arizona's. Is the state prepared to fund the state fund to such an 'appropriate' level like \$400 million?

"Mr. President, the section titled 'The Business Advocate' is another area where the report attempts to confuse the real issues and draw attention away from meaningful changes which could be made to the workers' compensation law.

"The discussion of the 1981 Illinois case, suggesting that massive fraud by Illinois insurance companies was proven, is obviously biased. The trial court, says the Committee report, found more than \$1 billion in excess premiums were due Illinois employers because of the excessive rates.

The report continues: 'The case was settled on appeal.' and then suggests that the Brief for Plaintiff-Appellees be accepted as confirmation that 'the motives of insurers to inflate losses in the absence of auditing and regulation is evident.'

"This section also states that a business advocate is necessary to implement the Act 263, SLH 1983, provisions regarding investment earnings in rate making. Since the Insurance Commissioner has not yet had an opportunity to implement Act 263, this is an empty attempt, to say the least.

"Mr. President, the next section is entitled 'Other Cost Reductions.' We have seen two programs proposed that must increase cost to the taxpayers of Hawaii simply by adding highly paid employees to the state rolls and by providing huge amounts to start up a new insurance program. It is therefore difficult to understand this title: 'Other' reductions.

"Mr. President, we start with a 'preliminary note' that Dr. Haldi emphasized that Hawaii's statutory workers' compensation benefits are 'among the lowest' when compared with those of other states. Mr. President, Dr. Haldi's report on this subject reads on page 27: 'Comparison of major benefit provisions in Hawaii's statute with other states further indicates that, with few exceptions, Hawaii's benefits are neither higher than nor out of line with statutory benefits provided by other states.'

"Haldi goes on to say that the two-day waiting period in Hawaii's law is 'significantly higher' than other states. He further comments on the unusual feature regarding retroactive benefits, and then comments that Hawaii's workers' compensation law 'does not provide benefits higher than those provided by the typical state.' The discussion in the Haldi report is simply for the purpose of showing that benefit levels are not the cause of Hawaii's problems.

"The committee report continues, Mr. President, and points out with pride to the changes your committee has proposed to reduce costs. The first of these says that the waiting period has been increased from two days to three days and that the recapture period has been eliminated (sic). In fact, Mr. President, the recapture period remains unless the injured employee is paid full wage loss replacement. While this provision may lower the cost of workers' compensation, it must invariably increase the cost of sick benefits, and will make it difficult for some employees to resist staying out a little longer to recapture their three days. The net impact, then, Mr. President, is an increase in cost for sick leave at full pay as opposed to two-thirds, or some decrease in cost for employers

whose employees do not remain away from work for five or more days.

"The provision establishing guidelines is a true effort to improve the law. It will require a comparatively small amount of money to implement, and may well provide a cost reduction, but there has not yet been an official estimate as to the amount involved.

"The provision regulating attorney and expert fees will, as suggested, result in some cost reduction, but not enough to make a dent in any premiums. Further, despite the chairman's statement that he rejects the evidence that this provision is not unconstitutional, it probably does violate the U.S. and Hawaii Constitution.

"Assuming, Mr. President, that we ever find any fraud cases, the new penalties will have some effect. Dr. Haldi did not believe fraud was important, estimating less than 1% possible savings by eliminating fraud. It has been said that under Hawaii's present law fraud is unnecessary, that it is so easy to get compensation legally, one does not need to commit fraud. Nevertheless, the changes to the fraud provisions cannot help but have a beneficial influence on the whole state — employee, employer, provider, counselor and consumer.

"Regarding the 'prompt hearings' changes in sections 3 and 8 of the bill, Mr. President, we have been told, variously, that this is the most important cost reduction area in the bill, with 'target' cost reduction of 2% to 3%, and that nothing in this language really changes what the Division can presently do, and presently does. Let us assume, then, Mr. President, a 'target' (apparently defined as 'something we hope for') cost reduction of 1% to 1-1/2%.

"The changes to the reopening language, allowing no reopenings after 8 years instead of the present 10, should have as its primary effect reopenings about 2 years earlier than before.

"The Accident Prevention Unit and certification program will very likely have the effect of reducing accidents, as any safety program does, and therefore reducing costs. The certification program will assuredly reduce premiums since it mandates insurers to reduce premiums for those certified. Reducing accidents is a good thing, Mr. President. It seems to me, though, that a better way to do this job would be improving the existing program rather than creating a whole new program with its attendant costs.

"Mr. President, this brings me to the discussion in this committee report on the presumption. A Senator was quoted the other day as saying that the whole issue of

the presumption language in the Workers' Compensation Law was raised as a smoke screen to cloud the issue on the competitive state fund. This appears to be a masterful example of doublespeak, Mr. President, since the issue of presumption in House Bill 463 was raised long before the issue of the state fund. Further, Mr. President, the committee report repeats what surely anyone who has been paying attention to the issue should have realized to be erroneous by now — that is, that there is some relationship between presumption language in a Workers' Compensation Law and the Common Law Right-to-Sue for Torts.

"Mr. President, many states have no presumption language in their workers' compensation laws. California, in fact, has language which presumes the injury is not work related, and requires the employee to rebut that presumption — by the preponderance of the evidence. Furthermore, Mr. President, the original Hawaii law, adopted in 1915, has no presumption language. In 1915, the employee gave up the right to sue employers in common law action for torts — that is, for illegal acts such as negligence — in exchange for the right to receive benefits when injured in a situation arising out of and in the course of employment and without regard to fault. That is, even if the accident was totally the fault of the employee, the employer was liable for benefits. This was a good thing, Mr. President. Employees in 1915 tended to be not quite as progressive and compassionate, Mr. President, as most of us are today. It was very difficult for an employee to sue his employer in the first place, and far more difficult for an employee to be successful in the suit.

"Forty-four years later, Mr. President, in 1959, the presumption language was inserted in our law — hardly as a trade-off for the right-to-sue.

"In all of the testimony heard by House and Senate Committees on this measure, only one testifier advocated elimination of the presumption language. Generally speaking, it is appropriate for the law to make a little harder for employers to prove an injury is not work-related — unlike California. No one in the Senate, Mr. President, is advocating the elimination of the provisions of section 386-85, HRS.

"The discussion in the committee report, Mr. President, is detailed, but in many respects appears to be part of the doctrine that if you say something often enough, it becomes true. For example, Mr. President, look at the so-called two-tiered approach adopted in House Draft 2. Such language appears in several jurisdictions across the county. Surely in those states that have such an approach, there must be attorneys

of the caliber of those here who are so convinced of the constitutional defectiveness of this approach as is the Hawaii's Attorney General who states that the approach is not unconstitutional.

"Mr. President, the remainder of the committee report addresses areas which we discussed Friday evening, and I will not burden the Senate and you, Mr. President, with further discussion on these areas.

"Mr. President, this is not a good bill. It is nowhere near as good a bill as the committee report says it is. But, Mr. President, I think we need to pass a bill; I think we have made sure that the House will disagree if only on the section regarding the appropriation, and I think we should work on House Bill 463 in conference and bring out a meaningful piece of legislation to address the major economic crisis confronting Hawaii's business, employees, consumers, and taxpayers.

"Thank you, Mr. President."

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

"Mr. President, I rise to speak in favor of the bill, of necessity because of some of the remarks made by the previous speaker.

"Mr. President, I will not burden you nor the body, either, by repeating what was said the previous evening. However, the previous speaker, my good friend and colleague, has indicated at least two areas in his remarks which reflect upon the words I had to say the other night and I would like to address my remarks in rebuttal.

"I think that, first, there is a misuse of the word 'doublespeak' with respect to 'presumption.' I don't know the literary capacity of whoever was aiding the good Senator in preparing the remarks, but the word doublespeak comes from an addendum to the book 1984 by George Orwell, which reflects upon on how an authoritarian society such as the one described in that book one was able to manipulate and maneuver opinion by virtue of manipulating and maneuvering language, and the word doublespeak is utilized as a particular kind of methodology utilized. It has to do not with the kind of thing that was mentioned by the good Senator in the context of the use of the word presumption.

"Doublespeak in 1984 has to do with minimizing the capacity to express emotion, minimizing the ability to describe a situation in terms other than the most elementary. If that is the case, I think that doublespeak may really more clearly apply to outfits like the Chamber of Commerce and others that have been utilizing the word 'presumption' in a manner in which

doublespeak is used in 1984.

"As I say, if something is good and something may be better, something is best, let's talk about good, plus good, double plus good, or bad, double plus bad, this kind of approach. It is meant to obscure; it is meant to provide an inability or to decrease the ability of people to describe with accuracy what is involved. I think that if that is the case, then surely my remarks do not constitute doublespeak. However, I think some of the propaganda that has been put forward by those who wish to make presumption the culprit in this area of workers' compensation, it may more appropriately fit them. I think they should look in the mirror before they make accusations about doublespeak.

"There is, however, another element in the book 1984 which does apply, and that is 'newspeak.' Newspeak is the situation where one word fits all, and in this instance I would say that presumption most surely has been utilized as a one word fits all item, such as was used in 1984.

"I was the person who utilized the word 'smokescreen' with its common meaning; that is to say, an attempt to obscure; an attempt to shield reality from the sight of one who wishes to see it.

"Now, in that instance, I think that the previous speaker indicated that times have changed. They certainly have, and I am perfectly willing to contend with whatever problems the presumption idea has put forward in the context of today's working life. I've tried to discuss that at length in committee. I've discussed it at some length with my good colleagues from the Republican Party, as well as in the Democratic Party, as well as with the chairman of the committee.

"The question here where presumption is concerned and where I raised it the other night, Mr. President, ... I thought was very straightforward. I don't believe that I was engaging in a smokescreen. I was trying to clear the air.

"The plain fact of the matter is, and you will notice in the remarks of the previous speaker, he did not refute what I said. I merely characterized what I said in a manner which in turn creates a smokescreen or continues the smokescreen.

"I said that the areas where presumption was involved in a public dialogue constitute a minor if not almost infinitesimally minimal area of the entire situation with respect to workers' compensation. I cited statistics filed for official publication which showed that the accident rate, as a matter of fact, had gone down by some 7- or 8,000 accidents between 1980 and 1983; that the

kinds of accidents that were injuries were associated with cuts, lacerations, punctures, strains and sprains had remained relatively constant, and more than half of those accidents, that is to say, tens of thousands of accidents and injuries, and that the elements that have now come into presumption in such great prominence: heart attacks, nervous diseases, mental diseases, etc., these kinds of stress, if you will, related injuries and their resolution constituted a small percentage ... as a matter of fact, in the tenths of percents, scarcely one or two-tenths of a percent of the cases.

"We are speaking about dozens of cases versus tens of thousands of cases. That's the context which I presented. It's not that I indicated in my remarks, if you will review them, Mr. President, will show that I thought that that was not important or that if it happens to the individual worker that it is of no consequence to that individual, but, rather, when we're talking about whether or not premiums can be reduced for the employers that have to pay them, it is a disservice to them to concentrate on areas which do not constitute the bulk, let alone any part of the bulk, of the cases to be settled.

"The previous speaker has cited some other instances where there are costs involved that need to be attacked and I don't disagree with those points at all. I do not want to have and I will repeat again, then, today, for the record, this public dialogue on presumption obscure and create a smokescreen as to what the real issues are involved, namely, that the workers are not benefiting from this precipitous rise in the insurance premium cost because it is all too easy to blame the workers, then, for those costs to the employer in terms of the premiums, even though the worker has had little or nothing to do with the decisions that are made as to what the rates are; let alone what the payments will be; let alone the circumstances under which those payments will take place in the workers' life.

"And it is a disservice to the employer who feels that he or she is burdened by these premium costs, wants something done about it and has touted to him or to her that it is the presumption situation which is causing this to take place. It may very well be that there are administrative elements and aspects associated with the presumption principle which need reform, which need looking at, which need to be changed entirely. And if that's the case, then, do it; but to attack presumption, itself, seems to me obscures and creates a smokescreen for that very kind of discussion.

"One further point, then. It is said constantly that those of us who have maintained that there are insurance

premiums and the rates earned, interest earned, income earned on the premiums are a key factor in the cost of workers' compensation. It's constantly said to us that insurance is not the problem, that we must be misstating the situation. I will just give you very briefly, Mr. President, ... but I will enter these charts and figures in the record, but just let me tell you that we do have a record from the Insurance Commissioner.

"The Report of the Insurance Commissioner of the Hawaii State Department of Commerce and Consumer Affairs, 1972-'82, a ten-year period. I will just refer to one or two columns very briefly for your information and to provide a perspective as opposed to a smokescreen for the members ... just a column on premiums earned, less loss of pay, that is commonly known as retention pay:

"Retention pay, 1972 - \$9,398,000, \$9.4 million; 1982 - \$64.9 million,' in a ten-year period; 1972, the retention incurred, that is, the premiums earned less the losses incurred ... all right, in '1972 - \$5.9 million; 1982 - \$28.3 million.'

"Mr. President, let's take a look at the estimated revenues from the program fund. Because there's been a moratorium, it doesn't prevent us from making assumptions, and I will tell you what they are as to what income might have been earned, estimated revenues.

"They are estimated and they are not accurate to the dollar, but I will tell you the basis upon which the estimation is made and give it to you again from 1972 and 1982 and I could give you all the figures in between and as I say, I will present them to you.

"Let me tell you, though, and tell the members that those figures have risen precipitously over the past ten-year period. Just revenues derived from the insurance industry from funds held in short term or long term accounts and invested in revenue producing investments, that is the estimated revenues that I'm taking about. Revenues derived from funds held either short term or long term accounts and invested in revenue producing investments, and I'm going to utilize a 10.5 percent return. I don't think that's out of line; I think it's probably pretty conservative.

"So if you look at the earned premium receipts placed in short term interest bearing investments in the year of receipt, in 1972 the interest revenue from incurred retention \$653,000. You know what it is in 1982? \$18.1 million, in the ten-year period. This is the time, don't forget, when accidents are going down and the number of accidents and injuries that we're talking about in the area of stress, etc., the

presumed new doom machine in workers' compensation, remain in the dozens, as opposed to the tens of thousands.

"Just one other figure, the incurred retentions placed in long term interest bearing accounts, compounded at 10.5 per cent: 1972 - \$1.8 million total interest revenues; 1982 - \$25.9 million.

"Mr. President, people may wish to maintain, if they will, and continue to maintain if they want to that the insurance companies are not making a bundle on workers' compensation and are not taking advantage of both workers and employers. If they wish to maintain that, they can do so, but they do so in the face of the facts, the financial facts, and that can easily be discerned just by a perusal of the information that is commonly available to anybody who wants to take the time to do it. The conclusion that I come to is that we are passing a bill ... I believe we have already passed a bill today to have a complete review of insurance, if I'm not mistaken a \$252,000 appropriation.

"In the past, I have been reluctant to vote for things like the Tax Commission review and all the rest of it on the basis that we could do it ourselves or the information was already available, but in this instance, I'm happy to vote for it so that we can clear the air once and for all with respect to what the insurance companies are doing to employers and employees in this state.

"We need to make this effort and I trust that in conference the thrust of the remarks made here, and in line with what Senator Fernandes Salling has presented, and the good faith effort of Senator Henderson, will be kept in mind."

Senator Machida supported the measure as follows:

"Mr. President, I have some written comments that I'd like to have entered into the Journal supporting the measure; however, I'd like to make some general comments on the bill at this time.

"Mr. President, as the subject matter committee chairman, it was my considered opinion when the session started back in January, and it still remains my opinion as we anticipate passing this measure on Third Reading and await further consideration during the conference deliberations, that the only way to achieve meaningful reform to reduce the cost of workers' compensation is for all sectors of the business community — working people, employers, insurance carriers, health care providers and others — to sacrifice a measure of their own interest. This, we all know, is easier said than done. Some have complied; others have not.

"Mr. President, the task has been an awesome one. We have before us House Bill 463, H.D.2, S.D.2, I feel that it is a measure that will achieve the goal of lowering the cost of workers' compensation. It is not a perfect document and should be worked on in conference deliberations and I will endeavor to do so.

"In closing, I would like to ask all members for the support of this measure so we can make this a perfect document after the conference deliberations are completed. Thank you."

(Senator Machida's written comments in support of the measure are as follows:

"A major issue that has faced the Legislature for several years has been the escalating cost of workers' compensation premiums to employers. The problem has been of sufficient magnitude and complexity for the Legislature to authorize certain actions designed to 1) moderate these costs; 2) examine the problem in a comprehensive manner; 3) hear out those involved in the program for their views and recommendations; and 4) deliberate carefully on the issue before deciding on what manner of changes are to be made to the program to contain its costs.

Your Committee on Labor and Employment has reviewed the reports prepared on the issue; conferred with the technical experts about the analysis, findings, and recommendations; and heard the various sectors involved in the Hawaii program on their views and suggestions.

Your Committee has as its purpose in the review and formulation of recommendations to:

- 1) maintain the integrity of the workers' compensation program of providing basic protection to employees who are injured or become disabled as a result of their work, and retaining the principle of excluding employers from other liability on account of work related injury or disability; and
- 2) consider program changes which address the major issue while not altering the fundamental purposes and structure of the program.

That is, your Committee sought to maintain a balance of these principles in addressing the issue of costs. Moreover, your Committee felt that as the problem can be attributed to the various program areas, its resolution should be sought from these areas. Towards that end, your Committee actively sought input and support of the various sectors for changes that would contribute to cost containment. Through this all, your Committee utilized the Haldi

Report as a frame of reference for discussion and deliberation.

As it is evident now, the Haldi Report fell short of providing the Legislature with a comprehensive analysis of the problems relating to the workers' compensation program costs in Hawaii. Specifically, data and analysis were lacking in areas of the insurance system and rate making, and in alternatives to the current system such as of state funds and open rating systems which were specifically identified in the specifications of the study prepared by the Legislative Auditor. Moreover, the report did not identify the considerable difficulties generated by the adoption of the recommendations proposed. The Department of Labor and Industrial Relations has estimated that such costs may be in excess of \$1.6 million, far more than what the administrative costs would be under the proposed bill.

I would like to report to this Senate body that despite the efforts made to secure some concurrence of the parties as to acceptable changes, a proposal satisfactory to all has not been achieved. We believe that we have here, however, is a bill which addresses the primary issue of cost containment, involves the 'giving' by all sectors, but still maintains the integrity of the program. I believe this is as fair a bill that is acceptable under present circumstances. It should be noted also that although much criticism of the proposal has been directed at claimant benefits, the rate of benefits to workers in Hawaii are not excessive and in some aspects lower than those in other mainland states.

The highlights of the bill are as follows:

- establishes a non-profit state competitive fund which will compete in the marketplace with other carriers that sell workers' compensation insurance in Hawaii
- establishes a business advocate to pursue the interests of employers in the establishment of rates for workers' compensation insurance in order to assure a fair and comprehensive review of insurance rates
- increases the waiting period from 2 to 3 days and eliminates the recapture provisions for those who become entitled to any full wage loss replacement during that period
- establishes guidelines for frequency of treatment and services of health care providers; regulates health care providers and establishes fee schedules for various services
- regulates fees of attorneys and expert

witnesses in benefit cases

- mandates prompt hearings and decisions on temporary total disability cases as soon as medical stability is reached in order to contain such temporary total disability costs
- increases fraud penalties and includes provisions for suspending and terminating benefits
- establishes an accident prevention unit within the DLIR to address the problem of higher job connected accident rates than in other mainland states, and to certify employers with good safety records to be used in the consideration of insurance premium reductions
- provides for the deductible options for medical benefits in insurance policies
- establishes Legislative guidelines on the purposes of vocational rehabilitation
- reduces the reopening of cases from 10 years to 8 years.

Mr. President and members of the Senate, I urge passage of H.B. No. 463, H.D. 2, S.D. 2.")

Senator Yamasaki spoke in support of the measure as follows:

"Mr. President, H.B. 463, H.D. 2, S.D. 2, represents a comprehensive reform of Hawaii's workers' compensation insurance law program. It is aimed at addressing what some have called a crisis, brought about by spiralling insurance premium increases as high as 54% in 1983.

"This bill is a product of a concerted effort by both houses of the Legislature to correct those conditions most responsible for those excessive rate increases.

"This measure reflects a problem-solving approach with one basic end in mind — to bring down the cost of workers' compensation. Each section of the bill is designed to correct or remedy in some way those factors which now threaten to undermine what was once characterized as our nation's best program of its kind.

"First and foremost, is the factor of excessive premium increases due to the failure of the insurance commissioner to consider investment income in setting premium rates. Some have suggested that high rates are merely a symptom of other problems in our statutory benefit system. I disagree. In 1983, the Legislature determined that the primary reason for inflated rates was the lack of consideration for investment income from reserve

accounts kept by insurers in setting rates. Today, these accounts total more than \$30 million per year. A reduction in rates of approximately 10% is expected, as Dr. Haldi predicted, with the full implementation of Act 263 of the 1983 session. By establishing a business advocate to represent the concerns and interests of businesses and employers (as opposed to those of insurance companies) in the rate filing and rate making process abuses of the past and future can be corrected and hopefully avoided.

"A second factor which accounts for inflated premium rates is the lack of sufficient market competition in workers' compensation insurance underwriting and sales. We have incorporated a non-profit competitive fund into the bill modeled after the California and Arizona funds which have a proven record of over a half a century. The cost-plus character of the insurance enterprise warrants a non-profit competitor to simulate further market controls which will lower premium rates in the long run.

"A third factor adding to the cost of workers' compensation is the high number of industrial accidents in Hawaii. To solve this problem the cooperation of employees, labor organizations, employers and government is necessary. We encourage the prevention of accidents by endorsing the concept of an accident prevention unit to promote educational programs, to make available safety professionals, and to certify good safety records. Those employers with such records are rewarded by premium reductions or dividends.

"A fourth factor which accounts for the high costs is the lack of effective controls on medical benefits where over-utilization has dramatically shown an increase in payments from \$11 million to \$34 million in just four years. A study into the problem reveals that one-third of all statutory benefits to injured employees is paid in medical expenses. We believe that the high frequency of treatments requires the establishment of guidelines, the promulgation of new fee schedules for all health care providers, and the imposition of penalties for violators. Furthermore, by increasing penalties for fraud and expanding the scope of the anti-fraud provisions of the current law, we send a clear message to all those who take undue advantage of the program that we will not tolerate such abuse.

"The fifth and final factor which accounts for the high costs is the lack of administrative controls by carriers and the Department of Labor and Industrial Relations over cases which account for extended wage loss.

- By allowing for medical deductibles to

employers and reducing the reopening period from 10 years to 8 years, we encourage employers to be more directly involved in case management.

- By increasing the waiting period from two days to three days and partially doing away with the recapture provision, we provide immediate cost reductions to employers and urge their speedy intervention in cases involving wage loss.
- By allowing preliminary decision soon after medical stabilization, we hope to stimulate employers and injured employees alike to address the need for prompt return to the active labor market of the disabled.
- By more specifically defining the objectives of vocational rehabilitation, we mandate that services be cost effective.
- By regulating attorneys' fees across the board, we seek administrative accountability of all who are involved in the delivery system.
- By requiring decisions from the Department of Labor within 60 days after hearings, we seek to eliminate bureaucratic causes to high costs in wage loss cases.

"Mr. President, we see through this bill the very same objectives of employers who have appeared in our halls this session. The bottom line on workers' compensation is cost reduction.

"Our best estimate is that this bill will result in savings to business from premium reductions and lowering of program benefit costs to approximately 25%. One part of these cost reductions can be expected by insurance reforms through the business advocate and the non-profit fund which we estimate at 10% to 15%. The other part is through benefit reductions and controls in cost areas where we estimate a reduction of over 10%.

"I call upon all of those who seek to improve Hawaii's business climate to act now, and to provide the much needed relief. This bill does not violate our prior commitments to the workers' compensation program and its philosophy; but it does deal with the five factors which account for the problem of costs.

"Mr. President, this is a big step forward in Hawaii for the first time in favor of employers. 1985 will go down in history as a historical year with the introduction of a state competitive fund to address the problem of costs in favor of the employers and to change the traditional way in which

premium rates have been addressed.

"Therefore, Mr. President, I ask for the wholehearted support of the members of this Senate on this bill."

Senator Cobb then spoke on the measure as follows:

"Mr. President, I rise to speak for the measure with reservations.

"The other night, during the debate on a proposed floor amendment, a question was asked, and I think quite legitimately so, what benefit or consideration is there for the workers either in this bill or in our discussions of a work comp?

"As I leaf through the bill, I can find at least five. One is the retention of the present presumption clause; two, are the fraud provisions which will discourage false claims and mean more benefits for those workers truly in need; third, is the requirement for prompt hearings on temporary total disability; fourth, is regulation on attorneys' fees and experts' fees; and fifth, is the accident prevention unit.

"My reservations are basically the same as those of the Senator from the 25th District and I would like to incorporate her remarks as my own for the purpose of expressing reservations.

"In addition, I see one problem contained either in the lack of the bill or the committee report and, that is, there's no specific legislative finding relative to the problem of court interpretations on the present presumption clause which has seriously discouraged additional challenges or questions being raised on that subject matter.

"A year ago, Mr President, we had a hearing in your Committee on Consumer Protection and Commerce relating to the insurance aspects of workers' comp and we found that the frequency of claims did result in lower benefits. In 1983 the same committee passed the now existing law that requires investment income to be computed in rate setting on workers' compensation insurance. The estimate at that time on the savings was 11 to 14 percent, and now that the moratorium is off, I'm going to be watching very closely to see that that kind of savings is implemented.

"Finally, Mr. President, I feel the real test on workers' comp will not be on Third Reading, but will come in the conference committee, in Conference Draft 1, when we have our final vote."

Senator Soares spoke against the measure as follows:

"Mr. President, I rise to speak against this bill.

"House Bill 463, H.D.2, S.D.2, is a very bad bill, in my opinion. I'm against the idea of a business advocate that would do the job the insurance commissioner is supposed to do.

"I'm against the idea of a state fund, again creating a government-run insurance business involving staffing and funding at the expense of our taxpayers and probably costing millions of dollars.

"I'm against the idea of an accident prevention unit which would, at great taxpayer expense, duplicate the work already being done by OSHA, the Department of Labor, employers, and unions.

"I fully supported our Friday night's effort, Mr. President, wherein Senator Henderson provided 14 amendments and justified everyone of them carefully and clearly. I really believe that those amendments would actually take care of the problem that the bill now has going over to the House. I'm not so sure that we can rely on the conference draft taking care of the problem that we see. I'm a little afraid of that. But on the face of it right now, this bill is a bad bill. I cannot vote for it and I hope, just hope, that somehow we may be able to come out with a proper bill at the end of the conference. I don't think so. I think we're going to go through another conference again battling with one another and the bill coming out same as it is now.

"I'm going to vote against it now and against it then."

Senator Chang added his remarks as follows:

"Mr. President, I would just like to add a footnote to this discussion.

"When the matter of workers' compensation change first came up several years ago, the matter of the presumption clause was a term that was boldly tossed about and I have been rather eagerly awaiting a thorough and exhaustive analysis and discussion of that concept.

"After the report was submitted and allegations made about the effect and influence of that clause, I thought that the preparer of that report might have justification for his recommendations and so attended the House hearing on that report. The House Judiciary chairman proceeded to thoroughly dissect the analysis and recommendations of the consultant and, for all intents and purposes, destroyed the validity of that recommendation.

"However, as the bill progressed through

the House and Senate, the matter of the presumption clause and its influence and intent continued to be tossed about merrily by both the advocates and opponents of workers' compensation change.

"I have yet to see any attorney step forward and present a thorough, exhaustive analysis of the presumption clause as it is applied by Hawaii's state courts. I find that as a source of some puzzlement to me. The only attorneys who have presented themselves in public hearing to discuss the matter have invariably argued against any change and, based upon the record as presented in both chambers, I find that to be a very, very interesting phenomena.

"Thank you, Mr. President."

Senator Soares then remarked:

"Mr. President, may I have this information in the record against the bill?"

The Chair answered:

"So ordered."

The motion was put by the Chair and carried, Stand. Com. Rep. No. 853 was adopted and, Roll Call vote having been requested, H.B. No. 463, H.D. 2, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO WORKERS' COMPENSATION," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, 3 (George, McMurdo and Soares).

At 2:13 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 2:27 o'clock p.m.

Stand. Com. Rep. No. 881 (H.B. No. 89, H.D. 1, S.D. 2):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Stand. Com. Rep. No. 881 was adopted and H.B. No. 89, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO TRAFFIC SAFETY," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 20. Noes, 5 (Abercrombie, Cobb, Fernandes Salling, Kawasaki and Kuroda).

House Bill No. 153, S.D. 1:

Senator Chang moved that H.B. No. 153, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Cayetano.

Senator Chang spoke in support of the measure as follows:

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

"Mr. President, the committee report outlines for you the purpose of and justification for the bill. I respectfully request the members of this honorable body to read that report in the context of the historical circumstances which I will now briefly summarize.

"As the committee report indicates, Act 152 was enacted in 1984 to provide 'appointed, non-compensated members of boards and commissions with immunity from any civil action arising under state law, for damage, injury, or loss caused by or resulting from the member's performance or failure to perform an official duty. It expressly denies immunity to a member who acted with a malicious or improper purpose.'

"The intent of Act 152 was to provide protection to 'volunteer' members of boards and commissions from frivolous suits, suits extended as harrassment, and more importantly, suits which may be intended to intimidate or influence board and commission members in their decision-making.'

"What your committee found at that time, Mr. President, was that paid full-time policy promulgating government officers were already provided with the kind of qualified immunity which was provided in Act 152 and which is extended in House Bill 153 before us today.

"The rationale for that situation may be found in Professor Prosser's treatise on tort law, and I will read from that treatise on page 987:

'The complex process of legal administration requires that officers shall be charged with the duty of making decisions, either of law or of fact, and acting in accordance with their determinations. Public servants would be unduly hampered and intimidated in the discharge of their duties, and an impossible burden would fall upon all our agencies of government if the immunity to private liability were not extended, in some reasonable degree,...'

"Professor Prosser goes on from there to say:

'The considerable majority of the state courts take the position that there is no immunity where the inferior officer does not act honestly and in good faith, but maliciously, or for an improper purpose. The argument in favor of this position has been that the qualified privilege is sufficient to protect the honest officer who tries to do his duty; that official immunity should not become a cloak for

malicious, corrupt, and otherwise outrageous conduct on the part of those guilty of intentional abuse of power with which they are entrusted by the people;....'

and for this purpose, Mr. President, the courts have provided, in the majority of states that the standard 'malicious purpose or improper purpose' is the standard for breaching that qualified immunity.

"Your committee therefore recommended, in enacting Act 152, that the Legislature, in all fairness and for a public purpose extend that protection to volunteer members of boards and commissions. If I may read now from Standing Committee Report 538-84: 'Your Committee supports protecting "volunteer" board and commission members from frivolous suits, suits extended as harassment, and more importantly, suits which may be intended to intimidate these persons to influence policies and decisions. Such protection should encourage more people to contribute their valuable knowledge and experience in the community interest, and promote more open, deliberate policy and decision making in response to the general public.'

"Your committee amended the bill. It raised the standard of liability to an act for a 'malicious purpose or improper purpose.' This standard conforms with Medeiros vs. Kondo, 55 Hawaii 499, 1974, which is the controlling authority for the standard of liability of government officials.

"It's very important, Mr. President, to summarize what has been described thus far. What we found was that government officials, full-time paid officials of the government, promulgating policy for the State of Hawaii, were already extended a qualified immunity and this qualified immunity, an identical standard, was extended to those volunteer members of boards and commissions who are also seeking to effectuate state purpose.

"Now, as to what boards and commissions were covered by this extension of immunity, let me just briefly recount some examples.

"We have, for instance, the Board of Dental Examiners, which is not an advisory group, the Board of Governors for the East West Center Corporation, the Hawaii Community Development Authority, the Hawaii Housing Authority, the Hawaii Public Employees Health Fund Board of Trustees, which makes decisions on financial matters, the Board of Regents for the University of Hawaii, the Research Corporation of the University of Hawaii, and the Stadium Authority, among others.

"Mr. President, the members of the boards and commissions excluded by the enactment of Act 152 are very few. This

bill is needed to accomplish the purposes of Act 152 and fairly extend its protection to all persons similarly situated. For this reason, I recommend that House Bill 153, S.D. 1, be adopted by this body."

Senator McMurdo remarked:

"Mr. President, I would like to point out that although I was not in the Legislature during the Twelfth Session, I was quite aware of many things that were going on up here. I do remember that Senate Bill 152 started out as a knee jerk reaction to the heptachlor (contamination), and that the Board of Agriculture was originally what it was supposed to do (protect) - or one of the other bills like it, was supposed to do this - and that it was originally to be retroactive to before the heptachlor scandal came about.

"The way it is now, the bill went ahead, the retroactive bit was stopped, but there has been this immunity. Now, we want to extend this immunity ... I don't, but some people do ... to the Hawaiian Homes Commission, the Board of Land and Natural Resources. Both of these boards have a strong land trust obligation. Now, here we're going to grant them immunity when they have all this land they must be dealing with.

"The other one that we are adding is the Board of Trustees of the Employees' Retirement System. Now, we've just passed the bill which will give them the right to make all sorts of investments.

"I think that we are really being a little careless here in granting this much immunity. I don't think Senate Bill 152 should have passed in the first place and that the public perception of this bill is exactly what I said, that this was done to take the rap off the Board of Agriculture, if there should be one.

"I would vote against this bill."

Senator Fernandes Salling then said:

"Mr. President, I rise to speak against this bill.

"The Hawaii law as it now stands provides immunity to certain members who sit on boards and commissions from any actions which they may commit that can be considered negligent or grossly negligent. They are presently held liable if it can be shown that their actions were malicious or done for an improper purpose.

"The bill that we have before us is going to extend that same immunity to those people that have land trust obligations, such as was mentioned, the Department of Land and Natural Resources, the Hawaiian Homes Commission.

"Now, in extending the immunity, what they're saying is that these board members with land trust obligations will no longer be held liable for gross negligence. They are now going to be held to the higher standard; you have to show that they have acted maliciously or with an improper purpose in order to show liability on the part of those board members.

"Now, the question is, would you want to extend this kind of liability to those boards and commission members that do have a higher duty of care with regard to their land trust obligations.

"It's been mentioned that the Hawaii Housing Authority does have dealings with land but the distinction to be made with them and these two land boards is the fact that Hawaii Housing Authority does not hold any land for the state; whereas, the Department of Land and Natural Resources holds those public lands in trust for the state, as does the Hawaiian Homes Commission for those native Hawaiians.

"The Hawaii Housing Authority, on the other hand, simply sells and deals with land but does not hold the land in trust for the State of Hawaii.

"The bill is even more dangerous, I think, because it goes one step further and it now is going to provide immunity from actions which are negligent or grossly negligent to those trustees that sit on the State Retirement System. Three of those trustees are elected. They are not volunteer members. Those trustees, it has been shown, are now controlling funds totaling \$2 billion as of June 30, 1983.

"We have recently passed bills out of this body over to the House which extends their discretionary powers so that they can make investments in land; they can now sell commodities. These people are acting more as a financial institution, and yet we are going to, by this bill, provide them immunity from actions which could be considered grossly negligent and hold them to the higher standard of malicious conduct and an improper purpose, showing in those cases some sort of deliberate, intentional type of conduct as opposed to a negligent type of conduct.

"Dealing with those kinds of money and managing the assets and the funds of the Retirement System, do we want to take this step and provide these people with the same kind of immunity that is presently enjoyed by other members, be they volunteers, paid, unpaid that sit on other boards and commissions.

"I would submit that a good analogy that we should consider when we look at the trustees of the Retirement System is that we should regulate them as we should have

regulated investment institutions to avoid problems such as we face with Rewald.

"Another example, perhaps, is the Bank Examiner. It may be not as good an analogy, but in that case, maybe we could find that actions were taken that were grossly negligent and yet under this immunity law that we have, board members would be immune for those actions unless one could show that it was done maliciously or for an improper purpose.

"To extend this immunity to these two boards, the DLNR and the Hawaiian Homes Commission, who have land trust obligations and who should be held to a higher standard of care, and also to the State Retirement System would be a dangerous move on our part in this Legislature.

"For these reasons, I ask all of you to seriously consider whether or not we should take this big step to grant these two departments and the State Retirement System the kind of immunity that other boards and commissions enjoy presently.

"Thank you."

At 2:43 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 2:46 o'clock p.m.

Senator Abercrombie also spoke against the measure as follows:

"Mr. President, I rise to speak against this bill.

"Mr. President, I do not recall the vote made on 152. Because we did something wrong before is not a reason to continue it at this time. If anything, 152 then should be considered for changes perhaps to be revised or removed.

"Mr. President, in a time when we've gone through Watergates and have gone through hearings that indicated that there was incompetence, possibly malfeasance and misfeasance, when we have had example after example given to us of less than industrious application of the laws or utilization of the proper oversight and custody with respect not only to our laws but for the public welfare in health and in other areas, in our financial institutions, what kind of message is going to be delivered to the public in the midst of all of this, if we're going to provide this immunity and indemnification.

"Mr. President, we have before us, I think we have a list right here on the floor today, all kinds of commissions, all kinds of people whose names are coming up ... money will be spent by the taxpayers on this, Mr. President. No one is being forced, either to

run for office or forced to be on one of these commissions. And unless we're saying that this again is some kind of a reward to political cronies or some kind of a low grade adventure to be paid for by the taxpayers, people who serve on boards and commissions, at whatever level and whatever kind of obligation, should take their job seriously.

"Now, Mr. President, what we're saying here is very simple, that we're going to remove any incentive which at best can result in incompetence and at worst, corruption. Are we really going to say, speaking of immunity, that members of boards and commissions, as well as other officials in this state, are immune from corruption, are immune from the possibility of incompetence. I don't think so.

"When the phrase is used, 'frivolous suits, suits extended as harassment,' that's always used when you're the one who wants to define it as frivolous and being a harassment but for the citizen that brings that suit or the group that brings that suit, they don't believe it's frivolous, they don't believe it's harassment. And, besides, where it's government, government should be harassed. Government should be gotten after all the time, and all the boards and commissions.

"How many have I seen of these boards and commissions where people do not, as far as I'm concerned, take their duty seriously. And if I believe that they have done something that is not only against the public interest, but should be subject to suit, why shouldn't I be able to bring it? Why shouldn't I try and cause my neighbors to join with me in being able to bring a suit? That's the difference in this country, between us and many other countries, where to raise an objection at all sometimes is grounds for imprisonment or worse, that government should not be able to stand in some kind of position against the people where it cannot be brought to account.

"If anything, we can talk about the First Amendment about the petition for redress of a grievance. There are various and sundry ways that have been made available to us to petition for a redress of a grievance; among them is bringing suits against officials and members of boards and commissions in government if we believe those suits are warranted, and that should be judged by a jury. We're going to get to that before this day is out too.

"This is America, and we are not supposed to substitute our judgment or place the government in a position where it can dictate to the people. The people have to have recourse against the government officials and decisions made by government

in a manner and in ways that constitute civilized, justified approach to keep the civil peace. Every step that's taken that loosens that accountability and responsibility and obligation on the part of the government is a step backwards not a step forward.

"Speaking of being trustees, we're supposed to be trustees of people's freedom, the average person, the working men and women taxpayer in this state. Why do we pass things like this? What's the necessity for doing these things? Yet, we seem to do it day after day ... one more freedom after another of the average person in this state chipped away because we find it inconvenient, or someone with whom we are associated with in government finds it inconvenient to have to answer the public.

"Mr. President, I submit that neither you nor myself nor any member here is forced to be in this body. No one serving on these boards and commissions are being forced to do it. They are supposed to do it out of a spirit of public service and they should always stand ready to be accountable and responsible for what they do.

"By passing laws like this, we diminish that and it's another step in proving to the people of this state that we don't care what they think; that we do not hold ourselves nor members of boards and commissions and other officials accountable to them. We're reversing what it is that underlines the freedoms of this state and in this country. And if people think that's an over statement, believe me, all we have to do is go through some of the bills that we've been passing, everything that diminishes our responsibility and our obligations towards the citizenry. Everything that diminishes our responsibility and our obligations towards the things that make this country the free place that it is; in this state, the free place that it should be. That's the reason this bill should be submitted to either being recommitted or to be killed on the floor with a negative vote because we're supposed to stand for something, not just protect those who should not be protected."

Senator Hee rose on a point inquiry:

"Mr. President, will you ask the chair of the Judiciary Committee to yield to a question?"

The Chair posed the question and Senator Chang answered:

"Mr. President, may I hear the question?"

Senator Hee asked:

"Mr. President, would you ask the chair of Judiciary if this bill would apply to members of the Hawaiian Homes Commission?"

Senator Chang answered:

"Yes, it would, Mr. President."

Senator Hee continued:

"Mr. President, would you ask the chair of Judiciary if it also would apply to members of the Board of Land and Natural Resources?"

Senator Chang answered:

"Yes, Mr. President."

Senator Hee continued:

"Mr. President, would you ask the chair, if the recent negotiations between the Board of Land and Natural Resources and the Hawaiian Homes Commission with respect to the awarding of Shafter Flats in exchange for the airport ceded lands, which has been challenged by the Office of Hawaiian Affairs, were these members who have participated in this transaction of Shafter Flats be immune and indemnified from the constituents, namely, the Hawaiian people?"

Senator Chang answered:

"Mr. President, the question is not clear as to whether the inquirer is speaking with respect to the present law or the application of the bill to that past situation?"

Senator Hee continued:

"I'll restate the question. Mr. President, would you ask the chair that if these kinds of acts which resemble what has recently transpired between the Board of Land and Natural Resources and commissioners of the Department of Hawaiian Home Lands with respect to awarding or exchanging lands, such as Shafter Flats, in exchange for ceded lands ... if these kinds of transactions would occur subsequent to the passage of this kind of legislation, would those participants be immune from civil action by the Hawaiian people in this case?"

Senator Chang answered:

"Not, if those persons were found to have acted with malicious or improper purpose, Mr. President."

Senator Hee continued:

"Mr. President, I don't know how you define malicious or improper action or that it matters from the common man's perspective. Because of the response given by the chair, I will be voting against this bill inasmuch as it does not expressly clarify the right of redress by members of the community. I use this example because these kinds of exchanges between boards and trustees and commissioners often occur without redress and to provide immunity

from redress by members of the community who at the outset are at a disadvantage, is not proper and is not the kind of legislation which this body should enact. For those reasons, Mr. President, I will vote against this bill."

Senator Chang then said:

"Mr. President, in response to the last question implied by the previous speaker, the standard of malicious and improper purpose would be found in the vast body of case law, which as I mentioned is found in a considerable majority of state courts which take a position that there is a qualified immunity with respect to officers of state government. Thus, if one were to sue in the State of Hawaii, for example, the Comptroller who has exercise over vast amounts of money or the Director of Budget and Finance who also has investment duties, or for that matter the members of the board of trustees for the Employees Health Fund which is presently provided immunity, the standard of malicious or improper purpose would be applied because that standard is so provided by law.

"Thank you."

The motion was put by the Chair and carried and, Roll Call vote having been requested, H.B. No. 153, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MEMBERS OF BOARDS AND COMMISSIONS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 14. Noes, 12 (Abercrombie, Cobb, Fernandes Salling, George, Hee, Henderson, Kawasaki, B. Kobayashi, Matsuura, McMurdo, Soares and Toguchi).

House Bill No. 949, S.D. 1:

Senator Matsuura moved that H.B. No. 949, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Aki.

Senator Abercrombie spoke on the measure as follows:

"Mr. President, I rise to speak again on behalf of the people against this bill.

"It gets more and more discouraging as we watch the Democratic Party become something that it should not be. We're supposed to be the party of the people, not the party of property.

"Once again, we have a bill before us that will diminish the right of people to be able to deal with, in this instance, the developers, geothermal resources.

"I've brought up examples previously where other people think something is important. We could take wind farm; we

could talk about aquaculture; we should talk about zoning. We talk about putting up apartment buildings. We talk about those things which affect us as tenants.

"Are we going to be able to go directly to the Supreme Court? No, we will not. It's only when something is deemed in the economic interest of a particular individual or corporation, generally with big money, big power behind it, then we're only all too ready to accommodate them, and there are other bills coming.

"We're supposed to be protecting consumers; instead we're attacking them. We're supposed to be protecting our people; instead we're attacking them.

"If you're big enough and if you're powerful enough, then you can get someone to come in and try and make things easy for you. I've heard it said that this is supposed to protect the people who oppose this particular concept or the way it's being manifested. How can it possibly be said with a straight face? You have to have time to develop your evidence. When you are a volunteer group as generally these things are, where people are involved, or you come together on the basis of what is happening to you and meet one another, perhaps for the first time ... I can think of everything from the Date Laau Initiative recently, to, as I say, apartment owners, people in neighborhoods having to gather around the initiative with which they have not been confronted previously. When they have to come up against expert witnesses, they find themselves in difficulties having to do with the immediacy of the situation. And yet they're told that, in this instance, what's going to happen is, 'any other law to the contrary notwithstanding' ... that's all that's generally said ... everything else has been done to protect you, everything else that's been done to insure due process will be set aside ... an 'appeal of a contested case hearing under this section shall be made upon the record directly to the supreme court for final decision;'.

"Now, Mr. President, I'm not sure exactly what that means. Does that mean then that this issue as such with respect to, in this instance, geothermal resource subzones ... we concluded once and for all and no other basis can be raised for any question with respect to the designation provisions and land use of these subzones? Is that what that means? Final decision? That even if you come together and from your point of view discover that there is other bases upon which you wish to make an argument, that's it for you, because it's been decided in statute here that something called final decision will be a final decision in all aspects, all elements, regardless of anything else that's raised?

"It said that the reason we're doing

this is this is so important. Well, again, you see it depends on who it's important to, doesn't it?

"You see, I've raised issues here today about tenancy, for example, what's important to people, for example, a mother with a crying child. That doesn't mean anything to anybody. But that's annoying; it's vexatious; throw 'em out, who cares.

"We're supposed to be the people, the party that cares about people. But it doesn't make any difference. What makes the difference is, are you powerful enough to get people to come in here and get you special privileges. That's all that counts and that's what this is about. It's been said over and over again, oh, this is a big investment; this is going to have profound impact.

"We don't know if the investment can be made if people are going to be harassed. There's that word again, they are going to be harassed. It's going to be frivolous. You see, it's frivolous if you've got big money. It's harassment if you're a powerful person or corporation. But precisely because it is so important to the economy, because it's so important to the environment, because it's so important to the people involved in it, that's why the whole due process situation should continue to be made available, and we should go through it.

"This is another message being delivered to our people ... that we're going to run things regardless of what you think. We're going to push things the way we want to do it because we are in line and in league with people who have that kind of power. And until and unless you get that kind of power and can make that kind of impact on us, you're going to have to just trip along like everybody else, and you're going to have to take it. That's what this is about.

"I don't contest the idea that geothermal resources is an important decision to be made, but if it's an important decision to be made, it's important that the process be carried out in a manner not different from the process that anybody else carries out under other circumstances. It's even more important that we maintain the process because it has a high profile; because it is so important to the economy and to the community and to the social atmosphere that exist, not just on the Big Island but everywhere in the state.

"It's precisely those times when you have the big cases, when you have the high profile, when you have a notorious instance, that you have to make sure that people understand and believe that everybody is playing by the same rules. When you change the rules to suit the powerful, the rich, the influential, the message goes out once again that we've come a long way in the last 30

years in the Democratic Party in the State of Hawaii. We've come a long way to supplanting the very people that we said acted arrogantly, acted in their own interest, to do things that they wanted to because they were powerful. We look in the mirror and we see the very enemy we thought was vanquished.

"This bill and other bills like it should be defeated for that purpose and for that reason."

Senator Matsuura spoke in support of the measure as follows:

"Mr. President, I wish to speak in support of this measure.

"Mr. President, the intent of this bill is to streamline the judicial appeal process relating to a decision of an administrative agency authorizing geothermal land use activities.

"Under the Hawaii Administrative Procedures Act, Chapter 91-14, HRS, an appeal from an administrative agency's decision on geothermal activities must be first heard in the state circuit court before the Supreme Court of Hawaii will take jurisdiction over the case. Because the state circuit court is not the highest court of jurisdiction in the State of Hawaii, its decision is not a final judicial determination in all instances. Therefore, an appeal to the supreme court is required for an ultimate state judicial determination.

"Since the standards and criteria for judicial review in the Hawaii Administrative Procedures Act are identical for both the state circuit court and the state supreme court, there is a redundancy in the judicial review process. This redundancy concerns the review of the identical legal issues by the two courts.

"This bill seeks to eliminate this redundancy by having an appeal concerning geothermal land use matters to be appealed directly to the supreme court. However, the elimination of this intermediate and duplicative step does not jeopardize the right of an aggrieved party to have his or her day in court. Instead, the highest court in the state will hear a case in a more direct and expeditious manner. As a result, it will be an advantage to the vindication of legal rights by eliminating this duplication and the time, money and effort to receive a final legal decision from the highest court in the state.

"At the same time, geothermal energy projects will be able to proceed without undue delay awaiting legal appeals that take as much as three or more years to reach a final resolution. Appeals to the circuit court and the state supreme court are

automatic upon the filing of a notice of appeal irrespective of merit. And this is what is important.

"If for some reason you go up to the circuit court, examining the records that have been decided upon by the administrative agency, even if there is no merit, by making an appeal you go automatically to the supreme court under the same record that's going to be deliberated upon.

"Another intent of this bill is to relieve the circuit court of the burden of appellate duties, since its primary role is a trial rather than appellate court. This bill, and I repeat, this bill does not alter the procedure for legal appeals concerning other types of agency decisions.

"Thank you."

Senator Fernandes Salling then remarked:

"Mr. President, I recall when we considered this same bill as introduced in the Senate.

"It seemed there was an agreement that we had some principles at stake here, and that we had procedures in place that everybody was going to be asked to follow. Now we are coming here today and asking for an exception to those procedures that apply across the board to all people.

"The insult that I see here to those principles that we once held when we discussed the Senate version of this bill in caucus is the fact that we're saying, we acknowledge that we have some principles to abide by these procedures and not circumvent them for one or the other group. The insult though is to say, that's okay, we're just going to do it for five years.

"I submit to this body that there are many requests made by people who are in favor of geothermal, and there are a lot of us out there that favor geothermal, but we have to consider that year after year these groups have come in and asked for exceptions to the laws so that they can continue to develop their operations. Why shouldn't they be held to the same sort of procedures that apply to other industries out there that face the same kind of economic problems.

"Thank you."

Senator Abercrombie then said:

"Mr. President, I rise in rebuttal of Senator Matsuura's remarks. In fact, I rise to speak in rebuttal by quoting his remarks back to him. He's made my case for me. I ask you to pay strict attention to what he said.

"The reason we are to pass this bill which

gives an exception to these powerful people, as opposed to the rest of us, anybody else and I'm talking about business, I'm talking about individuals, is because this is a more direct and expeditious method. It saves duplication, time, money, and effort, and you can proceed without undue delay.

"Why shouldn't I or you or any other business be able to have a more direct and expeditious method? Why should the rest of us have to take the indirect methods, methods which are not expeditious? Why should the rest of us have to suffer duplication? Why should we have to put in more time? Why should we have to put in more money? Why should we have to put in more effort? Why can't we proceed without undue delay?

"But, the good Senator tells me, no, in this instance these people are supposed to have all these advantages that none of the rest of us have. And yet he says at the same time, this is not a precedent. And I would be willing to venture this, that it probably isn't until the next time that somebody rich enough, powerful enough, big enough, with enough compelling reasons come in and say they don't want to be bothered like the rest of us; they want to be direct; they want things expeditious; they don't want to have duplication in time and money and effort the other people, ordinary mortals, have to go through. There could not be a better argument to defeat this bill than the proponent's own argument.

"The exception will be made for the powerful, for the rich, for the influential; the rest of us can grub along just the way we always have. And that's what the Democratic Party is coming to."

Senator Cayetano, in support of the measure, stated:

"Mr. President, I'm going to support this bill. I was opposed to the bill in its original form.

"Mr. President, I think the points made by the previous speaker are very meritorious. They deserve great consideration, but I believe the previous speaker paints a picture which is not entirely correct and, for the record, that should be corrected.

"The fact of the matter is that in our judicial system today, we have carved out special exceptions for the kind of expeditious hearing this bill would provide. I cite for example cases which go from the board of labor appeals directly to the supreme court. We have done that in that area. I'm advised that cases which are heard by the PUC also go directly to the supreme court, so there are at least two instances or examples where exceptions like this have been carved out.

"Moreover, I think it's a misconception to somehow believe that the supreme court will accept every case that is filed with the clerk of the supreme court. The fact of the matter is that the supreme court, whether it be the State Supreme Court or the Supreme Court of the United States, has some discretion as to the kinds of cases it decides to hear or not hear. So, those remarks are intended to address the point that somehow this is the only exception that has been carved out in our law.

"It seems to me that the issue here is a policy one. The question is whether we want to make an exception in this case. My impression is that if one feels that this particular issue, the question of geothermal development, and without taking the side of the developer or the people who are opposed to it, if there are enough people in this body who feel that it's important enough to carve out what is a temporary exception, then the vote should be cast accordingly.

"Some of the remarks of the previous speaker seem to indicate that somehow this exception will benefit only the so-called rich and powerful. That is not entirely correct either, and we owe it to ourselves to make sure that we have the picture correct before we vote.

"The so-called redundant legal steps usually favor the powerful and the rich. It's usually the poor who are most affected by these so-called redundant legal steps because it is the poor who cannot afford legal counsel. So I think, in this particular case, we should take that into consideration.

"What is apparently happening on the Big Island is that there is a dispute between members of the community and those who are interested in developing geothermal energy. Apparently, the author of this bill feels strongly that the dispute may end up destroying the development of geothermal energy on the Big Island.

"But the fact of the matter is, what goes up to the supreme court is a record of appeal. The arguments on the merits are made at the hearing level and it is the record that goes up to the supreme court. It is, I think, misleading to say that this exception will prejudice the preparation of the case by members of the community who oppose the geothermal project. Under either scenario, whether it is the existing law that we're talking about or the exception carved out in this bill, if the community people were not ready at the hearing level, then they have a problem. That is where the preparation counts, not on appeal. The record goes up on appeal; the witnesses, the testimony, the expert testimony, the expert witnesses argue the testimony at the hearing level.

"I share many of the sentiments expressed by Senator Abercrombie and others who are opposed to this bill. But, as I said earlier, I believe this is a policy decision. I think all of us have to decide whether this particular issue is as important at this particular time, under the prima as set forth in this bill, to cover an exception as we have done with the PUC, and as we have done in labor cases. My own feeling is that, it is."

Senator Hee then remarked as follows:

"Mr. President, I will be voting against this bill.

"Let me say at the outset that I support geothermal, have always supported geothermal, and as a policy decision, as mentioned by the previous speaker, I would like to address my points to making policy on this floor and not specifically to geothermal, although let me recant a short history of geothermal, at least from my own personal experience in the Legislature.

"In 1983, the Legislature authorized the Board of Land and Natural Resources to establish subzones and, as a member of the House at that time and presently a member of this body, I still maintain that by doing that as a policy decision the Legislature effectively circumvented the existing process.

"That, notwithstanding, this Legislature has passed a bill to waive royalties now to geothermal developers. And, presently, we are about to take action on a bill which would now expedite the appeal process for the geothermal developers.

"At each step of the actions taken by the Legislature, we are told that, if this were not to happen the developers would pull out. In essence, very similar to what we were told by the solar business community that, if we did not extend the tax credits, their businesses would fold. Similar to, as a policy decision, that, if the Legislature did not raise the drinking age, the Federal Government would rescind \$17 million.

"These are the kinds of actions that I see happening, looking at it from a policy and not from a specific substance that this body will act on.

"My concern as a policymaker is that, what will be the next industry to use so-called threats or perhaps blackmail. Will it be manganese nodules? Will the Board of Land and Natural Resources carve out an area for the mining of manganese nodules and under the previous bill have immunity because some judicial body deemed that it was not maliciously intended. Or will this body act on various measures on leasing of the ocean, because some developer will say, without the expeditious process to go

straight to the supreme court, that privilege not accorded to anyone else but set as a precedent with the geothermal bill, will that take place?

"I think quite frankly this bill will set precedent, whether we choose to admit it or not, just as the previous bill has set precedent with respect to immunity. I think that my own view on this is that this does little or nothing for those directly affected by this legislation, namely, those who will contest such development.

"Whether they are right or wrong is not the issue, in my view. It is the right to process and if the appeal process is long and it takes time, then until we get a better system or, perhaps as a policy, that system might be a bill to say we will do away with the appellate courts and waive everything to the supreme court. If we do that as a policy, then fine. Then let us establish many supreme courts to handle the judicial overload which will surely take place.

"Speaking as one who sets policy and one who supports, unconditionally, geothermal, I would urge this body, because of its implications to other industries, because of its implications to those who will be directly affected at all levels, to vote against this bill."

Senator Toguchi then inquired:

"Mr. President, point of inquiry, please. I would like to direct it to the previous speaker, the attorney of the Senate, a person who is an attorney in the Senate, Senator Cayetano. May I direct a question to Senator Cayetano?"

The Chair posed the question and Senator Cayetano replied:

"Mr. President, with friends like Senator Toguchi, I don't need enemies. I will yield."

Senator Toguchi asked:

"Mr. President, I think after his talk I got a lot more confused here so I need to raise these questions.

"First of all, Mr. President, how and when do we determine if the circuit court is redundant in the legal steps?"

Senator Cayetano answered:

"Mr. President, my response is this.

"First of all, the word redundant was not my word. I was quoting the author of the bill. But let me give my impression of why the appellate process is set up the way it is; why we have one supreme court; why we have one appellate court; and why we have dozens of circuit courts, district courts, and boards.

"If we wiped out everything that was in between, the intermediate court of appeals, for example, our supreme court would be backlogged with cases and would never get anything done. The whole system, whether we like it or not, is set to weed out those types of cases which should not proceed further than a certain level. Thus, if a case proceeds, for example, from the hearing level and an appeal is taken to the circuit court which is provided under existing law, and the circuit court acting as an appellate court makes a decision and the parties decide not to go further, then it's dead.

"Let's say there's a decision in the circuit court and the losing party decides to appeal and it goes up to the intermediate court of appeals, and there's a decision there, the losing party may decide, thereafter, whether they want to proceed.

"The system is designed to weed out the cases as they go along. I don't know whether that answers your question, but I think that goes to the point of redundancy. As to how we determine whether it is redundant or not, I guess my answer is that the appellate system by nature, and for the reasons I stated, is deliberately redundant."

Senator Toguchi continued:

"Mr. President, then I would just like to raise this other point and it's based on his answer. He said the circuit court was to decide whether we should move it on to the supreme court...it's a weeding out. Then we are making that determination here. It's exactly what we're doing. We're deciding that it should move on. It's something that the circuit court should be doing. That was your statement."

Senator Cayetano responded:

"Mr. President, my statement described the existing system and not the system that is proposed under the bill for this particular issue. What I'm trying to say is that, should the bill pass of course, you'll bypass the circuit court and the intermediate court of appeals and go straight to the supreme court. It's a policy decision as to whether we want to do it just as we have decided we wanted to do it in the areas of labor appeals, in the areas of the PUC.

"You have to weigh the pros and cons and decide whether this issue is important enough. That's the only answer I can give to that."

Senator Toguchi continued:

"Okay. I would just like to raise another inquiry, my last point, last question.

"I'd like to ask the Senator how he argued

and voted on the ... we just had a bill and I think it was the board of labor appeals ... facilitated directly to the supreme court. How did the Senator vote and argue on that recent bill that just came out of the Labor Committee, this year?"

Senator Cayetano answered:

"Mr. President, I don't recall the bill. I really have no recollection.

"If the previous speaker wants to pursue this matter, give me the courtesy of a recess. I'll talk to the chairman if he can refresh my memory; I'll try to recall how I voted. I don't think it's particularly relevant to the issue at hand because I think that we are deciding this on a case by case basis. And as I stated earlier, from a policy standpoint, if you believe this issue is important enough then you should vote accordingly. If you feel that this issue is no more important, for example, as Senator Abercrombie stated then, a dispute involving landlord and tenants ... and I think there's a good case to be made there ... then, vote accordingly. That's the issue as I see it before us."

Senator Toguchi continued:

"Mr. President, I'll pursue this matter with the speaker as he suggested during recess. But I think it's important that I bring this up because the board of labor appeals was used as a precedent that we've had exceptions like that and that's why I pursued that in terms of how the Senator argued that situation.

"Mr. President, I just want to say that I will be voting against this bill.

"I can recall I was in the House when aquaculture was in its developmental stages. We did not consider a measure like this for that new industry. I think that if we start doing something like this we can extend this to other things. What if there is an effort to build a polluting factory here? Let's say that the factory would provide jobs, would provide economic opportunities. Can we make the same argument?

"Mr. President, I think the appeal process that we go through is very important. I disagree that it would not benefit the proponents and that it would be for the rich. I think that it's an advantage also, if you look at past cases like, for example, what happened out in the Windward side, Waihole-Waikane is an example of that where I think if we facilitated that process, I don't think that Waihole-Waikane would be a state ag park today. So, I say that it's necessary that we maintain the existing system and not tamper with it."

Senator Cayetano then inquired:

"Mr. President, would the previous speaker yield to a question?"

The Chair posed the question and Senator Toguchi replied:

"Yes, I will. I guess he doesn't want to talk about things during recess, so I will."

Senator Cayetano remarked and asked:

"Mr. President, no, this is an inquiry regarding the statement he closed with.

"Mr. President, would you ask the previous speaker how expediting the appellate process would benefit the rich, when it is the rich who can afford attorneys; when it is the rich who can afford delays, rather than the poor. I just don't understand that."

Senator Toguchi answered:

"Mr. President, I feel that the process that all parties will have to go through can be utilized by not only the people that have the money. I think that we have had situations out on our side where we've had access to legal aid attorneys and with their help, even though the process had been very long, they have been able to be successful in some of the cases. I just can cite that example."

Senator Cayetano continued:

"Mr. President, just as a response to that.

"What is involved in any kind of legal proceeding is a lot of costs, for example, for depositions, for subpoenas, for filing fees, and those costs are multiplied at each level the proceeding follows, whether it's the hearing level, whether it's the circuit court level, whether it's the level of the intermediate court of appeals, and whether it's the level of the supreme court. That will generate legal services; someone has to pay for that. It seems to me that it's common sense that the less of those kinds of steps there are, the better it is for the party that cannot afford the attorney."

At 3:35 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 3:57 o'clock p.m.

Senator Abercrombie then remarked:

"Mr. President, I'd like to, if I may, in brief rebuttal, bring the issue back to the bill as to what principle is involved.

"We've heard over and over again about policy decisions. I think we're talking about principles here because the policy wouldn't buy you a principle.

"I just want to reiterate for the members, before we vote, that if in fact poor people would benefit or could benefit or individuals and groups in the community, not ordinarily organized for purposes of a legal endeavor, can benefit by more direct access to the supreme court, or more direct access in any form in our judicial system, then shouldn't it be enacted across the board? Shouldn't we all have that same privilege, then? Shouldn't they have that privilege? Why should it be only in this particular instance? And, do we truly believe as has been said by other speakers that this will be the only instance?

"If it's to be judged on a case by case basis, isn't that an argument then that those who have access to the Legislature, not access to the courts but access to the Legislature, will be getting this kind of preferential treatment. And how is that to be applied then across the board in terms of the message that will be given to the citizenry?

"The situation here is that we are overruling the jurisdictions of the court by legislative action. That can be argued as being a legitimate endeavor. But if we are to do that and we are to pass laws of general application on the whole, then why are we not taking the same kind of attitude and applying the same kind of standard to the cases that I have just mentioned.

"We have review in a process; the Judiciary has a review in a process. We keep them separate for a check and balance. We are seriously interfering with that check and balance with what is proposed here.

"I conclude, Mr. President, by reminding the body of the argument made by the introducer of the bill, this is more direct, it is more expeditious, it saves duplication, time, money, and effort, and you can proceed without undue delay.

"Don't we all wish we could say and do the exact same things, Mr. President? I don't think this is the kind of message we want to deliver to the people of this state."

The motion was put by the Chair and carried and, Roll Call vote having been requested, H.B. No. 949, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO GEOTHERMAL RESOURCES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 16. Noes, 9 (Abercrombie, Chang, Fernandes Salling, Hee, Kawasaki, McMurdo, Solomon, Toguchi and Young).

House Bill No. 40, S.D. 1:

Senator Cobb moved that H.B. No. 40,

S.D. 1, having been read throughout, pass Third Reading, seconded by Senator B. Kobayashi.

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

"Mr. President, I rise to speak against passage of this bill.

"You will note in the committee report that the Governor vetoed a like bill last year, and I think the Governor vetoed it for good reasons.

"One of the interesting aspects of this particular bill is that while, ostensibly, the bill originally was designed to take care of high interest rates that are chargeable by financial institutions on an extension of an agreement of sale, the concern was that for young couples particularly, buying into a home they bought an agreement of sale and they need to extend the agreement of sale, we don't want the interest rates chargeable in extending the agreement of sale to be too high.

"The bill provides that the interest chargeable to agreements of sale on a renegotiated basis would not be more than 4 percentage points higher than what was the interest rate charged on the original mortgage involved in that same parcel. This bill, however, is what I call the financial institutions' dream. It attempts to do what was never attempted in the past in the history of this state and that is, to completely remove all ceilings on interest rates chargeable to borrowers.

"And you know, in today's climate when you have to pay 18 percent when you borrow money on second mortgages, on uncollateralized loans and so forth, the only element that really suffers is these people who by economic circumstances cannot avoid borrowing money at these kinds of, what was ten years ago, usurious rates—18%, 24%.

"What this bill is going to do is to completely remove all ceilings on interest chargeable by financial institutions.

"And you know, I'm a little concerned. Much was said by Senator Abercrombie about protecting the interest of the ordinary person who is not represented by lobbyists around here, that the big, rich, and powerful people in this state have a lot of influence around here. Apparently, they do.

"I have seen, in my 19 years here, consumer interests subverted in the last six years like I've never seen it before. You know, in the old days all consumer interest bills were the purview of the Senate Committee on Judiciary. Well, six years ago or so ago, we spun off all bills relating

to consumers to make it going to a separate committee called, today, in my judgment, erroneously, the Consumer Protection Committee.

"And from what I've seen emanating from the Consumer Protection Committee in the last six years, I'm not quite convinced that we are protecting the interest of the consumers anymore. And this bill is a good example.

"Never before in the history of the Legislature has an attempt been made so brazenly by the financial institutions of the state, the banks, the savings and loans, industrial loan companies, retail merchants, people who provide credit cards, never has an attempt been made to completely remove all ceilings on interest rates.

"Passage of this bill will for sure substantiate the impression, rightly or wrongly, held in this community that if you are big and powerful, and you're well organized and you have money to buy fund-raiser tickets with, you can get pretty nearly all what you want passed by the Legislature. Passage of this bill would indicate to the general public that this is so.

"Today, I think some 14 states have removed all interest ceilings on certain categories of loans.

"Notwithstanding the fact that we claim that we are trying to protect consumers' interests here, in the last four or five years, I've seen a gradual erosion of interest rate ceilings that was ostensibly to protect borrowers who through circumstances beyond their control have to borrow money for one reason or the other.

"And the committee report talks about the concern for this young couple who has to renegotiate their agreement of sale and we don't want the interest rate chargeable to them to be too high, in any case, by the provision of the bill, not more than 4 percentage points higher than the interest rate charged on the original mortgage. But by the passage of this bill, what do we do about the young couple who went to a financial institution, they have been compelled to pay an 18 percent interest rate on the money that they borrowed, and possibly they put up for collateral whatever they could use as collateral. And they can't pay this loan, so it comes time for them to renegotiate the loan. By removing the ceiling, we leave this young couple at the complete mercy of the lending institution. The lending institution can say, we're going to renew your loan and we're going to charge you 30 percent, and you can't do a thing about it. Where is our concern for this category of consumers, if the passage of this bill is successful?

"We should have better concern about some of these people. And these people are not a few in this state. There are many people, beyond their circumstances, compelled to borrow money at high rates of interest. They have no place else to go.

"What about people who have the use of credit cards? I think the interest that we allow the financial institutions are very generous today. Removing the ceiling leaves no check on the financial institutions of this state as to what they can charge even on credit card situations.

"This morning or last night, within the last 48 hours, I got telephone calls from banker friends of mine, incidentally, presidents of banks, who asked me not to throw a monkey wrench in the passage of this bill, and I said, 'My God, you know the banks are doing real well, particularly two large banks.' As a matter of fact, the First Hawaiian Bank's last annual quarterly report showed that they are making good profits; likewise, with the Bank of Hawaii and Bancorp. The smaller banks, perhaps, are not making the kind of profits they should be making, I suppose.

"In any case, in the last few years we've allowed very generous statutes to help the banks in their effort to make money. And as to any confidence that we should have that the financial institutions would not exploit a bill that removes all ceiling, take a look at the charges you are charged by the banks today on overdrafts, on keeping a minimum balance in your bank account and your charge accounts. I think the banks have it good today.

"I think the deregulation of the banking institutions today really resulted in a disservice to the consumers of this state and this bill being passed is the last of the regulations that would somehow help the consumers.

"You know, it's said, well, let's have the open market dictate what interest rates are going to be charged by the banks. At least if there is a ceiling, there is an expression on the part of the Legislature to the financial institutions that, 'hey, we want to make sure that you people do not abuse this privilege that you have had the last five or six years in charging rates of interest that more than comfortable for most people.'

"For most people, their monthly payment does not really amortize the original loan. The principal of the loan rarely gets amortized. They're just about keeping up with the interest payments required on their loan. This is the kind of situation we're finding ourselves in today.

"And as to the open market argument, you know one of the problems we have as was

stated a few days ago, in this week's discussion, about the workers' comp abuses. That's an open market situation with the insurance companies, and look what they're charging in the way of premiums. That's not a regulated market. The insurance companies can charge whatever they want to employers for the workers' comp premiums. That's an open market.

"So my confidence in the ability of business people to use some discretion, to have some restraint on what they charge consumers, has waned considerably. And I maintain that like the 36 other states that at least have some kind of a ceiling on interest rates chargeable, let's maintain some semblance of an interest rate ceiling, even if that ceiling has to be rather high. Completely removing all ceiling, I think is going to be a field day for the financial institutions. And who suffers most, that segment of our population who could least afford to be exploited by the financial institutions.

"For that reason, I speak against passage of this bill."

Senator McMurdo then stated as follows:

"Mr. President, I'm speaking against the bill, and I share many of the previous speaker's feelings on this.

"Also, I'd like to add another thought. This bill takes the interest ceiling off of regulated lenders, retail installment sales, transactions of merchants, credit cards, and that sort of thing. And the questionable rationale here is that interest rates should be controlled by the marketplace, rather than by arbitrary ceiling set by law. But this same bill turns right around and discriminates against the private individual by establishing a ceiling on any agreements of sale made after the effective date of this act, and pegging it in at 4 interest points above the highest rate of interest charged on any mortgage on the property. Why? Because some young buyers have faced prohibitive interest rates when renegotiating an agreement of sale.

"Well, if this act were to take place, and indeed the marketplace did level out the interest rates, there shouldn't be any problem for this young couple in getting a better interest. But I do submit to you that if the marketplace will control commercial interest rates, it will do the same for those agreements of sale. There are still many people with mortgages way below the market today. Why should they be penalized by this bill?

"Thank you."

Senator Cobb then remarked as follows:

"Mr. President, I rise to speak in favor of the measure and in doing so, take account of some of the arguments or questions that were raised.

"First of all, on the matter of agreement of sales, the reason that provision was in there is because of the past clearly documented abuse in the area, and when we first moved under a federal allowance back in 1980 to raise the usury ceiling, I indicated at that time that we would be watching very closely what happened, and if there were areas of abuse that we would move to correct them. We have done so in this particular case.

"I think in conference, and this bill seems to be headed for that, the agreement of sale ought to be tied to a floating existing mortgage rate instead of a fixed lower rate so that it would also reflect market conditions.

"However, I think it's necessary to correct some of the statements that were made with respect to the number of states that have no limits and then get into the philosophical question about whether or not there should be limits at all.

"At the present time, on credit cards, of the 50 states, one state has a 30 percent limit; 17 states have no limit; 2 states have a 24 percent limit; 13 states have a 21 percent limit; 14 states have an 18 percent limit; one state has a limit below 18 percent; one state has a limit of 19.8 percent; and Hawaii is included in the category of 18 percent.

"When it comes to small business or corporate loans, 45 states have absolutely no limits.

"The category of \$30,000 second mortgages and loan to an individual, 34 states have no limits and another 4 to 5 have limits tied to the Federal Reserve Board rate, which floats on the free market.

"In terms of the \$5,000 unsecured consumer loan closed in to an individual, 21 states have no limits, and 6 states have a limit tied to a percentage figure over the Federal Reserve Board rate.

"In short, Mr. President, the clear direction, nationally, has been in the direction of deregulation.

"Although the remarks that I'm going to enter are long, I think it's necessary for a comprehensive understanding of the situation and with the indulgence of you and the body I would like to enter the following into the Journal.

"The market conditions in Hawaii and nationally have changed radically since May

31, 1980 when Hawaii increased the Chapter 408 limits to their present levels. Over the past five years, the Federal Government, under the Depository Insurance Deregulation and Monetary Control Act of 1980, has phased out federal restrictions on the amount of interest depository institutions could pay on their deposits.

"Since 1980, all limits on time deposits over 31 days in maturity are gone, as well as minimum requirements on money market deposit accounts, super now accounts, and ceiling free 7 to 31 day accounts for IRA and Keough investors. Furthermore, all minimum balance requirements will disappear as of January 1, 1986.

"While the cost of funds for lenders has recently decreased, volatile economic events in the past five years and the competition for short term deposits have caused lenders to change their policies with respect to extending credit and setting rates on all types of loans. Increasingly, variable rate loans are becoming common in Hawaii for both consumer and commercial transactions.

"The usury laws of the various states are historic reflections of ancient, social and religious notions from the time of Moses in the Old Testament that lending itself was distasteful and sinful. Hawaii's basic usury law, Chapter 478, HRS, can be traced back to roughly the same language in the Civil Code of 1859 with substantial amendments made in 1980. Our industrial loan company act restrictions go back to the 1930's. Ironically, our usury law was based on the old ancient English law, the 1714 Statute of Usury or what was commonly called the Statute of Hand, which ironically was abolished in England at the same time Hawaii was enacting it.

"Over the years, a number of exemptions have been added to the Hawaii law to recognize economic reality such as exemptions for loans over \$750,000 or supplemental laws enacted to regulate particular transactions such as the Retail Installment Sales Act.

"This long and complicated history has resulted in a number of inconsistent usury laws that have only historical justification and differ considerably from laws in other states. Because Hawaii depends upon funds imported from elsewhere to keep our economy operating, restrictive interest rate laws cause more damage here than in many other places.

"While considering arguments for the rate ceilings which are artificial government price controls for the use of money, the moral implications about usury and lending that developed through 1859, providing the background for current law, must be

remembered.

"I think the record is clear looking at it over the last five years, Mr. President, that states that have had restrictive usury ceilings have had less lending activity, less competition, less consumer choices, and any time the actual money market rates go higher than their present interest ceilings, no loans whatsoever. In fact, Mr. President, the experience in the State of New York confirms the existence and the benefits of the competitive market.

"In New York a survey was conducted on interest rates charged on certain loans by 20 commercial banks in the state over a three-year period, through 1984. Interest rates on most types of transactions in January 1983 varied approximately 7 percentage points, from 13 or 14 percent to roughly 21 or 22 percent.

"It is interesting to note that over the three-year period, the average rate for most consumer credit transactions was over 18 percent and the parallel rates in Hawaii and nationwide were at the same amount. Those over 18 percent transactions would have been prohibited in Hawaii were the pre-1980 ceilings in effect.

"As for the operation of credit cards, it is generally conceded that the service is somewhat more expensive and complex, together with the related cash advance feature and the interest rates on credit cards range from approximately 18 to 19.9 percent. By way of digression, Mr. President, I would point out, if an individual wants credit cards without a cash advance feature, there's quite often a savings of anywhere from 2 to 3 percent offered. And that is a consumer choice. I think it's important that the consumer should be able to make that choice, if he or she wants to pay a lower rate.

"I think it's also very clear that Mainland institutions will be aggressively soliciting Hawaii business if this law is passed. If this bill becomes law, we will be in the mainstream of competition with states on the Mainland.

"Finally, Mr. President, I think there are a few general observations that should be made.

"First, that competition is definitely to the benefit of the consumer, and that the more competition you have and the more consumer choices you have and the greater variety of consumer choices, the more the consumer can pick and choose and shop around and get the best deal.

"Secondly, that Hawaii consumers have a very high level of cost awareness.

"Third, the studies we have seen have shown that Hawaii consumers are not over extended in terms of their credit, and in fact have a better nationwide average savings.

"Fourth, that loan sharks are not deterred by usury laws; that if an individual is not going to follow the usury law and go on to loan sharking, that individual is already outside of the law.

"Mr. President, this bill, in effect, implements the principle that we've heard a lot of discussion about both inside and outside of the Legislature, and that is business deregulation, free enterprise, let the marketplace work. I think that's what this bill does. And if we're going to believe in free enterprise, believe that a free marketplace will provide the competition to the benefit of consumers in terms of consumer choices, then I think we should support this bill."

"Thank you."

Senator Abercrombie then spoke on the measure as follows:

"Mr. President, I'm speaking against the bill.

"I've heard some incredible defenses in my life of the indefensible but this last one matches anything I've ever heard in my experience. I suppose we should move from the last to the first.

"We believe in free enterprise and business deregulation. I wasn't aware that the previous speaker was a partisan of President Reagan, but apparently he is. I wonder if he is referring to the business deregulation that has resulted in the telephone company now telling us that they're going to try and raise our rates to \$20 plus a month, which I presume he is in favor of because he thinks that business deregulation is so terrific.

"If I am not mistaken, the previous speaker has just voted on regulations up and down the line with respect to geothermal, corporations ... he's got bills in here that we voted on today with corporations that if you dropped it on your foot you'd fracture it; you'd be walking around on crutches. And he stood up on this floor over and over again and stated how we're going to have more regulations with business and all the rest of it because that's what's needed. Now, all of a sudden when it comes to credit for the average person, we're going to deregulate.

"This same person, the previous speaker, has just had us pass a bill that takes a full page to explain how we're going to have pets in apartments — seven different steps

to try to figure out the kind of pet you can have in your apartment. But, he is for deregulation. That's what this bill does.

"Isn't it strange that when it comes to credit for the average person, the previous speaker is all for deregulating. And he mentions the very thing I have written here. Let me tell you and reiterate for you in case you missed it. What's the only other group that operates in a state of total deregulation? The Mafia, the loan sharks. I can quote you exactly what he said. The loan sharks are not deterred by usury laws, and he proposes to get rid of the usury law. That means the loan sharks will not be deterred. Who's going to be the loan sharks? The banks, the credit card companies, anybody that wants to come after you.

"What the previous speaker says is, if we pass this bill, we have now reached the level of the Mafia and the loan sharks. That's exactly what the situation is, where the desperate come and have to pay whatever it is that's going to be put to them. We've taken the whole lid off. It says right in the committee report here on usury: 'Your Committee has amended this bill ... by exempting from the usury law'

"And he's given us a brief history, all too brief history, of the usury laws. He's failed to define it, however.

"Usury is the unconscionable or exorbitant rate or amount of interest, that's what it is — unconscionable. He said himself, the loan sharks have no conscience. But that's what we're opening up the public to. And the classic definition of usury in its implementation has always been excess charging of interest over the legal rate. We're not going to alter the usury rate here, we're abandoning your concept entirely because there will not be any excess rate, because there won't be any rate at all. The rate will be whatever you can get.

"The previous speaker says that damage is caused by artificial government controls. Mr. President, I don't think we have enough time today for me to go over all the bills we've just passed in which the previous speaker has voted for which impose artificial government controls, which cause damage to the free market. We interfere with it constantly, all the time. Why, because we say there is a public interest to be served. Was not the vote just on the previous bill on the basis of what the public interest is supposed to be? A policy decision has been set, and the previous speaker voted for that policy decision. It's happening all the time. Yet, he's the chairman of the Consumer Protection Committee. My advice to the consumer in the street is, wear armor. You're not going to get any protection from the Consumer Protection Committee.

"The clear direction nationally set is not deregulation, as the previous speaker indicates, as the chairman and the committee indicates, but the systematic exploitation of the helpless consumer. It is taking place all across this country. And what the chairman of the Consumer Protection Committee wants us to do is join the parade. Because the consumer in this country is now at a point even more helpless than he or she has ever been before. That's the reason that we should join it? This is the trend, it said. This is the trend. We should join this trend.

"I reiterate, I stand here, a member of the Majority party in this state, the party of the people that's supposed to be standing for the interests of the common person, and here we are again presented with a bill that says, all bets are off, particularly if you are a commercial interest. Because if you are an individual, as have been pointed out by two of the previous speakers, you're going to be victimized, especially if you're young, especially if you're involved in an agreement of sale of housing. The item that is probably more important to more people in getting them started and the cause of more anxiety for them and more hope and frustration, an investment not only fiscally, but in terms of their dreams and hopes. And we say we're throwing you to those same sharks, and good luck to you.

"Credit cards. We heard the speech. Who could follow it? Percentages, states, 17 this, 27 that, the average person standing there is saying, you mean everybody is getting it the way I am? That's supposed to make you feel better, that you can point to a whole lot of other people that are being exploited?

"Percentages about this, percentages about that, competition on the Mainland. The final argument made by the previous speaker is that there's going to be competition now from the Mainland. Mr. President, I put it to you that we will shortly be taking up a bill sponsored by the previous speaker which is going to forbid people from the Mainland from being able to advertise here. The same competition that he's talking about he's trying to thwart. How? By governmental action.

"Now we're going to pass a bill on whether you can advertise and they're going to say that they're not regulated by the State of Hawaii, not that they are regulated by the Federal Deposit Insurance Corporation. Isn't that an artificial government control, an interference, the previous speaker says we should abandon if we really believe in free enterprise?

"The previous speaker has a curious way of citing statistics and citing principles as it suits his purposes opposed to being

consistent about their application when it comes to the bills that he wants us to vote for.

"The question here is what is the compelling need? I raised it before; I've raised it before today; I've raised it on other occasions and I will raise it at this time for your consideration, Mr. President, members of the body. What is the compelling need to remove all sense of restraint with respect to the interest rates and usury? There is no need. The argument is, oh, it's below what it could be. Does anyone really believe that in this monopoly game, that games will not be played by the great financial interests as has been shown over and over again with major corporations, where there is a market to which people do not have ready access other than as consumers per se? It's called price convergence.

"You don't have to actively conspire to come to a price convergence. We've seen that just with rates in hotels in Hawaii, for example. You don't have to sit down in a room and conspire to do these things. Does anyone really believe that that kind of competition is going to result in a break for the average consumer? I think not.

"The bottom line is that if we pass this bill, the message will go forth once again from the Legislature, and once again I say from the Democratic Party, that you are fair game as a consumer in this society for any loan shark out there, any of these people who otherwise and other circumstances would be considered usurers. We are here to protect the common person; we are here to see that they are not exploited; and I ask the members of the body to vote down this bill. It is not needed; it is unwarranted; and can only cause harm and pain to those least able to bear it."

Senator Cayetano then asked:

"Mr. President, will the chairman yield to a question?"

The Chair posed the question and Senator Cobb having answered in the affirmative, Senator Cayetano inquired:

"Mr. President, I'm very troubled by that part of the bill dealing with agreement of sales and I endorse the remarks made by Senator McMurdo on that matter. It seems to me that it is somewhat inconsistent to put a lid on agreement of sales and lift the lid on the other side. I'm not saying that I'm opposed to lifting the lid, but I have very strong feelings about the lid on agreement of sales.

"This bill has been around for some time, at least in one version or another, and my question to the chairman is, has either the House or the Senate ever considered tying the agreement of sale rate to some

mortgage rate?"

Senator Cobb answered:

"Mr. President, the answer is 'yes,' and will probably be further considered in conference with likely further amendments."

Senator Cayetano further inquired:

"Mr. President, well, then, I have another question.

"Was it considered in previous years?"

Senator Cobb answered:

"No, last year it was discussed briefly but the consensus at that time was to go with a fixed rate. It was brought up this year and I think it will be further discussed."

Senator Cayetano further inquired:

"It is my understanding that the House at one time wanted a 6 percent ceiling over the underlying mortgage and the Senate position was 2 percent; the counterpoint was 4 percent. Is that correct?"

Senator Cobb answered:

"That is correct."

Senator Cayetano then asked:

"The contradiction seems so obvious that I wonder why this was not considered last session. Can you give me an answer?"

Senator Cobb answered:

"Last year's bill that passed had set ceilings. This year's bill does not in terms of the other rates, at least in the Senate version, although what form it emerges from in conference will be difficult to say."

Senator Cayetano remarked and further inquired:

"The problem I have is that, of course if this bill goes over, I'm not sure that the House perceives the problem that I am raising. I mean, what have been your communications with the chairman of the House side about this particular section of the bill and does the chairman feel that there is a problem here?"

Senator Cobb answered:

"I have not communicated with the chairman specifically on this one section but I have been informed by yourself and others that he will disagree on this and there will be a conference on it."

Senator Kawasaki spoke against the measure as follows:

"Mr. President, I rise again to speak in opposition to passage of this bill.

"You know, we had a bill, Senate Bill 1141, go to the Consumer Protection Committee in the Senate, a bill designed to lift the ceiling on credit cards from the existing 18 percent to 21 percent. Hell, this bill, in one fell swoop, even removes the 21 percent ceiling that was proposed in that bill, 1141, by the banking institutions and people who do handle credit cards.

"There was a bill introduced, Senate Bill 1148, that would raise the ceiling for merchants charging interest rates on their goods sold to consumers. That bill provided for a ceiling to be raised up to 24 percent. Again, this bill, in one fell swoop, removes even the 24 percent ceiling requested and suggested by proponents of that bill.

"Much was said about letting the free enterprise system operate with no constraints by the government. Well, it just happens that we just passed a very important bill, a bill that, hopefully, will be beneficial to small business people and, wherein, we're now by statute are going to provide a state fund so that the state can get into the position of providing insurance for workers' comp for small business people. Talk about an impediment to our free enterprise system, on these people in the insurance business who've been charging such high premium rates unjustifiably and causing such a problem to small business people in this state.

"Well, we pass this impediment and we're going to say, the state is going into the business of providing insurance for workers' comp because we need this impediment; we need this so that it would stop the abuse on the part of insurance companies of overcharging in the way of premium rates charged to employers. So sometimes the free enterprise system doesn't work too well.

"Talk about the free enterprise system, at the request and the insistence and the pressure on the part of industrial loan companies, the Legislature very unwisely developed and passed the Thrift Guaranty entity, and what has happened? Again, the free enterprise system members, in this case the industrial loan companies, what did they do? They abused the privileges accorded them under the Thrift Guaranty program. They made insider loans; loans to each other; they never repaid these loans; they overextended their credit. And so what happens? The people of this state, the taxpayers, are now asked to pay the bill, the tab, that is the result of Thrift Guaranty, and that program which incidentally was requested by the free enterprisers, so to speak ... from my point of view, I have a very jaundiced point of view regarding the altruistic motives of free enterprisers,

particularly from the financial community ... it seems to me that passage of this bill again is acceding to their request ... never mind the consumer's welfare, just lift the ceiling.

"At this point, I'd like to request of the chairman of the Consumer Protection Committee if he can give us the number of states which today have lifted all ceilings on all loans, as suggested in the bill that we're talking about today."

The Chair posed the question to the chairman and Senator Cobb answered:

"Mr. President, I don't have the category for all types of loans. The information that I've received so far was on the types that I enumerated on credit cards, small business loans, second mortgage loans, and unsecured consumer loans, which are the majority but certainly not all of the loans made. I've heard reports, but I don't have the figures in front of me, of between 14 and 20 states that have either done so or in the process of doing so.

"That, of course, does not include the states that chose not to act under the federal preemption that was passed by the 1980 Congress in which the states had three years to act on usury, otherwise the national deregulation would have taken place. I understand approximately ten states took no action on that."

Senator Kawasaki continued:

"Mr. President, the statistics the chairman has quoted, I have right before me, but my inquiry was basically to find out how many states have done exactly what is proposed to be done by this bill; that is to say, remove all ceilings on all types of loans, and I doubt that there are too many of these states that did that.

"My count and the latest information that I tried to get from the Legislative Reference Bureau and the banks, incidentally, was that perhaps 14 states have done away with all interest rate ceilings. Probably 36 other states feel a compulsion to maintain some semblance of a ceiling on interest rates chargeable. I think we're in pretty good company to maintain the status quo at this point."

Senator Henderson spoke in support of the measure as follows:

"Mr. President, I rise to speak in favor of the bill. I think that we have to look at this as letting the free market prevail.

"The good Senator from the 16th District, when he goes down to the supermarket and buys razor blades, he doesn't have a ceiling that's put on the price he pays or that the

store can charge him for razor blades, soap, or shoes or pants or ties. There's no such thing as a state ceiling on razor blades. There shouldn't be a state ceiling on interest. Interest is a commodity like so many other things that we deal with in commerce, and there is no reason to put a fixed ceiling by law on interest rates. This bill is long overdue.

"The good Senator from the 19th District, where he stated that workers' compensation rates are open market. It's not true; those rates are filed by the Hawaii Rating Bureau and are approved by the Insurance Commissioner. I think, maybe, we should look at open rating in workers' compensation, especially if we have a state fund.

"I think we need to look at opening up the free market. That's where competition takes place; that's where the economic decisions should be made.

"I urge support of the bill."

Senator McMurdo then inquired:

"Mr. President, may I ask the good Senator from the Big Island a question?"

The Chair posed the question and Senator Henderson having answered in the affirmative, Senator McMurdo asked:

"Mr. President, I would like to know if he feels that it would be in the interest of the free market to remove a ceiling from those who wish to sell by agreement of sale as well?"

Senator Henderson answered:

"Mr. President, I do. However ... I think that there's been more abuse in the private sector with interest rates than there has been in the business sector.

"I think if there needs to be some regulation there, then maybe it should be tied to the current mortgage rates or second mortgage rates or something like that, certainly."

Senator Holt then said:

"Mr. President, I request a ruling from the Chair on a potential conflict."

The Chair inquired:

"Being that you are an employee of a financial institution?"

Senator Holt responded:

"No, I work for a loan shark."

The Chair answered:

"The Chair declares no conflict."

Senator Abercrombie then remarked as follows:

"Mr. President, I think the last point was actually well taken by Senator Holt for a different reason and I will speak just briefly to that.

"We're not contemplating in this bill a situation other than providing for that opportunity to hurt. Right now we have the regulation and when we talk about, for example, our private purchases, I do that with the funds available and often I can do exactly that with a credit card.

"And if I don't have the cash and I think that one of the previous speakers would have to admit that much of the business that's being done that is beneficial to business is being done because of credit cards. People have to take what comes their way in order to keep this economy rolling right now. That's one of the ways business gets done. I'm sure the good Senator is not opposed to business being done in that way.

"And as for the conflict ruling there, I don't think it's a question of the loan shark, it's a question of whether you're opening up the opportunity to become that. The only other group of people that has ever operated in that atmosphere before here within the living memory of everybody in this room has been anybody associated with organized crime.

"Now, if that's the image that we want to put forward, then we can certainly do it by voting for this bill. That's the point. We are here to protect the consumer, not to open up the opportunity for that kind of nefarious activity to take place."

The motion was put by the Chair and carried and, Roll Call vote having been requested, H.B. No. 40, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INTEREST," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 19. Noes, 6 (Abercrombie, Fernandes Salling, Hee, Kawasaki, McMurdo and Young).

Senator Kawasaki then added: "Mr. President, for the edification of members of this Senate, as a subject matter for one of my daily conferences with the Governor, I shall suggest that he veto this bill, too."

House Bill No. 1357, H.D. 1, S.D. 1:

On motion by Senator Cobb, seconded by Senator B. Kobayashi and carried, H.B. No.

1357, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INSURANCE," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Abercrombie).

House Bill No. 1360, H.D. 1:

Senator Cobb moved that H.B. No. 1360, H.D. 1, having been read throughout, pass Third Reading, seconded by Senator B. Kobayashi.

Senator Abercrombie inquired:

"Mr. President, would the chairman yield to a question?"

The Chair posed the question and Senator Cobb having answered in the affirmative, Senator Abercrombie asked:

"Mr. President, would you ask the chairman of the Consumer Protection and Commerce Committee whether this bill before us is an example of deregulation and the operation of the free marketplace?"

Senator Cobb answered:

"I think it could be characterized as that since it changes the cumulative voting provisions from mandatory to permissive and allows a business or corporation to make that determination rather than requiring it by government."

Senator Abercrombie then remarked as follows:

"Thank you, Mr. President, then I rise to speak against this bill.

"I didn't quite hear the previous speaker. I think I got the gist of it; the tone of his voice was a bit weak.

"Mr. President, the free enterprise system is now apparently to get a big boost. If you were part owner of a company now, you're going to be told that you'll no longer be able to exercise your votes in a manner that you choose. It's going to be done for you by management already in control.

"We have had this bill before us previously, but now we have an instance in which once again if you are big enough and powerful enough you get your side considered and, in this instance, we have the individual — a rich individual, a powerful individual, an influential individual — is now able to take on a rich and powerful group of individuals, and we will find ourselves going through various contortions and distortions in the process, trying to settle what will happen with Mr. Weinberg and Alexander & Baldwin and anybody else that we can find

in between that we can help.

"I wonder when the people of this state, when they tune in, if they should happen to bother to watch the news anymore where the Legislature is concerned, inasmuch as what we do here has very little to do for them ... it's mostly at them, on them, over them, and very little with them. If they bother to tune or pay any attention, they will find that here we are once again trying to decide which of the powerful will succeed. And where is it coming from? It's coming from the Consumer Protection Committee again.

"We do have the word Commerce attached on the end and perhaps we should just get rid of Consumer Protection and put Commerce in it and leave it at that.

"Just referring to the committee report with respect to the cumulative voting, it says it 'can be used as a tactical device by which an undesired director may be forced upon a board thereby impeding governance of the public held corporation.' It's a publicly held corporation, by the way.

"Isn't that an interesting point upon which to base a law that we consider passage? An undesired director. I think it's good to pass laws against undesirables. Isn't that a grand way to make law?

"Let's find out who's undesirable and pass a law against them. I daresay that most of the people in this room are the sons and daughters, granddaughters and grandsons, great grandsons and granddaughters, etc. of people who were considered to be undesirable at one time or another. We are the beneficiaries of their struggle. We are the ones who are able to stand here today and make our voices heard, whether or not everybody likes it or not. We stand it for all by the vote, how it's cast. We are in the minority or majority, depending on what happens on a given vote. But, here we are saying that it's necessary to pass a law because someone may be thought undesirable by the majority. Because, you see, the argument is never made, Mr. President, with respect to cumulative voting on the majority side.

"It's awfully strange to me, regardless of the particular kind of voting, and I've heard it characterized, by the way, and an interesting analogy is 'plunking.' We used to be able to do that in this state. I thought that was a good idea. I daresay that there are some people sitting in their chairs right now who are the beneficiaries of plunking. (I hear a possible verification of that. I see a few smiles in the room.) I daresay that there are some people in this room ... perish the thought ... who may even have encouraged that kind of plunking in the past. Naturally, we're all above that now. It's very difficult

to do in single member districts. I happen to have thought that that was a good system. I got through that system. I suppose I got some plunks in my time and I suppose I was the victim of some in my time, but on the whole, I think the analogy is probably a fair one that most of the people in our state can understand.

"I suppose I won't be the first; I guess I'm the first on the floor, formally, today, to say I don't know Mr. Weinberg. I know a couple of people in A&B better. I mean, I've had an acquaintanceship with them over the years. I've never met Mr. Weinberg, and I won't be the last today to say that they don't know Mr. Weinberg and so on and so forth. I hope nobody says that they don't know A&B, because I can't believe we're living in a germ-free capsule.

"But the fact of the matter is, I daresay, most of us don't know Mr. Weinberg. We wouldn't know him if he was here today because he probably has his picture in the paper the same way Senator Henderson does, which is to say their high school graduation picture, so we probably wouldn't know him if he showed up.

"But the plain fact of the matter is that what we're doing here is trying to see to it that the present corporate enterprise, as conducted by Alexander & Baldwin and I suppose others in the same situation, will be protected by interference by the government. That's what we're doing.

"We think that that's going to benefit, or at least those voting for it think that will somehow be beneficial to the interests of the people of the state, and I have an idea that many of those who want to vote for this bill will be saying that that is their primary motivation and I have no reason to dispute it. I certainly dispute it with respect to its being put forward here by the Consumer Protection Committee.

"This bill is put forward by the chair because there is a belief that this is going to benefit the chairman or the interest that he espouses. There is no question of that in my mind. There are people in the public who believe otherwise, and my answer to that is that the A&B management will do exactly as it pleases with respect to land or anything else and that all provisions that we have in government and all that artificial interference that we talk about, preserving ag land for one, will still be in place regardless of what Mr. Weinberg's intentions are or are not as posited in his proxy statement.

"So, when we're voting here, what we're really doing fundamentally, if we're voting for this bill, what we're really doing fundamentally is saying that the minority cannot be represented, and that if you're in the majority you may vote. This is what

permissive means. Permissive means that you may vote to keep yourself in power and that you cannot be removed except by someone else actually being able to take over the company, rather than the board of directors.

"No one has said to me yet in this discussion of cumulative voting that the minority, with respect to cumulative voting, can do any more than elect a single or small number of directors and that cumulative voting cannot operate the same for those who hold the majority. If someone, after all, gains the majority of the stock or gains ownership of the company, he or she may do as he or she wishes, or that group may do as they wish. So that's not an issue as to who will control the company or not control the company.

"The question here is, will there be a voice on that board of directors that may very well point the direction that the company should be going so that you avoid the Castle & Cooke kind of situation. That kind of discussion is generally absent from the terms of disquisition that takes place on this issue and on this bill.

"Look what happened. We came within 30 days of Castle & Cooke going broke and for all we know it may still go broke because we don't know whether this merger is going to go through.

"I do know, however, that we do not have the opportunity to do anything about it and the people who think that this bill is somehow going to save them, and that is the bottom line for me, that we will be misleading people in this state into thinking that if this bill passes, somehow, mismanagement on the part of A&B or Castle & Cooke or anybody else will somehow ... this kind of mismanagement or the possibility of this mismanagement ... will be ameliorated, will be diminished in some way. And that is not the case.

"So I ask those who are thinking of voting for this bill, because they think that this will somehow form a protective shield for the A&B company or for any other company in Hawaii, for that matter, to think again. This bill will not do that. It will on the other hand suppress and oppress the possibility of the minority voice, whether we like that minority voice or we don't like that minority voice, from being heard on the board of directors."

Senator Kawasaki spoke on the measure as follows:

"Mr. President, I rise to vote against this bill.

"I'm at loss to understand why this bill is before us today because I remember very clearly, in the Majority caucus considering a

similar Senate bill that was before us, that we overwhelmingly decided not to have this bill emerge. And I recall at that time, the chairman of the Consumer Protection Committee very piously and sanctimoniously told me, 'You know, I work for PRI and PRI supports this bill but I'm going to vote against it and I'm going to withdraw it back in committee.' Well, things have transpired since that time and perhaps I see a very clear, dramatic illustration of the point made by Senator Abercrombie that the rich and powerful and influential people in this state can do a heck of a lot in the way of influencing the Legislature, and in this particular case, the Senate of this State.

"I am at loss to understand why it is so imperative that we pass this bill today. Is it because 23 days from today the directors of A&B are going to meet in their annual meeting and that they would like to prohibit cumulative voting? Is it because PRI, (and Alexander & Baldwin today owns 25 percent of PRI) they're opposed to it? Could they be supporting this bill to do away with cumulative voting because Mr. Weinberg just happened to be one of the three directors who voted against Alexander & Baldwin purchasing a 100 percent of PRI that's been losing money for many years? Is PRI against this bill to do away with cumulative voting because the leaders of PRI, as I recall a few years back, was called to task by a minority director, Mr. Chalmers, if my memory serves me correctly, who strenuously objected to the fact of inside dealing by the leaders of PRI, inside dealing in the way of a half a million dollars of PRI money being borrowed by its chairman of the board at that time so he could purchase PRI stock on the stock option plans available to him. And the interest rate that he paid with the approval of 'the majority directors,' over the objection of the minority director, he borrowed this half a million dollars at 4 percent interest at a time when PRI was paying 12 percent, as I recall, on its own borrowings needs. Now, this is the kind of situation, if we had a minority director, this kind of information can go out to all of the stockholders of a company.

"By passage of this bill, we eliminate the chance of a minority stockholder electing a minority director, who may in his judgment, want to apprise all the shareholders of a company exactly what's going on at the top levels of the corporate entity, and particularly public corporate entities.

"Much has been said about this minority position that Mr. Weinberg holds, and I don't know Mr. Weinberg from Adam. Now, he just happens to have 25 percent of the total number of common stocks that is issued by Alexander & Baldwin. Now what does the chairman of the board, the president of the company, Mr. Pfeiffer own, what is the

number of shares that he owns? Notwithstanding the fact that this man has had a very productive and illustrious career at A&B for well over nigh over 20 years as stated in the annual report, Mr. Pfeiffer, notwithstanding his over \$1 million per year compensation for his position, happens to own only two-tenths of one percent of the stocks issued by Alexander & Baldwin.

"Now what about the other top leaders there? All combined, top management people own only 9 percent of the total common stock issued of Alexander & Baldwin. I began to wonder who and what group happens to be the minority stockholders in this particular case? Mr. Pfeiffer who holds two-tenths of one percent of the stock and the rest of the directors there that own, totally combined 9 percent, or is it Mr. Weinberg who has paid for 25 percent of the shares of Alexander & Baldwin.

"I think I must commend the Honolulu Star-Bulletin for one of its more commendable and objective editorials, and let me quote the editorial. Incidentally, they are high in praise of Mr. Pfeiffer. I think Mr. Pfeiffer has done a good job. But, actually, Mr. Pfeiffer or Mr. Weinberg is not the issue today. But just let me quote the Star-Bulletin's editorial which I thought was quite objective for that evening paper.

"The Star-Bulletin had said and I quote: 'In its fight against Weinberg, Alexander & Baldwin's management has made some tactical moves which are understandable, if not entirely to our liking.' That is to say, the paper's liking. And it goes on to say, 'Cumulative voting now mandatory, if requested in advance by any stockholder, makes it easier for dissident shareholders to place a representative on the board. It is a useful tool for stockholders. Directors should not be mere yes sayers for management.' And I might add neither should Senators be yes sayers for Big Five company managers and incidentally, a top bank president.

"The editorial goes on to say, 'Troubled Castle & Cooke might have profited from the wisdom of a Weinberg. Alexander & Baldwin also is wrong in criticizing Weinberg's other two nominees on the present board. It objects to his accountant and lawyer, two occupations useful in running a business.'

"As I said, I must pay Star-Bulletin a compliment for that very objective editorial.

"It is said that this is basically an anti-Weinberg bill. Nothing that is extant today, that is to say the mandatory feature of cumulative voting, prevents the present majority on the directorship of A&B from doing exactly what they plan to do.

"The only way Mr. Weinberg can take over, raid, or whatever word you want to use ... that he can take over A&B is for him to be able to purchase at least 51 percent of the common stocks available to him, and this takes a lot of money, notwithstanding Mr. Weinberg's great wealth. The only way he can profit is by the directors of A&B, the majority directors today, paying what is known as 'greenmail.' That is to say, in order to get Mr. Weinberg out of their hair purchase all of his stock at a price that's higher than what the market is commanding for that stock today. This is what happened in the case of Castle & Cooke.

"Now, if the directors of A&B want to do the job they've been appointed to do, then they can refuse to pay any 'greenmail'. They can refuse to sell Mr. Weinberg any stock at a price that is a premium over what is the market price of the A&B stock today. They can continue to convince the stockholders that what they are doing, the direction they are going with A&B, is in the best interest of the shareholders, thus, preventing Mr. Weinberg from picking up shares cheaply that are just thrown on the market.

"If, however, Mr. Weinberg has the resources to pay and offer shareholders holding stock today more than what is the market price today, a price that's very attractive, then this is good for the shareholders. Then the shareholders can decide whether to sell or not, whether they should they take profit. In any case it's good for the shareholders. I see nothing wrong with that.

"But passage of this bill to prevent cumulative voting is, as stated by Senator Abercrombie, a guarantee that a minority of shareholders would not be able to get very relevant and pertinent information from the top level, if the top level directors decide that they shall not share information to the general run of stockholders in the company for reasons of their own. And some of this could be perfectly legal. They would not be, perhaps, violating their fiduciary responsibilities. But minority directors, like the dissidents on this Senate floor here, sometimes can offer contribution to a majority that prevails.

"Passage of this bill prevents this minority voice to exist on a board of directors. This is bad.

"The reasons we have mandatory, cumulative voting in many states is because in the world of corporate entities, in the manipulations, the operations of corporate entities, cumulative voting is a very important feature.

"There is no rush for us to pass this bill just to meet the requirements of the present

directors of A&B in their annual meeting, 23 days hence. Let us not pass this bill; study the implications of this further and perhaps pass it next year if this becomes necessary and we see a need for it. And, incidentally, July of next year is the day that our Hawaii corporate law, passed by us in 1983, takes effect on July 1986.

"There's no compulsion for us to pass this today just to conform to the requirements of the A&B stockholders' meeting that is scheduled to take place on the 24th.

"I speak against this bill. It is a bad bill. We're going to regret what we do today and, certainly, Mr. Weinberg and his interest in accumulating A&B stock is irrelevant to the issue today.

"The issue today is do we allow minorities a chance to elect minority directors, who by the fact that they don't have the votes to begin with on the vote, would not be able to dictate to the majority, in this case the direction and the affairs of Alexander & Baldwin. I speak against this bill. I trust that you can see the implications in voting for this bill."

Senator Cobb then remarked:

"Mr. President, before speaking for the bill, I would like to ask for a conflict ruling since I am an employee of Pacific Resources, Inc."

The Chair responded:

"No conflict."

Senator Cobb continued:

"Thank you, Mr. President.

"I rise to speak in favor of the bill and in doing so I'd like to address some of the previous remarks.

"This bill was originally a part of the proposed model business corporation act that was before this Senate for a five-year period from 1978 until 1983. Because of the controversy involved on this particular question of cumulative voting, it was taken out of the bill and was agreed, or at least explained, that it would be addressed as a separate issue in the future, which obviously it is now.

"One of the previous speaker's remarks in terms of my statement on a bill and my employment with PRI, I think, was a state of confusion in terms of which bill I was referring to. There was a matter pertaining to alternate energy tax credits, which although I recognize that PRI was for, I was against and I voted accordingly.

"My decision in the caucus to recommit

this particular bill was an instantaneous one when I saw 11 hands go up. And if the same number of hands had gone up again, the same result would have happened.

"However, I want to make it crystal clear that I do not hold a management position with PRI, nor am I in a policymaking role with that company. The law department of that company has always, philosophically, favored such a change and has always so testified. I've had no management contact whatsoever for or against this particular measure.

"The case of PRI and Chalmers was alluded to, and while I recognize very clearly that PRI paid a premium to have Mr. Chalmers leave or sell his stock in the company, I think it's a good thing they did in hindsight, because it's been brought to my attention that, within the last eleven months, Mr. Chalmers has gone into Chapter 11 bankruptcy proceedings. Had he succeeded in taking control of PRI, we would have had one of our major companies here in the same predicament.

"Finally, Mr. President, in terms of addressing previous remarks, the testimony was very clear before the committee that no small shareholder has made a profit or a killing in a corporate takeover fight. It's only those large shareholders with either inside information or those who practice arbitrage in terms of betting on the open stock market that make any kind of profit whatsoever.

"And whether it was Castle & Cooke or A&B or PRI or anyone else, locally or nationally, the trend very clearly established is that the small stockholder does not make a profit when there's a corporate takeover fight, only the big ones do.

"Mr. President, I'd like to turn to the question of information being available to a minority stockholder. The fallacy of the argument lies in the mistaken assumption that minority shareholders do not have access to information and a voice in corporate affairs. The un rebutted testimony before the committee showed that minority shareholders of publicly traded corporations have access to full information concerning the corporation as matter of law and practice. The requirements of the Securities Exchange Commission, the stock exchanges, the statutes regulating corporations, the decisions of Hawaii courts, and the financial writers in the press furnish stockholders with an enormous fund of information.

"The testimony also showed that the shareholders do have access to officers and directors who are normally responsive to such information or request for information.

"In terms of the philosophy of passing a permissive rather than mandatory cumulative voting law, Mr. President, the testimony before the committee showed that presently 18 states have mandatory cumulative voting laws and that 32 states and the District of Columbia have permissive cumulative voting laws; thus if the Hawaii passes this it will join the ever growing majority of states that allow for permissive, rather than mandatory, cumulative voting.

"As for the philosophy behind it, I would like to quote, if I may, briefly, from an article in the Business Lawyer, quoting Dean Neal Jacoby, who is the Dean of the Business School at the University of California at Los Angeles, in a report to the Commissioner of Corporations in the State of California, in 1959, when the commissioner was considering a rule to require cumulative voting for directors of foreign corporations as a condition for permitting such corporations to sell securities in California.

"He said, and I quote: 'May I express my firm conviction that a rule requiring cumulative voting would impair rather than advance the management of business corporations in California. I am convinced that such a requirement would be in practice detrimental to the interest of stock holders. As an economist, I have spent some 25 years in the teaching, research, and writing on various aspects of business finance, including the forms and processes of corporate government. Apart from this, I am a director of four different corporations and a stockholder in at least 25 other business corporations. Consequently, my opinion emerges not alone from theoretical study but also from practical experience in corporate direction and ownership.

"The principal of compulsory, cumulative voting is wrong because it increases the probability of a divided board of directors, and such division stultifies action. Our world is changing very rapidly and if a business corporation is to succeed in maintaining its competitive position and in growing, it needs to act promptly in response to changing problems and opportunities. A board of uncontinual persons with divided views on basic policies will delay or prevent action which can have even worse consequences than taking a wrong action because it defers the day when a change of policy must occur. Cumulative voting has a superficial appeal as a means of assuring minority interests are represented. This rests on the false assumption that the public directors of a corporation represent only the management. In my observation and experience, public directors are typically alert and sensitive to the complaints of stockholders of all kinds.'

"Mr. President, not getting into the

question of whether or not this bill is a form of shark repellent, or is aimed at any one individual, or is protective of anybody in particular, or favors one group over another, I think we have to realize that the A&B annual meeting is going to occur on April 25 each year, and regardless of what year we're in the Legislature, we're always going to be running up against that annual meeting. So, it would be very difficult to divorce the practical effect of this bill from the meeting schedule of that particular corporation.

"However, Mr. President, I think the bill deserves support because of the merit of the question as to whether or not a business corporation should be able to function boldly and independently, without fear of internal dissension, as an executive organization, not as a legislative body. And for that I would ask the members' support.

"Thank you."

Senator Abercrombie rose to remark as follows:

"Mr. President, I rise to rebut the last remarks.

"Professor Jacoby's description about the board of directors being typically alert and sensitive of stockholders of all kinds I think would certainly be enhanced if they had minority voice on the directors. His description of the directors, as he viewed them to be, I think would be a very good description of the Politburo as it presently exists in Moscow, which is possibly the way Professor Jacoby would like to have it, I don't know. But I don't see that it's in our interest to propose that we have that same kind of institution.

"As for the annual meeting, I think that the chairman of the Consumer Protection Committee is being a little disingenuous, and I'd ask him to answer a question. Is he aware of the fact that the A&B directors have already voted, that should this bill pass, they will in fact remove the cumulative voting element in their bylaws?"

The Chair posed the question to the chairman of the Consumer Protection Committee and the chairman replied:

"Mr. President, I'm aware of that fact as well as the conflicting testimony that took place in the committee as to whether or not"

Senator Abercrombie interjected:

"Yes or no will be sufficient."

Senator Cobb continued:

"No, I would like to answer that question

in full."

The Chair allowed Senator Cobb to proceed.

Senator Cobb continued:

"Thank you.

"And I'm also aware that there was conflicting testimony in the committee as to whether or not any statement was made as to the certainty of passage of this bill. Both sides offered to produce affidavits to verify their account of it and so far to date none has been received."

Senator Abercrombie then continued:

"Thank you, Mr. President.

"The only affidavit I need is the confirmation by the chairman of the committee that he in fact knew that this had already been done by the A&B directors, so when he tells us that the annual meeting is coming regardless, and the practical effect is that that is happening, and what goes on here has nothing to do with what's going on at that meeting is simply not true.

"What's going to happen at that meeting is the board of directors will say the Legislature gave us the permission to go ahead and do what we've already decided to do. That's what the situation is.

"The final remark I have has to do with the idea of the executive organization. I presume that means that this is a legislative body or that there are legislative bodies that determine policies in one manner in which presumably dissent is allowed and that sometimes even thought to be conducive to the public good. Whereas, in an executive organization, as outlined by the chairman of the committee, presumably dissent is to be discouraged along the lines that he quotes so favorably from Professor Jacoby.

"I might state that we would be in a sorry state today if people, inside the executive in the Department of Defense, nationally, had not blown the whistle on the kinds of practices that were taking place, and many of the people who have done that have had to suffer for it, from their dissent from the majority, but the public in the United States of America has benefited from it by their sense of courage and duty because they pointed out practices that they thought were inimical to the interests of the people of this country. And I would point out, in the executive level of this state, we have had instances as recently as days ago in which individuals associated with the executive in this state have come forward to bring out areas of what they felt were against the interests of the people of this

state, in the areas of pesticides and in other areas of government, financial institutions and all the rest off it.

"Again I say, if the argument is going to be that the interests of the people of this state are best served by bowing to the interests of the powerful to see to it that the voice of dissent on any level, especially the executive level, is stamped out or oppressed or in any manner thought to be something that should be discouraged, we will all be the losers rather than the beneficiaries."

Senator Fernandes Salling also spoke on the measure as follows:

"Mr. President, I'm going to support this bill but I would like to express some reservations that I have.

"I think many of us have struggled with this bill and no matter how this issue is finally resolved, there will still be some lingering doubts about this legislation and whether this is the best solution.

"You'll probably agree with me, Mr. President, that this has been one of the most lobbied bills this session. Even for those of us who do not sit on the Consumer Protection Committee, we have met with a number of people who have wanted to bend our ear about this legislation, and the more you listen, the more you realize that this is one of those issues where there are sound arguments on both sides.

"I can truly understand the public benefits of mandatory cumulative voting. It is one of the strongest ways we can assure a minority voice and oversight of the majority in corporate board rooms. And often such guarantees are consistent with the democratic principles that we all hold very dear.

"Those who seek from us the permission to make cumulative voting optional have come to us with a real problem and fear. Throughout this nation, the stability of publicly held corporations is being threatened by the actions of outside interest, wishing to take control of the corporation and its lucrative holdings. The pattern has become familiar.

"Through the purchase of a sizeable share of a corporation's stock these outsiders become part of the minority interest in the company. Quite often their presence on the board is disruptive to the workings of the corporation and its ability to offer a sound return on the investment of stockholders.

"From what has happened in other states and with the recent experience of Castle & Cooke, we all know that this is a problem that can have catastrophic consequences in

Hawaii's community.

"In the end, Mr. President, I came to support this bill only because of the potential for harm that a takeover can have on any publicly held corporation in Hawaii. In most cases, experience has taught us that those wishing to gain control are thinking only to increase the immediate profitability of the company and the worth of their stock. Their decisions are made without regard to the possible effects their actions have on a community. They don't see their investment as part of a commitment to this community, and that is deeply disturbing to me.

"In the end, my support of this bill rests solely on whether I thought that there was any public benefit to continuing the present situation. I came to believe that there was not. Those who currently hold the reins of publicly held corporations have at least demonstrated some kind of commitment to our state, and in this situation that was quite important. When measured against the track record of some of these takeover artists, that became very important.

"Mr. President, may I sound a warning to those who hold the corporate reins in Hawaii. This bill gives you an advantage in the corporate board room. It came at the expense of a public policy which encourages representation of legitimate minority interest. For this privilege, I would hope that they would be sensitive to the demands and requests of minority stockholders and should it ever be found that this legislation has been used to overwhelm the interest of minority stockholders then let's again change the law back to what it currently is.

"Lastly, I think what is also troubling me is that this seems to be the only solution to the problem of possible takeovers to publicly held corporation in Hawaii. I don't have any other answer, but I feel that this may be an issue that we should look at more closely in the future. It may be one that would be good for a study or interim work. Either effort I think will be greatly appreciated."

Senator Kawasaki then added as follows:

"Mr. President, I feel compelled to respond to the statements by the good Senator.

"In my judgment, she really doesn't understand the implications of what the issue is all about.

"It's been stated, as I said, that this is an anti-Weinberg bill and it is not. The issue is very simply, do we, by the device of cumulative voting or mandatory cumulative voting, enable minority stockholders to be able to elect minority directors to the board

of directors of any publicly held corporation.

"Now, assuming Mr. Weinberg who holds 25 percent of the stock of A&B today, assuming that he has the wealth, the wherewithal to purchase 49 percent of the stocks of A&B. If the majority that's on the board of A&B or the majority of the stockholders of A&B decides that Mr. Weinberg, notwithstanding his having 49 percent ownership of the total number of common shares of A&B, shall not be a director, by a bill disallowing cumulative voting, he will not be able to take over the company; he will not be able to serve on that board.

"The only way that Mr. Weinberg could raid the corporation or take over and sell the assets of the company, land in this case, is only if he can get more than 50 percent of the total number of shares involved. And he can only do this by paying a price higher than what is the going price on the market for those shares. And if this happens, in my judgement, and shareholders decided that they will sell because the profit situation here is quite attractive, then it is a good that is occurring to the ordinary common stockholders of this company.

"The other way that Mr. Weinberg can personally benefit is, as I said, for the directors to agree to pay blackmail or 'greenmail' as it is called, and just pay a higher price for his shares than what he can get on the market just to get him out of the way. This happened in the case of Castle & Cooke and look what happened to Castle & Cooke's stock. It went down from \$18 to as low as \$11. Today it hovers around that neighborhood. And this was not a good thing that happened to the shareholders of Castle & Cooke stock today who regret the action taken by Mr. Wilson and the top management of Castle & Cooke.

"The issue has been clouded by the fact that everyone pictures this Mr. Weinberg as a greedy capitalist with a lot of money who's just raiding this corporation to profit himself personally. Now, any man who has 25 percent of the shares of the stock and who today, by the admission of the management of A&B, enjoys an annual dividend return in excess of \$6 million. No person like Mr. Weinberg, who's got that kind of a holding position in A&B, is going to do anything detrimental, basically, to the best interests of the shareholders of the stock in A&B.

"That issue aside, it is awfully important in a corporate setup for cumulative voting to be mandatory so that minority shareholders, if they have enough stock even if they are in the minority, to be able to elect somebody who may not be one of the majority directors. A dissenting voice in a corporate setup could be very useful.

"Can you imagine what would happen here right on this floor if we have no dissenting point of view and you, Mr. President, had full say as to what bills are going to pass or not pass? I think the fact that the Senate on rare occasions comes out with something very meaningful and useful and valuable to the people of this state is because we have a minority here, not only the Republicans but even the minority among the Democrats. You've seen an example of what discussion takes place among the minority in the Democrat group, dissidents, each of them arguing with each other on the merits of a bill, and this is healthy for the benefit of all of us here and, certainly, it gives thorough airing of issues before us.

"Likewise in a corporate setup, to be able to elect minority directors on a board of directors of a major corporation, notwithstanding every now and then, disgruntled points of view or dissension, a minority point of view is valuable even in a corporate setup. This bill will do away with any possibility of a minority point of view from ever existing on a board of directors of any publicly held corporation.

"There's no immediate need for this bill to pass, notwithstanding the April 24th meeting of A&B.

"And the chairman of the Consumer Protection Committee alluded to conflicting testimonies about what was said in a San Francisco February 25th meeting of the board of directors of A&B at which time someone representing the majority directors had stated, after they took action at the directors' level to do away from cumulative voting, that, 'notwithstanding what we did, which is contrary to the law in Hawaii today — don't worry about it the Legislature is going to pass our bill to do away with cumulative voting.' This is disputed; there is conflicting testimony both ways, but those who state that this statement was made are equally emphatic in saying that they can provide us with affidavits to show that this was the case.

"Be that as it may, I think perhaps it is an indication of what the Big Five companies think of their influence is around here and I must agree that they have quite a bit of influence over here. But if we are to give the people of this state a clear impression that we act quite independently around here, whatever the influence the Merchant Street merchants can wield around here, perhaps then we should not vote this bill today; hold it in abeyance, wait till after the directors' meeting or the shareholders' meeting on April 24th of A&B, and perhaps in the interim, take a good look at it and, next year, if we find an imperative need to pass this bill, then we can act on it at that time. But voting on it today, I don't think is the answer that we would like to convey to

the people of this state."

Senator Chang also spoke on the measure as follows:

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

"It seems to me that much of the discussion heard today is based on a mistaken analogy between governmental institutions and commercial institutions.

"It has often been said that democracy is the least efficient form of government but it's the best form that we have, and I've seen nothing in the operation of this august body to convince me otherwise.

"Corporations, on the other hand, are engines of commerce, and as a device for aggregating capital in order to fuel these engines the American corporation has known no equal. And it is this very distinction, this very dependence on these engines of commerce for efficiency and effectiveness that creates this need to reexamine and change the device of cumulative voting.

"Because of recent changes in the American banking and financial picture it is now possible for raiders of corporations to utilize vast sums of capital in order to disrupt corporate operations and, in this disruption, weaken these engines of commerce and make these engines prey to not only raiders in our own country, but to persons who have access to international funds.

"Mr. President, the Democratic Party is committed to outlining and establishing the foundation of a new economic order for Hawaii in the midst of a very troubled international, national and local situation. In order to quickly achieve this new order, it is necessary to provide for ways in which people and programs that the party has traditionally served, may be supported by a stable and progressive economic order. Retooling the engines of commerce and realigning these engines with the Democratic government is a necessary step in the achievement of this order and for this reason I support the bill."

The motion was put by the Chair and carried and, Roll Call vote having been requested, H.B. No. 1360, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CORPORATIONS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 20. Noes, 5 (Abercrombie, Hee, Kawasaki, McMurdo and Toguchi).

House Bill No. 1366, S.D. 1:

On motion by Senator Cobb, seconded by

Senator B. Kobayashi and carried, H.B. No. 1366, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CORPORATIONS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Kawasaki).

House Bill No. 1489, H.D. 1, S.D. 1:

By unanimous consent, H.B. No. 1489, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TIME SHARING," was recommitted to the Committee on Consumer Protection and Commerce.

House Bill No. 240, H.D. 1, S.D. 1:

Senator Cobb moved that H.B. No. 240, H.D. 1, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator B. Kobayashi.

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

"Mr. President, I oppose this bill and refer the members to page 60 of the bill.

"Mr. President, we've heard a ringing defense today of the so-called free enterprise system from the chairman of the Consumer Protection and Commerce Committee. I ask the members to tell me how this principle is being enunciated in this bill except in contradiction to the remarks previously given to the presumed effect of the vote taken.

"It says, 'A foreign financial institution.' I presume what they mean here is not necessarily somebody located in Taiwan or Australia, but probably one of the other states of the Union. 'A foreign financial institution whose principal office is not within this State' etc., etc., etc., 'shall not be considered doing business in this State by reason of engaging in the advertising or solicitation of savings accounts or investment or other certificates in this State by mail,' (that involves the federal mail, I presume, unless it happens to be one of the private companies that's doing it) 'radio, television, magazines, newspapers or any other media.'

"What we're saying here is that we're now going to define and interfere with the First Amendment rights of speech and say that you are not doing business ... we're going to create a fiction, in other words.

"Now you know perfectly well, Mr. President, if you, in the wisdom of your campaigning for example go to the radio, the television, the magazines or the newspapers in this town, they're going to demand cash from you, as a matter of fact. I don't think we get credit at the newspaper, not you and I anyway; we don't get credit at

the newspaper. You have to pay in cash and I presume that that's doing business and that will be seen as an expenditure by the Campaign Spending Commission. Yet, we're going to define here that taking out an ad is not doing business in this state for purposes of this section ... 'provided that in any advertising or solicitation by mail, or in any media which is directed primarily to persons in this State, there shall be a conspicuous statement made that the institution is not supervised or regulated by this State.' Now, what we're really talking about here is the financial institutions.

"If you take a look at the title of the bill, 'A Bill for an Act Relating to the Commissioner of Financial Institutions,' and what that director shall do and not do. This goes back to the bank examiner in her quest to look forward rather than backward, taking a look at the past as to what the bank examiner has done or not done or what the Office of Consumer Affairs has done or not done with industrial loan companies, it says let's look forward; let's forward and let's prevent anybody from competing from out of the state. Yet, the very arguments that have been made by the chairman of the Consumer Protection Committee have been towards the encouraging of this. One of the reasons we're told to vote for the credit bill or taking the ceiling off of credit and loans is going to encourage competition from all over the country.

"Now the chairman knows perfectly well that the other institutions that he's speaking of have to be under the Federal Deposit Insurance Corporation and, if they were, they could say so. But no, we're going to insist that they say are not supervised or regulated in this state. To what purpose? To try to imply to the depositor-investor in this state that somehow these companies are not financially sound, or they are like the companies we have here. Perish the thought.

"This is all that it is. It's a clear contradiction of the arguments in the previous cases. I don't see how there is any justification whatsoever for this. If there is to be an admonition that they must state what they do have by way of protection for their request that people in this state invest or deposit money with them, that seems perfectly reasonable. We require the same things of our own people. What protections do you provide and let people judge whether they are adequate or not? Instead, we enter a negative.

"I don't believe that this can be sustained in court. I don't see there's any reason to have this here except to interfere with the ordinary activity of commerce and business, which has been defended stoutly on this floor today, over and over again. And yet here we come in and tell business that it

cannot be done when there is no rational ground for doing it whatsoever, other than to perhaps to try to protect business in this state which is undeserving of protection.

"If the business in any other state is a legitimate business, soundly managed and protected in terms of insurance, for example, Federal Deposit Insurance Corporation is the example that I'm using in this instance, then I don't see why it can't say so just as our own financial institutions can now say so, particularly with respect to industrial loans.

"So I don't see any purpose in this bill other than to stand as a beautiful demonstration of how you can say one thing to get a bill passed one time and try to do another thing in another bill, another time, even though the contradiction is so blatant that how one can stand in good conscience and support it is beyond me."

Senator Cayetano also spoke on the measure as follows:

"Mr. President, I rise to speak against this bill.

"Mr. President, my signature is free and clear on the committee report. I recall at the hearing, I thought this bill, especially the amendment on page 60, was silly and I have to blame myself for signing the committee report rather than trying to kill this bill in committee.

"There's a little history on why this amendment, stated on page 60, is there.

"Two or three weeks ago, maybe a month ago, the members of this body may have read a newspaper article which related how the bank examiner had stepped in to prohibit Coast Savings from advertising for business in this state.

"At the hearing on this bill, I questioned the bank examiner as to what her statutory authority was for making that kind of decision with respect to Coast Savings. Her answer was that it was not clear; there was nothing expressly stated in the law but she felt that implied in the law was a prohibition against out of state financial institutions advertising for business in this state. Coast Savings' attorneys, of course, disagreed, but because Coast Savings is a large, respected financial organization, they agreed to step back until this matter could be looked at more thoroughly by the bank examiner.

"The problem I have with this amendment is that it is a bill of illogic. If the members will look at the amendment on page 60, starting with (b), and let me preface my remarks by stating that the only way the State of Hawaii can regulate a foreign

financial institution is for that institution to do business in this state; otherwise, we can't regulate them. I mean, you don't have to be a lawyer to understand that. That's something that is pretty well known.

"In the first part of the amendment, it goes on clearly to state that a foreign financial institution which does not have a principal office in this state is not doing business in this state, if it advertises for business in this state. So, that takes it out of our jurisdiction.

"Then in the second half of the amendment, it goes on to say, however, if that foreign financial institution should advertise in this state then 'there shall be a conspicuous statement made that the institution is not supervised or regulated by this State.' Now how can you possibly enforce this since we don't have jurisdiction over the institution because it's not doing business in this state, according to the first half. How can we enforce this?

"The conclusion I have come to is that this must be a regulation on our local news media. It seems to me that they would be the ones who will have to carry the burden and require Coast Savings or whatever foreign financial institution, which wants to advertise in this state, to have such a statement in their ads before they are published in the newspapers or broadcasted on the radio or television. Now if that's the case, then it seems that the local news media may have a real argument on whether this violates the First Amendment.

"But there's even greater illogic and inequity. Let us assume that Coast Savings advertises in the Wall Street Journal, a publication read religiously and almost daily I understand by Senator Henderson. The Wall Street Journal is published nationwide and the State of Hawaii has no regulatory powers over what the Wall Street Journal publishes, so how will we enforce this against out of state publications such as the Wall Street Journal or the New York Times or any other newspaper that is published outside of this state and sold here, assuming we can even enforce it against the Honolulu Star Bulletin, Advertiser, or Channel 9, 2, 4 or any of the other news media that we have here.

"I'm sorry, maybe I'm a bit slow but the illogic just hit me maybe just a couple of hours ago and so I want to bring it to the members' attention and I would ask that the chairman take a recess to consider what I've said and maybe consider recommitting this bill because the rest of it, it seems to me, is nothing vital. In fact, all it does is change the name, bank examiner, to commissioner. It's amazing, it's this thick and that's about what it does.

"So I would ask that the chairman, if we can have a recess and talk this over, reconsider or consider recommitting this bill because I think that it makes absolutely no sense to me. It can't be enforced.

"Maybe I'm wrong. If some of you feel that it can be enforced, that it makes sense, please give me some time and explain it to me because I can't figure it out."

Senator B. Kobayashi spoke on the bill as follows:

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

"I will agree that the last page having to do with advertising may cause some people to question this bill but, unlike what the previous speaker says, there are sections of this bill which are highly important. There are at least four sections in which the commissioner is allowed to adopt rules pursuant to Chapter 91.

"In addition to that, the various thrusts of this bill would shift responsibility from the current director of consumer affairs to this new commissioner for financial institutions, and that involves a major reorganization and improvement, I would suggest, in how that department operates."

Senator Abercrombie then asked:

"Mr. President, maybe I'm going to make an inquiry at this point. It seems where consumer protection is concerned you have four or five different things get jammed into every bill. Is this bill properly before us then? If there are three or four other things and this got added in, is it properly within the purview of the commissioner?"

The Chair answered:

"I would think the title of the bill will be broad enough to include the subject matter being discussed at this time; therefore, it becomes a property of the bill."

Senator Abercrombie continued:

"Mr. President, all right.

"Then just in rebuttal to the last remark, briefly.

"We cannot keep on passing bills or make an argument to pass a bill because there are a couple of good things in it, supposedly, and then have the chairs constantly inserting other things into it to accomplish something else that don't add up. So then we're forced to all the time to keep voting for bills, especially bills with a particular subject matter. There's one I can think of that where inevitably you may not agree on

everything that's in it but it's all relevant to the point, and that's the budget bill. Not everybody may have the same view on what is in the budget but you vote for the budget bill because everything at least is addressed to it.

"But here you get changes in names and the commission and all of a sudden advertising pops in at the end. One, you're talking about a nuisance and all of a sudden the pet law appears. And it appears in another bill. We get two pet laws.

"We have all this coming up in there. I can't see that that's the reason. In other words, the previous remarks are not a reason to pass this bill. We just had an argument made, at least twice now, that the thing doesn't make any sense. I understand that that's not necessarily a deterrence in this body. You know, that may be a big thrust forward for it, but on the other hand, every once in a while we ought to surprise ourselves when we realize that it doesn't make any sense say, well, okay, we won't pass it this time."

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

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

"The language on page 60 was added at the request of the now existing bank examiner in testimony before the committee to address the question of whether or not Coast Savings could or could not in fact advertise here.

"The bill, unlike some assertions to the contrary, is intended to state that, yes, out of state advertising by financial institutions is allowed. All that the bank examiner sought, and the committee at least agreed, was let's have a disclosure that this is not a Hawaii institution and not regulated by Hawaii law.

"The language which the bank examiner presented is patterned identically after Section 8505 of the California Financial Code which provides virtually the same language. This is found on page 60. I would assume that if it has been in the California Financial Code that it has been tested and found to be constitutional. If it is not, I will certainly be willing to change the language and I've been told that the language question can also be addressed in conference, but I think there is perfectly good source and authority for that particular language, particularly when it addresses the question of in state publication. True, you cannot force a disclosure on an out of state publication, but when the letter or the newspaper is published or mailed in your own state, you certainly have the right to seek that kind of

disclosure without inhibiting competition, and this bill does not prohibit that kind of advertising."

Senator Cayetano then added:

"Mr. President, first of all, I disagree with Senator Kobayashi that this is a critical or important bill. If the members will peruse the bill itself, you will find that this is a reshuffling within the Department of Commerce and Consumer Affairs to create something that's called the Examiner of Financial Institutions or Division of Financial Institutions whose responsibilities are now handled by the bank examiner.

"As far as the rule-making provision, certainly that rule-making provision relates to the commission and that's going to be created in this bill. The present bank examiner, I'm sure, has the same kind of authority, if not the director of the department itself.

"With respect to the remarks made by the chairman, the fact that this amendment is contained in the California law is interesting but not necessarily compelling to me. I mean, the words speak for themselves. The illogic, it seems to me, just is obvious on its face.

"Maybe the answer to my concerns may be posed in the form of a question to the chairman. How will this be enforced? How will the advertising requirement ... and it seems to me that it has to be enforced against local media because certainly it's not enforceable it seems to me against out of state media ... how will it be enforced is question one.

"Second, if Coast Savings or any other institution does not want to comply since the first part of the amendment says they are not doing business in this state, how are we going to regulate them?

"Simple questions, I just want some answers."

Senator Cobb responded:

"Mr. President, the enforcement will go to precisely the same way that the enforcement of massage advertising would take place in the yellow pages of the directory. It would be up to the publishing institution to follow the law and insist on the requirement of the disclosure. That bill was passed earlier and it was in response to the problem of prostitution. The Police Department was in support of it, the Board of Massage was in support of it, and Hawaiian Telephone was also in support of it, and they stated that the cleanest way to do this, the easiest way to do this is to simply require in the law that the yellow pages directory require a license.

"The same principle would apply here that a disclosure would be required for such advertising. Just as the general contractor is required to disclose a contractor's license number to do advertising in certain publications, and that has withstood constitutional scrutiny."

Senator Cayetano continued:

"Mr. President, I assume the general contractor's license the chairman is talking about is held by a contractor who is doing business in this state, I mean, within the definitions of doing business in this state as set forth or established by our court rulings and our statutes.

"All right, if this is going to be enforced against the media, what is the sanction against the media if the media chooses not to comply because it perceives this as being an infringement of their First Amendment rights. How will we then enforce it against the media?"

"Senator Cobb answered:

"Mr. President, the language, as presently drafted, has no sanction."

Senator Cayetano then said:

"Anything that does not have a sanction, Mr. President, is unenforceable by definition. So in my view, that's a good reason to kill this bill."

The motion was put by the Chair and carried and H.B. No. 240, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE COMMISSIONER OF FINANCIAL INSTITUTIONS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 19. Noes, 6 (Abercrombie, Cayetano, Hee, Kawasaki, Soares and Toguchi).

House Bill No. 265, H.D. 1, S.D. 1:

On motion by Senator Chang, seconded by Senator Cayetano and carried, H.B. No. 265, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CHILD SUPPORT," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

At 6:00 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 6:30 o'clock p.m.

MATTERS DEFERRED FROM
EARLIER ON THE CALENDAR

THIRD READING

House Bill No. 29, H.D. 1, S.D. 1:

Senator Chang moved that H.B. No. 29, H.D. 1, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Cayetano.

Senator Abercrombie spoke on the measure as follows:

"Mr. President, I rise to speak against this bill.

"From what I consider just to be the most fundamental basis of all the bills we've considered today, everything has come down to something here that is related to the most basic right that any man or woman can have in this state or in this country and that's the right to a trial by jury.

"What's stated here, and this is in the Constitution, Mr. President, what's stated here is that if we put this out, and you know that the capacity to pass an amendment is very high when it's on the ballot, but then the amount will be determined by law, which means in the Legislature instead of by the people. And all I'm maintaining, very simply, I don't know how it can be put any more simply and it's a question that we should decide on that basis, do you believe or do you not believe that the average man or woman should decide for themselves whether or not they want to have a trial when they believe a wrong has been done to them and get their opportunity to stand in front of the judge and the jury and make their case and hope that their friends and neighbors, their peers will agree with them. And that's the sum and substance of what this is all about.

"And the other part of it is that no one is entitled to tell somebody else as to what's important or not important to them. A thousand dollars, I know what's going to happen, we're going to raise it to five or ten or fifteen thousand dollars. That's not right. It's up to the individual to decide. Is it worth it to them to go and try to seek a redress in front of that jury?

"That's the most fundamental thing that there is in this whole country. It's the last bastion and the last offense that the average person has is to stand up and say, I'm going to sue, I don't have to take it. We shouldn't take that right away from him and we shouldn't decide for them what the amount is that makes it worth it to them to go in to get their day in court.

"I'm for voting 'no' on this bill so that the average person is able to maintain their day in court."

Senator Cayetano also spoke on the

measure as follows:

"Mr. President, speaking in favor of the bill, I think it's important to understand the question that this bill poses.

"Essentially, what the bill does is simply to put the question before the people. And I have to say that the remarks of the previous speaker are inappropriate to this bill because whether or not we should have jury trials for disputes exceeding a thousand dollars is not the question before us.

"The question before us is whether this question should be put to the people. It calls for a constitutional amendment, and unless anyone has problems with the process of letting the people decide whether there should be a change to an amendment to the Constitution, I see no reason why we should not pass this bill."

Senator Chang then remarked:

"Mr. President, very quickly, the purpose of this bill is to propose an amendment to Article I, Section 13, of the Hawaii State Constitution to change the jurisdictional amount required for jury trials in civil cases. That's one important distinction to keep in mind. We're not referring here to jury trials in criminal matters. It would allow the Legislature to establish the jurisdictional value for civil cases.

"Presently, the State Constitution preserves the right to a jury trial where the amount in controversy exceeds one thousand dollars. This bill would allow the Legislature to adjust the jurisdictional amount from time to time as circumstances may require. It would allow for an expeditious implementation of a new jurisdictional amount without a delay until the next election.

"Presently, the district court has exclusive jurisdiction if the amount in controversy is less than \$5,000 and limited jurisdiction when the amount in dispute is between \$5,000 and \$10,000. District courts, however, try and determine all actions without a jury. Therefore, a case may be commenced in or removed to the circuit court if the amount in controversy exceeds \$1,000 and one of the parties demands a jury trial.

"Rather than expediting the disposition of the case, removing a case to circuit court would usually result in prolonging the case and add to an already congested circuit court calendar.

"Moreover, the cost of a jury trial can easily exceed \$1,000, several times over, especially when one considers attorneys' fees for all parties, legal expenses and judicial time in administration.

"For these reasons, Mr. President, your committee has examined the proposal before it and recommends that this is an appropriate question to be presented to the people for their decision — shall the jurisdictional amount be changed by the Legislature as circumstances deem appropriate."

The motion was put by the Chair and carried and, Roll Call vote having been requested, H.B. No. 29, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT PROPOSING AN AMENDMENT O ARTICLE I, SECTION 13, OF THE HAWAII CONSTITUTION, TO CHANGE THE JURISDICTIONAL AMOUNT REQUIRED FOR JURY TRAILS," having been read throughout, passed on the following showing of Ayes and Noes:

Ayes, 14. Noes, 10. Excused, 1 (Kawasaki).

Senator Abercrombie then inquired:

"Mr. President, point of inquiry. When will this measure appear on the ballot?"

At 6:36 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 6:39 o'clock p.m.

At this time, Senator Cayetano also rose to inquire:

"Mr. President, the vote on the last bill which proposes a constitutional amendment, does that meet requirements for passage this year?"

The Chair responded:

"In answer to the inquires by the previous speakers, for final passage this year the bill requires passage by two-thirds vote in each house. However, it can pass by a simple majority this year and again next year. It must pass by a simple majority in two successive years and then be placed on the next general election ballot."

Senator Abercrombie then said:

"Mr. President, am I correct then that the majority voting on this issue will have an opportunity, then, next year, to see the error of its way."

The Chair answered:

"Yes, if that be so the"

Senator Abercrombie interjected:

"Yes, Mr. President, I predict, if we do not take such action that this item will become a major issue in 1986, and I invite

everybody to think very seriously about that. And those who wish to discount it can do so, and those who see it as I do will be able to pursue it with the electorate."

Senator Cayetano then added:

"Mr. President, just a few remarks in response.

"I see this as a form of initiative. I cannot understand why some of the people who voted against it did so."

House Bill No. 1257, S.D. 1:

Senator Chang moved that H.B. No. 1257, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Cayetano.

Senator Abercrombie said:

"Mr. President, I think that the chairman of the Judiciary Committee wants to make a statement, if I'm not mistaken, before we vote on this, for the record."

Senator Chang spoke on the measure as follows:

"Mr. President, some reservations have been expressed with respect to one provision found at the bottom of page 5 in House Bill No. 1257, continuing on to the top of page 6.

"I have so expressed the concerns of the Majority caucus to the corresponding committee chairman in the House and he has agreed that he will disagree with this matter and take the matter to the conference committee whereby that offending provision shall be removed.

"Very simply, Mr. President, the questionable provision would have permitted printing on both sides of the ballot card by means of consolidating questions, offices and candidates. And while the matter involved is cost savings of \$75,000 per card, it involves procedures presently followed by the Chief Elections Officer. The matter was of sufficient concern to cause the Majority caucus to put aside those concerns about expense in favor of a more conservative approach at this time."

The motion was put by the Chair and carried and H.B. No. 1257, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ELECTIONS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1

(Kawasaki).

MATTERS DEFERRED FROM FRIDAY, MARCH 29, 1985

REFERRAL OF RESOLUTIONS

The President made the following committee assignments of concurrent resolutions and resolutions that were offered:

Senate Concurrent Resolutions	Referred to:
No. 61	Committee on Consumer Protection and Commerce
No. 62	Committee on Higher Education
Senate Resolution	Referred to:
No. 76	Committee on Labor and Employment
No. 77	Committee on Labor and Employment
No. 78	Committee on Consumer Protection and Commerce, then to the Committee on Legislative Management
No. 79	Committee on Labor and Employment, then to the Committee on Legislative Management
No. 80	Committee on Higher Education
No. 81	Committee on Higher Education

The Chair then made the following observation:

"Members of the Senate, I believe this is the first time in six years that we adjourn at 6:45 p.m. on Third Reading of House bills. The Chair appreciates the cooperation by all members.

"I hope you have a good evening. We'll see you tomorrow."

ADJOURNMENT

At 6:46 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., Tuesday, April 2, 1985.