

## SIXTY-FIRST DAY

Monday, April 22, 1985

The Senate of the Thirteenth Legislature of the State of Hawaii, Regular Session of 1985, convened at 10:20 o'clock a.m., with the President in the Chair.

The Divine Blessing was invoked by the Reverend Charles T. Crane, Rector, Holy Church of the Nativity, Aina Haina, after which the Roll was called showing all Senators present.

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

## ORDER OF THE DAY

## FINAL READING

Conf. Com. Rep. No. 53 (H.B. No. 1, H.D. 1, S.D. 1, C.D. 1):

Senator Yamasaki moved that Conf. Com. Rep. No. 53 be adopted and H.B. No. 1, H.D. 1, S.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Mizuguchi.

Senator Kawasaki rose to speak on the measure as follows:

"Mr. President, I rise to speak in favor of the bill, but I do want to enter into the records of the Senate Journal some concerns that I have.

"On page 7 of the committee report emanating from the Conference Committee, the Health Department is directed to take necessary action to accelerate the deinstitutionalization of mentally retarded and mentally ill patients into group homes, transitional living and day activity programs. While it seems to me that this new emphasis may be merited, it becomes absolutely necessary that the Health Department very carefully screen, qualify and efficiently monitor the staff and the personnel of these homes and programs, as these mentally ill patients are susceptible and helpless to cope with neglect, with abuse and inefficient care at the hands of non-government, private care providers who are less than compassionate and qualified. If the Health Department does not oversee this new deinstitutionalization emphasis efficiently, then we could do more harm than the good that was intended.

"Page 13 of the committee report expresses concerns regarding the accountability of funding for purchase of services contracted by the State Foundation on Culture and the Arts. And on page 17, the committee expresses concerns and directs the departments to re-evaluate the use of purchase of services, especially the development of requests for services.

"I believe the committee is justified in expressing these concerns as my perusal of a list of purchase of services, and even a cursory examination of the list of fund requests and allocations, seems to indicate to me that many items of funding for a whole variety of programs seem less than efficiently justified and funded.

"Senator Cayetano and I have some familiarity with the number of these funding requests as former chairman and vice chairman of the Ways and Means Committee. We have experienced and discovered inefficiencies and misuse of funds by the agency management and the use of state funds in the past has been less than efficient. I do not believe that even with the Act 42 statute in place that we have completely eliminated or discouraged improprieties in the abuse and misdirection of funding resources yet.

"In this connection, I have in the past and continue at the present time to strongly recommend to you that we provide the necessary resources and funds and staffing for the Ways and Means Committee, the Human Services Committee and the relevant departments, that is to say, the Health Department and the Department of Social Services, to coordinate their efforts to routinely monitor these programs of these agencies, unannounced, to reasonably ensure the proper utilization of funds appropriated by the state.

"On page 252 of the budget bill, I am somewhat disturbed to note that the CIP allocation for the widening of Kalakaua Avenue has been needlessly encumbered with a proviso mandating 'a simulation' of the projected improvements to Kalakaua Avenue. Incidentally, this simulation effort is estimated to cost anywhere between \$350,000 and \$450,000 before funds are going to be released for the contractual needs. This proviso, I understand, is contrary to the wishes of the chairman and the majority members of the Tourism Committee. Its inclusion in the bill, it seems to me, delays the commencement of the widening project which was explained to four of us in the Senate by Mr. John Hurten, now the director of the City and County's Transportation Department.

"And finally, I would like to register my concern that again this Legislature, amazingly, has neglected to allocate an equitable share of funds in the revenue sharing formula for the taxpayers of the City and County of Honolulu. In its long standing revenue sharing grants-in-aid to the counties, the conference committee has allocated to Oahu, with its 803,000 taxpayers, a sum per capita of

\$11.18 for a total of \$6 million. It has allocated to Kauai County with a population of 44,000, \$3 million, or a per capita allocation of \$57. To the Island of Hawaii, it has allocated some \$38 per capita. To Maui it has allocated \$25 per capita more than the allocation to the citizens of Oahu.

"I think it is way past due that we in the Legislature treat Oahu County and its 800,000 taxpayers a little more fairly. In this connection, the committee in the Senate on Government Operations has reported out favorably a bill to repeal the statute that today requires the City and County to pay a 4 percent excise tax on all its payment of goods and services. This would have saved the County of Oahu some \$9 million. I regret to see that this bill got nowhere.

"The committee also reported out favorably a proposition to return to the County of Oahu some 50 percent of the total amount of fines collected, again to help the plight of the City and County of Honolulu. This bill apparently has met with defeat again.

"It seems to me that it is high time, in view of the fact that the residents on this island are responsible for 80 percent of the total revenue generated in this state, that we allocate to Oahu County a more equitable share of the funds that are passed out to the counties. With this concern expressed and entered in the Senate Journal, I, with reservation, support the passage of this bill."

Senator Abercrombie also spoke on the measure as follows:

"Mr. President, speaking in favor of the bill, I would like to begin what I'm sure is a chorus of thank you's and acknowledgments to the efforts of the Ways and Means Committee, its chairman, vice chairman and members.

"I particularly want to do so, however, and feel that it is in order to make specific mention because this Ways and Means Committee, in cooperation with the members in general and the members on my committee in particular, have made what can only be termed a revolutionary stride in the area of human services this year.

"As you know, Mr. President, the committee this year which was previously the Labor and Human Resources Committee was split in half. Sometimes that is done in legislative circles to accommodate the organization of the moment; however, in this particular instance, the workload that was involved in the committee was such that almost inevitably the labor issue side of the committee would receive attention to the detriment of an adequate understanding

and survey of the human services side. That, by virtue of the split in the committee this year, we were given an opportunity, rather, to reverse that idea, and I'm very grateful for having had the opportunity to work with my committee members on this, not only from a budgetary point of view, but from a legislative point of view.

"We have had several bills, some of which are before us today, which materially advance the area of human services in this state in a bipartisan and progressive way, and with particular reference to the budget, we are now moving into the idea that we will have prevention in the area of child abuse, in the area of family violence, prevention in the area by working in a cooperative way with the Health Committee and the Department of Health, and in services to the elderly, to the frail elderly, to the helpless, to the needy. We are not following any kind of trend or fashion which indicates that we should be less than compassionate and have less than the number of dollars that are needed. By the same token, I am again grateful to the Ways and Means Committee, its members and chairman, because they recognized as well that the welfare drum, if you will, Mr. President, has been beat on for quite some length of time.

"Speaking of political fashion, again, it was certainly fashionable for a long time to cite the area of social services and housing as one in which there was abuse, one in which one could expect to have inefficiency in government spending, an area which could not be governed. That is not the case, Mr. President. What it requires is a legislative oversight. It requires foresight. It requires a little bit of hard work and concentration in having a coherent philosophy. I think we have developed one, and I think it's manifested in this budget.

"We are improving services. We are increasing the amount of money that will be spent at the grassroots community level without increasing the budget. As a matter of fact, the chairman of the Ways and Means Committee will confirm, I am sure, for you that we will be requiring less in the way of federal dollars without harming our programs in any instance whatsoever; in fact, we will be improving them.

"Mr. President, for the edification of those who are not familiar with this budget, virtually every area of it is known as an entitlement budget. The general assistance area, the aid to families with dependent children, the medical payments area and the area for aged, blind and disabled. The medical payments area alone, Mr. President, is a \$200 million plus expenditure area for our budget in this state every year.

"We have added a medical payments

office with the cooperation of the House and its good chairman, Representative Renaldo Grauly, and with the cooperation of the Finance Committee there we were able to work out a budget that is well within the Governor's ceiling and yet as reversed, if you will, the expenditure at the top and put it down at the level where it is most needed, at the client level. We can be proud of it. It was a bipartisan effort; particularly grateful to those members of the Minority whose stalwart support throughout this session has been invaluable in putting this budget and this legislation together.

"Mr. President, I can assure you that when this session ends and you are called to account by the public at large, by the media, by those who are interested in our work output, that you may confidently cite the work of the Human Services Committee and all the attendant work done on the financial end of it as a major accomplishment which will have a ripple effect down the line to the positive benefit of the taxpayers and the people of this state for years to come.

"Thank you."

Senator Kawasaki then added:

"Mr. President, I believe I would be remiss if I did not, in behalf of the people of this state, thank the chairman of the Ways and Means Committee and to the six members on that committee, and along with seven others here for a total of 13 to 14 Senators, and you know who you are, who steadfastly refused to increase the excise tax. This puts the Senate of the State of Hawaii squarely on record as having kept faith with the consumers of the state that we will not increase the sales tax as being an additional burden on the people of this state. This makes me very proud in the decision of the chairman of the Ways and Means Committee and the Majority members of this Senate.

"I have some criticism to make on some other bills later on, but I do appreciate this effort on the part of the Senate to steadfastly, as I said, refuse to go along with the House in increasing the sales tax."

Senator Yamasaki then spoke on the measure as follows:

"Mr. President, I rise to speak in favor of H.B. No. 1, H.D. 1, S.D. 1, C.D. 1, Relating to the Budget.

"Before doing so, I wish to express my thanks to the conferees of the Ways and Means Committee for their tireless efforts in developing this bill during the week-long conference negotiations, and also the subject matter committee chairmen. I especially want to thank the members of my Ways and Means staff for their dedicated work and their effort put into this

bill.

"The bill represents \$2.3 billion for each fiscal year for the operations of the nineteen executive departments. Appropriations are also provided for capital improvement projects totalling \$200 million and \$175 million for fiscal year 1986 and fiscal year 1987, respectively.

"Mr. President, based on the March 1985 Council of Revenues projections for general fund tax revenues, there are adequate revenues to fund the total general fund appropriations provided for in this bill along with the specific appropriations bills that are being considered for Final Reading today. I project an end balance at the end of the fiscal biennium 1985-87 of approximately \$84 million. However, I must caution you that the financial picture of the state is not as financially sound as it first appears. The impact of the Reagan administration's policies as it relates to local and state fiscal responsibilities, human services, and health care services have not been fully assessed.

"Furthermore, we continue to rely heavily on our tourist industry to maintain our local economic growth. Because of reliance on the tourist industry, investment in the promotion of and improvement of the infrastructure of Hawaii was a strong commitment of the Senate. We had hoped that our tourist tax measure would be given favorable consideration by the House to fund this investment in tourism. However, the Senate and House conferees could not come to agreement with this tax measure as well as other measures that would have benefited the taxpayers and businesses of Hawaii.

"During the interim, I intend to study various tax alternatives that would provide relief to our taxpayers, and improve our business climate, while improving our state's tax revenue base.

"Mr. President, with your indulgence, I would like to just highlight some of the budgetary decisions made by your conference committee.

"In ECONOMIC DEVELOPMENT, your committee has provided the Hawaii Visitors Bureau with an annual appropriation of \$5.2 million, increasing its advertising and marketing/promotional budget by over \$1.8 million per year. In doing so, we acknowledge the tourism industry's significant role in promoting Hawaii and its economy.

"We have also provided an additional \$1 million per year to the Pacific International Center for High Technology Research (PICHTR). It is your committee's hope that such support will increase PICHTR's potential to become a major center for

high technology research in the Pacific region.

"Your committee has provided funds for the promotion of papayas, pineapples, local seafoods and diversified agricultural commodities to further the development of our state's agricultural industry.

"In HEALTH, your committee focused on three major health issues:

"1. For child abuse and neglect prevention about \$250,000 was provided to supplement existing programs in the Department of Health, in coordination with the funds provided for in the Department of Social Services.

"2. Over \$1.0 million in additional funds have been provided for group homes, and day activity programs designed to keep the mentally ill out of the hospital and in the community.

"3. The Department of Health's plan for the deinstitutionalization of patients at Waimano Training School and Home was given an added impetus by your committee. In the first year, the program will be planning for the eventual movement of over 200 patients into the community from Waimano in the next six years. Nearly \$1.0 million has been provided for this purpose.

"In SOCIAL SERVICES, major emphasis was placed on addressing the needs and problems associated with the increase in child abuse and neglect cases. Additional social workers, aides, and clerical support are provided for both prevention and treatment programs within the Departments of Health and Social Services and Housing. Also, the level of services provided through purchases of service has been expanded to reflect the increasing role private organizations have in the provision of human services. An additional \$1.1 million for prevention, and \$1.3 million for treatment, have been provided for this purpose in each year of the fiscal biennium 1985-87. Eight attorneys are also provided specifically for child abuse and neglect to handle the increase in legal services. Further, a computerized tracking system of known perpetrators will be set up within the DSSH to monitor child abuse and neglect cases as they proceed through the system.

"In HIGHER EDUCATION, your committee has provided the University of Hawaii with approximately \$7 million in each year of the fiscal biennium over and above the original Governor's budget request. This additional support is a reflection of both the Governor's request that \$5 million be added in support of the University's activities, and your committee's commitment that a portion of the increased general fund revenues from recent tuition increases should be given

back to the students. As a result, you will find increased funding to improve the areas of equipment, supplies, repairs and maintenance, computerized systems, and new instructional and research programs.

"In LOWER EDUCATION, focus has been on the students at the intermediate school level. It is at this educational level that the number of alienated students increase, and these students are prone to conflicts with the law. About \$1.4 million in each year was provided to alleviate this problem.

"Emphasis has also been place in education programs at the formative years in the elementary school. Besides ensuring each child's achievement to his full potential, a total of \$3.5 million in the first year and \$1 million in the second year was provided for the early provisions for school success program, music instruments, textbooks and classroom equipment have been provided.

"To supplement the regular instruction program, an increase to the priority fund will allow each school flexibility in the use of the fund above and beyond each school's basic needs. The total funding for this purpose in both years was \$2.8 million. The physical atmosphere within the public school system is as equally important as academics. Recognizing the need for the state to protect its substantial investment in its school plant and to insure that existing facilities are safe and functional, a total of \$31 million for each year of the biennium has been authorized for the purpose of repair, maintenance, and renovation of school facilities.

"In PUBLIC SAFETY, your committee has provided funds for additional adult correctional officers and additional training, expand community service programs, and to repair the existing correctional facilities.

"In LEGAL SERVICES, a major concern which revolved around the mismanagement of the litigation fund within the Attorney General's office has been addressed during conference. A request has been made for a management audit or a budget review to be conducted by the Legislative Auditor. This audit would examine the handling of funds in the litigation fund. The appropriation of this fund was deleted in the second year pending the recommendations of the Legislative Auditor's audit, the better determination of statewide litigation needs and the improved coordination by the Attorney General's office with each state department requiring legal services.

"In CAPITAL IMPROVEMENT PROJECTS, funds have been provided for such major projects as:

"An additional 248 rooms for the Halawa Medium Security Facility,

\$11.5 million;

"A new Hawaii State Hospital Mental Health Facility, \$15 million;

"The Hawaii Ocean Center to be located at the present Aquarium site in Waikiki, \$10.5 million;

"The dredging of Pearl Harbor to accommodate the home porting of the battleship U.S.S. Missouri, 41 million;

"Permanent facilities for the University of Hawaii School of Architecture, \$3.2 million;

"The development of the Hawaii Ocean Science and Technology Park at Keahole, Kona, \$7.8 million;

"The expansion of Kahului Airport, \$36.5 million; and

"The expansion of Lihue Airport, \$8.1 million.

"Based on adequate future bond issuances, your committee ensures that these appropriations for capital improvements are not beyond the state's financial capabilities, resulting in a comfortable debt margin of over \$63 million provided for in the bill will ensure a viable future for the people of Hawaii, and I therefore ask your unanimous support of this budget bill."

The motion was put by the Chair and carried and Conf. Com. Rep. No. 53 was adopted and H.B. No. 1, H.D. 1, S.D. 1, C.D. 1, "A BILL FOR AN ACT RELATING TO THE STATE BUDGET," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

At 10:47 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:50 o'clock a.m.

#### MATTERS DEFERRED FROM FRIDAY, APRIL 19, 1985

Senate Bill No. 64, S.D. 2, H.D. 2:

By unanimous consent, action on S.B. No. 64, S.D. 2, H.D. 2, was deferred to the end of the calendar.

Senate Bill No. 1354, S.D. 1, H.D. 2:

By unanimous consent, action on S.B. No. 1354, S.D. 1, H.D. 2, was deferred to the end of the calendar.

#### CONFERENCE COMMITTEE REPORTS

#### FINAL READING

Conf. Com. Rep. No. 30 (S.B. No. 615, S.D. 1, H.D. 2, C.D. 1):

On motion by Senator Chang, seconded by Senator Cayetano and carried, Conf. Com. Rep. No. 30 was adopted and S.B. No. 615, S.D. 1, H.D. 2, C.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO FEES FOR PRIVATE ATTORNEYS GENERAL," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

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

Conf. Com. Rep. No. 41 (H.B. No. 995, H.D. 2, S.D. 1, C.D. 1):

Senator Cobb moved that Conf. Com. Rep. No. 41 be adopted and H.B. No. 995, H.D. 2, S.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Cayetano.

Senator Cobb spoke on the measure as follows:

"Mr. President, I'm not going to speak in favor of this bill. In fact, I will be voting 'no,' as the committee report indicates my reservation.

"This bill has come out of the conference committee going back to the original House language at the strong request of two of the House conferees that the Senate formally take a vote on this issue. I pointed out to them that if we passed this bill we may as well in effect abolish the Board of Massage because the Senate version provided the discretionary authority for that board to waive the apprenticeship requirement for a particular type of massage. But the House version of it singles out one type of massage and one ethnic group which I think is an unfortunate situation because others could make the same claim. In fact, the very day that we had a hearing on this particular measure in the Senate we also had over an hour of testimony on a style of massage called 'reflexology,' and they were asking for the same type of exemption from the apprenticeship requirements. We said no. We said properly, I think, no in the Senate version, and the way this has come back is in its original House version for that up or down vote that the House conferees requested.

"Given that and the fact that I told those conferees I could not and would not defend this bill on the floor of the Senate, I would ask each member of the Senate to consider the implications of this, that if we begin by passing this, we may as well start looking at other types of massage to exempt, as well. Thank you."

Senator Cayetano then remarked as follows:

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

"Mr. President, I don't disagree with the remarks made by the chairman of the conference committee. As a conferee on that committee, I share his views. Unfortunately, I was not present when the agreement was made between the House and Senate conferees and signed the committee report only after the decision had been made. Had I been present, I would have opposed this bill, but it seems to me that one of the duties of the conferees, whether they be House conferees or Senate conferees, is that if an agreement is struck between the House and the Senate that we on this floor try to push and support the measure.

"Although I have grave reservations about this bill, let me say that in the scheme of things, in the scenario of bills that we have here, perhaps this is not an important bill in terms of money and those kinds of considerations. But there is another perspective that I would like to share with the members. I have here a floor speech which will be given, if it has not already been given, by Representative Peter Apo in support of the bill. Representative Apo was a conferee on this bill and he has asked me to share his remarks with the members of this Senate and with your indulgence I will do so. I now quote from Representative Apo's speech:

"Mr. Speaker, I am never surprised by opposition to the suggestion that native Hawaiians should, as native American aboriginal peoples, be singled out for exception to the law with respect to traditional and customary cultural practices. To be sure Mr. Speaker, the issue here is not the practice of lomi lomi. The issue here is whether native Hawaiians can validly pursue exception to the law and if so, on what basis should these exceptions be granted.

"Mr. Speaker, the special status accorded to native Americans has time and time again been confirmed by the Congress and reconfirmed through the legal process which gives special emphasis to protection of religious and cultural practices by indigenous peoples.

"There are numerous precedents in federal law and subsequent challenges to these laws that have been upheld by the Supreme Court. These precedents include Title VII: The Native American Program Act ... Title III: The Native American Employment and Training Act ... The Hawaiian Homes Commission Act of 1921 ... The Native American Vocational Education Program ... and one that has direct bearing on the issue before us, The American Indian

Religious Freedom Act which upholds the right of indigenous peoples to practice their culture as well as religion.

"Mr. Speaker, I suspect that the bottom line here is that as long as these exceptions are kept out of the marketplace there would be less opposition. But since we're talking about money and the application of a native practice for the purpose of financial gain the native Hawaiian is once again in deep kim chee. More astonishing to me, is the blatant fact that when others find ways to exploit the Hawaiian culture for profit then it's OK. I cite you the curious law that makes the construction of a thatched shelter, better known to us as a halau or grass shack ... a law that forbids this type of construction except ... except on property that is zoned resort. Now, isn't that a valid exception!!

"Mr. Speaker, this bill is more symbolic than substantive in that I doubt that we will see a rush of native Hawaiian masseurs filling up the yellow pages if this bill is passed. It is more of a stand up and be counted bill on the broader issue of whether or not we agree with the Federal Government and the Supreme Court who in the case of Morton versus Mancari upheld the lower court's decision that hiring preferences could be extended to a certain group of aboriginal people without violating the equal protection under the law clause.

"In closing, Mr. Speaker, I wish to once again express the need for this Legislature to address Article XII, Section 7, of the Hawaii State Constitution that directs the state to reaffirm and protect traditional and customary native rights for subsistence, cultural, and religious purposes. By doing so, Mr. Speaker, we would provide ourselves with the opportunity to construct a framework in which bills like the one before us could be better addressed.'

"Mr. President, those are the words of Representative Apo. I will ask that that the record reflect that I adopt them as my own, and I ask the members of this body to support the bill."

Senator Cobb then remarked:

"Mr. President, I think a salient point was brought out by the remarks of the previous speaker and one which caused the Senate to adopt the original position that it did, and that is the question of for compensation or profit, because in the testimony before the Senate Committee on this very bill the Board of Massage pointed out, and I think correctly so, that as long as the practice is done as a cultural matter or not for profit, it is not subject to regulation; but when the element of profit or compensation enters into it, then it is and should be subject to regulation like all other types of massage.

Thank you."

Senator Abercrombie also spoke on the measure as follows:

"Mr. President, I speak in opposition to this bill.

"Mr. President, I think it is unfortunate that the very serious questions and issues raised about aboriginal rights, about native American laws and legislation affecting the cultural and religious heritage of native Americans should be raised in this context.

"Mr. President, we're not voting on the philosophy supporting such legislation in which I am in whole support. We're voting on a particular bill, and to cite philosophical considerations which do not relate to the bill, I think, do a disservice to those of us who would like to try and make a rational vote.

"Mr. President, if the members would refer to the definition of massage utilized here for Hawaiian massage, it includes 'any method of treatment or therapy ... kneading with the hands, feet, or elbow, and whether or not aided by any mechanical or electrical apparatus.' I don't think that it makes much sense to talk about aboriginal heritage and electrical apparatuses. It's a contradiction in terms.

"Also, Mr. President, there is a serious implication, philosophically, however, beyond that which relates to ancient, cultural predilections. The point here is that native Hawaiian, if you look on page 3, refers to 'any individual, any of whose ancestors were native of the area which consists of the Hawaiian Islands prior to 1778' and then goes on, on page 4, to say that 'The board shall waive the apprenticeship requirement and other requirements set for the apprentices ... for Native Hawaiian applicants for ...' under this examination, and I'm sure the chairman would correct me if I am interpreting this in a wrong sense, but that the waiver then would be for anybody who by definition had an ancestor here in 1778.

"Mr. President, I understand the motivation of the good Representative, as enunciated by Senator Cayetano on his behalf, but Mr. President, that gets almost the to point of what might be called in other academic context, racial memory. It's the kind of thing that many of us have tried to discourage or oppose philosophically over time because this can be used to the detriment of someone whose ethnic heritage or racial heritage or even religious heritage is such that someone disapproves of it or wants to utilize it in a derogatory way and in some instances even worse to justify prejudice, discrimination, even killing or maiming or ostracizing someone.

"It is a very, very dangerous practice to cite genetic references with respect to cultural heritage. They are not one and the same, Mr. President. Your genetic background and my genetic background and those things which we honor by way of social practices with respect to history are two entirely separate matters. And to give by passage of a law credence, respectability, validity, if you will, to simultaneously citing genetic history and cultural history is to walk on the edge of real social disaster. Obviously, that's not the intent of this bill but it nonetheless puts us in the position of approving such a philosophy and I think that would be a very, very unfortunate thing. History is replete. In fact, arguments are taking place even as I stand here right now and we contemplate voting on this bill, arguments are taking place over the results, forty years after World War II, of the triumph of a philosophy which related race and ethnic heritage and religious heritage to certain presumed cultural and social habits and characteristics which were utilized of course to justify genocide.

"The Hawaiian people have suffered from just exactly that same kind of designation, as well as other native peoples throughout the continent of the United States and in the Pacific and the continent of North America, precisely because they were viewed that their cultural predilections were viewed as somehow inherently theirs by virtue of their race or their ethnicity and therefore became a justification for the terrible consequences visited upon them in war and pestilence and they found themselves victims of this kind of justification.

"Therefore, Mr. President, I do not believe it is in the interest either of the State of Hawaii, as it exists today, or in the interest of any native American person, be they Hawaiian or otherwise, to cite this particular kind of justification for the waiver that is sought. The board itself could recognize the cultural side without incorporating any reference to race or genetics or ethnic heritage based on race or genetics."

Senator Cayetano then responded:

"Mr. President, just in brief response.

"I appreciate the history recited by the previous speaker although it seems to me it's going a bit overboard to apply history of genocide and racism and all of those other considerations recited by the previous speaker to this bill. I mean, we're talking about an activity called 'lomi lomi' which I think we all recognize as indigenous to the Hawaiian culture.

"The speech given by Representative Apo

cites authorities, both in the federal and state level as well as in the federal courts including the U.S. Supreme Court, which does permit, without violating the equal protection clause of the Constitution, certain types of preferences made to native aboriginal groups or their practices or their rights and again I refer to Article VII, Section 7, of the Hawaii Constitution where we state that the state is directed to reaffirm and protect traditional and customary native rights for subsistence, cultural and religious purposes.

"The lines that divides, I think, the kind of argument made by the previous speaker and what we're talking about here is not always very clear. And I think for each person sitting here having to vote on this bill, you have heard one perspective and certainly Representative Apo has given you a different perspective. I think both have some merit to them and I am going to vote for the bill and for the perspective set forth by Representative Apo because he has cited law which has permitted this kind of special treatment."

The motion was put by the Chair and carried, and Roll Call vote having been requested, Conf. Com. Rep. No. 41 was adopted and H.B. No. 995, H.D. 2, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MASSAGE," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 19. Noes, 6 (Abercrombie, Cobb, Fernandes Salling, Henderson, Kawasaki and Kuroda).

Conf. Com. Rep. No. 44 (S.B. No. 201, S.D. 1, H.D. 1, C.D. 1):

On motion by Senator Cobb, seconded by Senator B. Kobayashi and carried, Conf. Com. Rep. No. 44 was adopted and S.B. No. 201, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PSYCHOLOGISTS," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 45 (S.B. No. 224, H.D. 1, C.D. 1):

On motion by Senator Cobb, seconded by Senator Young and carried, Conf. Com. Rep. No. 45 was adopted and S.B. No. 224, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HORIZONTAL PROPERTY REGIMES," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 46 (S.B. No. 932, S.D. 1, H.D. 1, C.D. 1):

On motion by Senator Cobb, seconded by Senator Chang and carried, Conf. Com. Rep. No. 46 was adopted and S.B. No. 932, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO AGREEMENTS OF SALE," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 47 (H.B. No. 40, S.D. 1, C.D. 1):

Senator Cobb moved that Conf. Com. Rep. No. 47 be adopted and H.B. No. 40, S.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Kuroda.

Senator Kawasaki spoke on the measure as follows:

"Mr. President, this bill, as it emerged from the conference committee, is much better than the bill that got out of the Senate Consumer Protection Committee. It brings back some reasonable ceiling to the interest rates chargeable. I regret, however, that they eliminated the 'drop dead' clause which would have caused interest rates to revert back to the time several years ago when interest rates were perhaps a little more reasonable.

"I just found out this morning that the top interest that people with money buying CD's could get for 30-day CD's is 8 percent; for a one-year CD or deposits for one year by people having money, the top rate that you could get is from Bank of Hawaii at 9.2 percent. However, what are these institutions charging people that of necessity have to borrow money? They're charging anywhere from 18 percent on upwards.

"And while I'm delighted that the interest chargeable on credit card accounts is kept at 18 percent and not 21 percent as the institutions wanted, or as the Senate bill provided (a complete lifting of all ceilings) this is an improvement.

"I still feel that perhaps keeping the 'drop dead' clause, so that interest rates would revert back to a more reasonable level, was a better proposition for the consumers of this state in view of what they have to pay today and what depositors are getting for their money. This big spread between an 8 and 9 percent interest that the institutions pay the depositors and what they charge borrowers, approximately 18 percent, this big spread I think allows the institutions ample profits. And for this reason, I think we should have kept the 'drop dead' clause.

"I wish to vote 'no' on this bill."

The motion was put by the Chair and



carried, and Conf. Com. Rep. No. 47 was adopted and H.B. No. 40, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INTEREST," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, 2 (Fernandes Salling and Kawasaki).

Conf. Com. Rep. No. 48 (H.B. No. 347, H.D. 1, S.D. 1, C.D. 1):

Senator Cobb moved that Conf. Com. Rep. 48 be adopted and H.B. No. 347, H.D. 1, S.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Chang.

Senator Cobb spoke on the measure as follows:

"Mr. President, I would just like to enter into the Journal a correction of the committee report, if I may. It does not affect the substance of the bill.

"I've been informed by Representative Shito, chairman of the House Consumer Protection and Committee who served as co-chairman and manager for the House on the conference for this bill, of a slight technical error in the conference committee report but not in the bill.

"In assembling the report for the Senate, page 2 was inadvertently transposed. While this in no way affects the language or contents of the conference draft of the bill the record should reflect for clarity that page 2 of Senate Conference Committee Report No. 48 should be marginally noted in the following manner: Delete the first line of the body of the report on page 2, simply because it was repeated at the bottom of page 1.

"A similar technical disposition is being made in the House by Representative Shito. Thank you."

The Chair so ordered the correction be made.

Senator Kawasaki then inquired:

"Mr. President, a brief question on that committee report on the first page. It says there about one-third of the way down, 'Further, the Department reassured your Committee that this would be the last time that an extension of the HBCA and Model Professional Corporation Act would be...'asked. What assurance do we have that future regulators would not extend this bill?"

Senator Cobb responded:

"Mr. President, the assurances that we received were threefold: (1) from Mr. Yamashita who is a civil servant and will be

remaining with the department's business registration division beyond December of 1986; (2) the proponents of the corporation legislation, including the department and other interested parties; and (3) the House chairman and myself who felt very strongly that the date should not go beyond July 1, 1987.

"The reason for the concomitant dates or concurrent dates was that the department felt very strongly that all of the dates for the Model Corporation Acts should go into effect at the same time. And that's the only reason why the July 1, 1986 date for the Model Corporation Act was slipped one year, to implement that."

Senator Kawasaki then thanked the Chair.

Senator Cobb then added:

"Mr. President, just by way of addendum, the fourth item to insure that those dates would not slip would be the individual Senators within this body. Thank you."

The motion was put by the Chair and carried and Conf. Com. Rep. No. 48 was adopted and H.B. No. 347, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CORPORATIONS," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 49 (S.B. No. 309, S.D. 1, H.D. 1, C.D. 1):

On motion by Senator Cobb, seconded by Senator Abercrombie and carried, Conf. Com. Rep. No. 49 was adopted and S.B. No. 309, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INSURANCE FOR MOTOR VEHICLES AND OTHER VEHICLES," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 50 (S.B. No. 539, S.D. 1, H.D. 1, C.D. 1):

On motion by Senator Cobb, seconded by Senator Chang and carried, Conf. Com. Rep. No. 50 was adopted and S.B. No. 539, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ALARM BUSINESSES," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 51 (S.B. No. 588, S.D. 1, H.D. 1, C.D. 1):

On motion by Senator Cobb, seconded by Senator McMurdo and carried, Conf. Com.

Rep. No. 51 was adopted and S.B. No. 588, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HORIZONTAL PROPERTY REGIMES," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 52 (S.B. No. 665, S.D. 1, H.D. 2, C.D. 1):

On motion by Senator Cobb, seconded by Senator Kawasaki and carried, Conf. Com. Rep. No. 52 was adopted and S.B. No. 665, S.D. 1, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ACUPUNCTURE," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 54 (S.B. No. 726, S.D. 2, H.D. 2, C.D. 1):

On motion by Senator Yamasaki, seconded by Senator Cobb and carried, Conf. Com. Rep. No. 54 was adopted and S.B. No. 726, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PHYSICAL THERAPY," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 55 (S.B. No. 460, S.D. 2, H.D. 2, C.D. 1):

On motion by Senator Yamasaki, seconded by Senator Chang and carried, Conf. Com. Rep. No. 55 was adopted and S.B. No. 460, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII CRIMINAL JUSTICE DATA CENTER," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 56 (S.B. No. 459, S.D. 2, H.D. 2, C.D. 1):

On motion by Senator Yamasaki, seconded by Senator Chang and carried, Conf. Com. Rep. No. 56 was adopted and S.B. No. 459, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII CRIMINAL JUSTICE DATA CENTER," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 57 (S.B. No. 1186, S.D. 2, H.D. 1, C.D. 1):

On motion by Senator Yamasaki, seconded

by Senator B. Kobayashi and carried, Conf. Com. Rep. No. 57 was adopted and S.B. No. 1186, S.D. 2, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HOSPITALS," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 58 (S.B. No. 702, S.D. 2, H.D. 2, C.D. 1):

On motion by Senator Yamasaki, seconded by Senator B. Kobayashi and carried, Conf. Com. Rep. No. 58 was adopted and S.B. No. 702, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ENVIRONMENTAL QUALITY," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 59 (H.B. No. 49, H.D. 2, S.D. 2, C.D. 1):

On motion by Senator Yamasaki, seconded by Senator Abercrombie and carried, Conf. Com. Rep. No. 59 was adopted and H.B. No. 49, H.D. 2, S.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CARE FOR THE ELDERLY," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 60 (H.B. No. 101, H.D. 1, S.D. 1, C.D. 1):

On motion by Senator Yamasaki, seconded by Senator Abercrombie and carried, Conf. Com. Rep. No. 60 was adopted and H.B. No. 101, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO AN OFFICE OF COMMUNITY SERVICES," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 62 (H.B. No. 1393, H.D. 2, S.D. 1, C.D. 2):

On motion by Senator Cayetano, seconded by Senator Hagino and carried, Conf. Com. Rep. No. 62 was adopted and H.B. No. 1393, H.D. 2, S.D. 1, C.D. 2, entitled: "A BILL FOR AN ACT RELATING TO CIVIL AIR PATROL," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 63 (H.B. No. 99, H.D. 1, S.D. 2, C.D. 1):

By unanimous consent, action on Conf.

Com. Rep. No. 63 and H.B. No. 99, H.D. 1, S.D. 2, C.D. 1, was deferred to the end of the calendar.

Conf. Com. Rep. No. 64 (H.B. No. 463, H.D. 2, S.D. 2, C.D. 2):

By unanimous consent, action on Conf. Com. Rep. No. 64 and H.B. No. 463, H.D. 2, S.D. 2, C.D. 2, was deferred to the end of the calendar.

Conf. Com. Rep. No. 65 (H.B. No. 134, H.D. 1, S.D. 1, C.D. 1):

By unanimous consent, action on Conf. Com. Rep. No. 65 and H.B. No. 134, H.D. 1, S.D. 1, C.D. 1, was deferred to the end of the calendar.

Conf. Com. Rep. No. 66 (H.B. No. 146, H.D. 1, S.D. 1, C.D. 1):

By unanimous consent, action on Conf. Com. Rep. No. 66 and H.B. No. 146, H.D. 1, S.D. 1, C.D. 1, was deferred to the end of the calendar.

Conf. Com. Rep. No. 67 (H.B. No. 147, H.D. 1, S.D. 1, C.D. 1):

By unanimous consent, action on Conf. Com. Rep. No. 67 and H.B. No. 147, H.D. 1, S.D. 1, C.D. 1, was deferred to the end of the calendar.

Conf. Com. Rep. No. 68 (H.B. No. 1198, S.D. 2, H.D. 1, C.D. 1):

By unanimous consent, action on Conf. Com. Rep. No. 68 and H.B. No. 1198, S.D. 2, H.D. 1, C.D. 1, was deferred to the end of the calendar.

Conf. Com. Rep. No. 69 (S.B. No. 463, S.D. 1, H.D. 2, C.D. 1):

By unanimous consent, action on Conf. Com. Rep. No. 69 and S.B. No. 463, S.D. 1, H.D. 2, C.D. 1, was deferred to the end of the calendar.

Conf. Com. Rep. No. 70 (S.B. No. 20, S.D. 1, H.D. 1, C.D. 1):

By unanimous consent, action on Conf. Com. Rep. No. 70 and S.B. No. 20, S.D. 1, H.D. 1, C.D. 1, was deferred to the end of the calendar.

Conf. Com. Rep. No. 71 (S.B. No. 1286, S.D. 2, H.D. 2, C.D. 1):

On motion by Senator Yamasaki, seconded by Senator Abercrombie and carried, Conf. Com. Rep. No. 71 was adopted and S.B. No. 1286, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 72 (S.B. No. 1287, S.D. 2, H.D. 2, C.D. 1):

On motion by Senator Yamasaki, seconded by Senator Abercrombie and carried, Conf. Com. Rep. No. 72 was adopted and S.B. No. 1287, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 73 (S.B. No. 239, S.D. 2, H.D. 1, C.D. 1):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Conf. Com. Rep. No. 73 was adopted and S.B. No. 239, S.D. 2, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Cayetano).

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

The Senate reconvened at 12:22 o'clock p.m.

Conf. Com. Rep. No. 74 (S.B. No. 589, S.D. 2, H.D. 1, C.D. 1):

On motion by Senator Yamasaki, seconded by Senator Holt and carried, Conf. Com. Rep. No. 74 was adopted and S.B. No. 589, S.D. 2, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC EMPLOYEES," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

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

Conf. Com. Rep. No. 75 (S.B. No. 471, S.D. 2, H.D. 1, C.D. 1):

By unanimous consent, action on Conf. Com. Rep. No. 75 and S.B. No. 471, S.D. 2, H.D. 1, C.D. 1, was deferred to the end of the calendar.

Conf. Com. Rep. No. 76 (H.B. No. 281, H.D. 2, S.D. 2, C.D. 1):

On motion by Senator Yamasaki, seconded by Senator Cayetano and carried, Conf. Com. Rep. No. 76 was adopted and H.B. No. 281, H.D. 2, S.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE STATE HIGHWAY FUND," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, 1 (Young). Excused, 1 (Soares).

Conf. Com. Rep. No. 77 (S.B. No. 384, H.D. 1, C.D. 1):

By unanimous consent, action on Conf. Com. Rep. No. 77 and S.B. No. 384, H.D. 1, C.D. 1, was deferred to the end of the calendar.

Senate Bill No. 1089, S.D. 2, H.D. 1:

By unanimous consent, action on S.B. No. 1089, S.D. 2, H.D. 1, was deferred to the end of the calendar.

At 12:24 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:25 o'clock p.m.

### THIRD READING

#### MATTERS DEFERRED FROM WEDNESDAY, APRIL 17, 1985

House Bill No. 20, H.D. 2:

By unanimous consent, action on H.B. No. 20, H.D. 2, was deferred to the end of the calendar.

House Bill No. 813, H.D. 3:

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, H.B. No. 813, H.D. 3, entitled: "A BILL FOR AN ACT RELATING TO COUNTY BONDS AND FINANCING SOLID WASTE PROCESSING AND DISPOSAL AND ELECTRIC GENERATING FACILITIES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 1272:

By unanimous consent, action on H.B. No. 1272 was deferred to the end of the calendar.

### ADVISE AND CONSENT

Stand. Com. Rep. No. 1145 (Gov. Msg. No. 300):

Senator Chang moved that Stand. Com. Rep. No. 1145 be received and placed on file, seconded by Senator Cayetano and carried.

Senator Chang then moved that the Senate advise and consent to the nomination of Georgiana M. Yuen to the Hawaii Paroling Authority, term to expire December 31, 1987.

Senator Kawasaki rose to remark as follows:

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

"This job is a hard enough job for men, to begin with. I think this woman sure is asking for trouble, but that's her decision. I'll support her."

Senator Abercrombie then remarked:

"Mr. President, I would just like to comment that there is one thing we can count on in the Senate and that is that Duke Kawasaki will always be the same."

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Stand. Com. Rep. No. 1146 (Gov. Msg. Nos. 296, 297, 298 and 299):

Senator B. Kobayashi moved that Stand. Com. Rep. No. 1146 be received and placed on file, seconded by Senator Machida and carried.

Senator B. Kobayashi then moved that the Senate advise and consent to the nominations of the following:

Thomas Lee to the Board of Health, term to expire December 31, 1987;

Bernard Punikaia to the Board of Health, term to expire December 31, 1988;

Akira Omonaka to the Statewide Health Coordinating Council, term to expire December 31, 1986;

James W. Linman, M.D., Ellen K. Serra and Kathleen K.M. de Silva to the Advisory Commission on Drug Abuse and Controlled Substances, terms to expire December 31, 1988;

Robert G.B. Bjornson, M.D., Masaru Oshiro, Ray M. Higa, Bishop Edmond Lee Browning and Guy A. Paul to the State Council on Mental Health and Substance Abuse, terms to expire December 31, 1988;

Donna W. Saiki, John A. Bissell, Tina Dameron, Jane R. Smith and Connie C. Chun to the State Council on Mental Health and Substance Abuse, terms to expire December 31, 1987; and

John F. McDermott, Jr., M.D., Reverend Frank A. Chong, Reverend Vincent De Paul O'Neill, Kenneth 'Shannon' Steele and Frank Sua to the State Council on Mental Health and Substance Abuse,

terms to expire December 31, 1986,

seconded by Senator Machida.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Stand. Com. Rep. No. 1148 (Gov. Msg. No. 302):

Senator Cayetano moved that Stand. Com. Rep. No. 1148 be received and placed on file, seconded by Senator B. Kobayashi and carried.

Senator Cayetano then moved that the Senate advise and consent to the nomination of Danilo V. Lucila, M.D., to the Medical Advisory Board, term to expire December 31, 1988.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Stand. Com. Rep. No. 1159 (Gov. Msg. No. 134):

Senator Holt moved that Stand. Com. Rep. No. 1159 be received and placed on file, seconded by Senator Chang and carried.

Senator Holt then moved that the Senate advise and consent to the nominations of Julia Frolich, M.D., and James F. Gary to the Board of Regents, University of Hawaii, seconded by Senator Chang.

Senator Abercrombie spoke on the nominations as follows:

"Mr. President, I rise to speak against these nominations to the Board of Regents. They are both being considered simultaneously, are they not?"

The Chair answered in the affirmative.

Senator Abercrombie continued:

"Mr. President, I speak against both nominees.

"Mr. President, the newspapers have adequately covered, I think; the television has to some degree and for those who had the opportunity to attend the hearings on tuition, I think you'd get a good example of the way the regents have operated since these two individuals were nominated and received a positive vote from this body the last time. I do not believe that they have exercised the kind of stewardship at the University that is required.

"I am against the raising of tuition. No

argument was brought forward of any kind that sustained raising the tuition at the University of Hawaii. On the contrary, the arguments against raising tuition, even in the manner in which it has been done by the regents at this stage, were so compelling and so commanding that it is beyond my conception as to how it could have taken place except by arbitrary decision on the part of the regents.

"What their agenda is, I do not know. They have not indicated what it is. The manner in which the regents conduct their business continues to be one of the real scandals in my estimation with respect to openness in government. Those of us who have dealt with sunshine bills; those of us who have had ourselves questions raised as to how our committees do business here in the Legislature could take a lesson in terms of secretiveness and behind the scenes maneuvering from what goes on at the Board of Regents.

"The leadership that was promised by these people and particularly Mr. Gary, when he was nominated, has not been manifested in any form that is discernible to me. The manner in which the search for the president of the University was conducted, I think, left a great deal to be desired, to say the least. The fact that the editor of the Honolulu Advertiser was appointed the head of a civilian, if you will, search committee when obviously the Honolulu Advertiser had to report both on the search process and on its results, is such a blatant conflict of interest is to beggar anyone's imagination. Mr. Gary was in particular associated with that whole process.

"The failure of the regents to adequately pursue the question of the president's salary; how it should be paid. At a time when we were looking for new leadership at the University when we were hoping to see a positive atmosphere created at the University is now been dragged down as a result of that failure of the regents to adequately understand what it is they were doing and why. It's obviously for no lack of opportunity to get legal and other advice as to what to do.

"The president of the university's salary today, as we speak, is in jeopardy. Whether or not it will be able to be accomplished is a question that remains to be resolved. Therefore, Dr. Mackey is coming in to the University not having the first and foremost, what he can do to improve the University in terms of leadership, in terms of advocacy for the University, but rather coming in to an atmosphere replete with mediocrity and incompetence.

"The principal discussion that has taken place at the University since Dr. Mackey's being named is whether or not the president can be paid, who's going to pay him, where

all the fringe benefits are, and how much we're going to be able to sock students for how long in terms of raising tuition.

"There's been scarcely a word said or I might say, whether the Hawaii Islanders can play in the baseball stadium. Aside from that, discussion or awareness in the public mind of what it takes to have an adequate, let alone excellent academic institution, is virtually nonexistent.

"It is about time that we require of the Governor that he send us nominations for the regents in particular, that reflect the rhetoric that has flowed not only in these halls, but in public on the part of elected officials for lo these many years, that it reflect what we truly wish to accomplish in terms of the people that are there.

"We simply cannot continue to have the caliber of people on the regents that exists right now. We cannot continue to have people who make presentations of grandiose proportions as to what they seek to accomplish as regents and then have such miniscule records with respect to those accomplishments that we heard so much about when they came up for nomination.

"I do not see any compelling reason whatsoever to confirm these two individuals as regents, aside from the fact that you might hurt their feelings. If that's the basis upon which we're going to make nominations to the regents, why then, we shouldn't fail to hold hearings or fail to hold them to account at all.

"The record of the regents of the University of Hawaii in the past couple of years is a singular failure. There is no leadership; there is no competence; there is no confidence on the part of the public. They have not sought to gain it by opening up their meetings nor by their communication with the average student.

"It was interesting to me to note that the last time the student body had seen the overwhelming majority of regents was the last time the regents raised their tuition. The students have no understanding whatsoever of the role of the regents other than as some secretive body that periodically hands down the pronouncements that they'll have to pay more for their education, regardless of the deterioration of that education in terms of either offerings of courses or in the infrastructure academically and otherwise that would back up a good education.

"For once, the Senate should make clear that we want to have top caliber people who will carry through on their promises. And the way to make that message clear is to reject these two nominees. Thank you."

Senator Chang then rose to remark as follows:

"Mr. President, I rise to speak in favor of these nominations in a very brief response.

"I too share the good Senator's concerns and I think the chairman of the Higher Education Committee shares the concern that the students come first and the students should be aware of the regents' presence, role and function at the University of Hawaii. And so, at the hearing we posed several questions to determine the commitment of the nominees to broadening the avenues of student access to the Board of Regents and, I for one, found the response very adequate and very gratifying. And because this was my primary concern in the hearing I decided to support the nominations and I do so at this time. Thank you."

Senator Kawasaki then added as follows:

"Mr. President, I think the comments made by Senator Abercrombie relative to nominee Gary were well taken and I would wish that this vote for confirmation would have been separated between Mr. Gary and Dr. Frolich.

"I am willing to vote for the confirmation of Dr. Frolich, but being as how this committee report takes two names together, I will be compelled to vote 'no.' I think it's unfortunate, but perhaps in the future we should consider these nominations to be voted upon individually. I have to vote 'no' because of my agreement with Senator Abercrombie and the comments he made relative to nominee Mr. Gary."

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

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

#### MATTERS DEFERRED FROM THURSDAY, APRIL 18, 1985

#### HOUSE CONCURRENT RESOLUTIONS

House Concurrent Resolution No. 78, H.D. 2:

Senator Cobb moved that H.C.R. No. 78, H.D. 2, be adopted, seconded by Senator Soares.

Senator Abercrombie spoke on the resolution as follows:

"Mr. President, I'll speak against this resolution. Mr. President, may I, before I proceed speaking against the resolution, address a question or two to the chairman of the Economic Development Committee?"

The Chair allowed the Senator to proceed.

Senator Abercrombie inquired:

"Mr. President, would you ask the chairman whether a resolution or resolutions with respect to homeporting the battleship group were in his committee?"

The Chair posed the question to the chairman and Senator Aki answered:

"Mr. President, in answer to that question, yes. There were several resolutions addressing the homeporting in my committee."

Senator Abercrombie continued:

"Would you ask the chairman whether or not any of those resolutions were heard?"

Senator Aki answered:

"Mr. President, none of these resolutions were heard."

Senator Abercrombie continued:

"Thank you."

"Mr. President, perhaps you can answer this question. I presume that the only resolutions with respect to this issue did reside with the Committee on Economic Development. Is that correct ... resolutions originating in this house?"

The Chair responded:

"No, I think some of them were sent to the Government Operations Committee, and the reason for that is because their substance dealt with a request being made of the Federal Government, while this one involved an economic impact study of the possible effects of homeporting."

Senator Abercrombie continued:

"Would you kindly ask the chairman, then, of the Government Operations Committee if he would yield to similar questions as I asked of the chairman of the Economic Development Committee?"

Senator Kawasaki answered:

"Yes, I most certainly will."

Senator Abercrombie continued:

"Could you ask the chairman whether hearings were held in his committee on the resolutions with respect to the substance of this resolution?"

Senator Kawasaki answered:

"Yes, they were held."

Senator Abercrombie continued:

"Thank you."

"Mr. President, one other point. Would you ask the chairman of the Government Operations Committee what resolutions issued from his committee in this area?"

Senator Kawasaki responded:

"The resolution was reported out favorably."

Senator Abercrombie continued:

"Would you ask the chairman whether the substance of that resolution appears here in this House Concurrent Resolution?"

Senator Kawasaki answered:

"Substantially, this is about the same resolution that we acted upon."

Senator Abercrombie continued:

"Thank you. I thank both chairmen."

"Mr. President, I speak against this resolution and in the process I will raise a series of questions."

"Mr. President, as recently as yesterday, Mr. Yee of this task force was indicating in the pages of the Sunday newspaper that the assurances that we have concerning housing and the financing for housing ... where does it take place and under what conditions; in what manner people presently residing here will have access to the housing, which magically appeared when this homeport issue was first raised, is at best under severe questioning. There are vague references to pension plans of unions. Why these same pension plans are not available for housing for people already residing here is not clear."

"What is clear is that we have not had an opportunity to have many of the questions that have been raised with respect to the homeporting answered adequately. There's little doubt in my mind that there will be an influx of money into this community but, Mr. President, I'm of the same opinion as the Mayor of the City and County of Honolulu who is, to my best recollection, an advocate of bringing the battleship group here. That the only reason to homeport any battleship group or other military activity anywhere is on the basis of providing for the national security of the United States of America."

"To go through a process of courting any of the military branches of this government, presumably our government, is not only an unseemly activity, but removes from consideration the idea that the homeporting or any other military activity has a basis other than political."

"Mr. President, I refer you to an article in the Honolulu Star-Bulletin of April 19th, just past. 'Armed Services Panel Member Hits "Politics" in Homeport Plan,' and I am quoting now: 'The Navy's plan to disperse its ships is being carried out in a "totally political" manner, a member of the House Armed Services Committee charged yesterday. Rep. Ron Dellums, D Calif., said he was shocked to learn the "name of the game is politics" in the Navy's plan to find new homeports for several battleship groups.'

"Mr. President, I will not go on with the entire article. The point being that Rep. Dellums raises some very good questions. He said that 'Navy representatives explained they consider a proposed homeport's proximity to major waterways, its strategic and tactical capabilities, economic and other factors in determining a final site.'

"He then said, 'I asked how they prioritize the list or how do they weigh the factors in relation to each other. They said they do not prioritize the list. The list is not weighted. Rather than approaching the dispersal of Navy ships in a "rational and a serious manner," it is totally political. It is not the result of serious strategic and tactical decisions.'

"Now, if the argument, Mr. President, is that we should campaign for homeporting this battleship group here on the basis that it has very little to do with strategic considerations or even tactical considerations but has everything to do with politics, then I suppose you could pass this without much concern. But I think that there are questions, then, that if they are to be political, it should be asked of the State of Hawaii.

"It's one thing to campaign on a political basis, nationally, but it's quite another thing to leave the State of Hawaii out in the process. I'm quite sure by the way that most of the people who are so adamant about the ease with which the housing situation would be addressed probably have homes of their own right now. I do not know Mr. Yee, but I doubt that he's living in rented quarters somewhere. I doubt that most of the members of the Chamber of Commerce who cite this as being such an advantage to the State of Hawaii are in rented quarters, either.

"As a matter of fact, this entire campaign, if you will, is being conducted principally in the press and among the chosen few with very little in the way of the opportunity for the public, not only to provide input, but to ask and gain answers to questions. There has been very little public debate as such.

"And so for purposes of the record, I wish to enter into the record some of these questions that have not been answered and are most certainly not answered by the text of this resolution.

"What effect would the homeporting have on Oahu's already serious housing shortage? It's been estimated that homeporting would add between four and seven thousand people to Honolulu's population. Where will they live? Local renters already are being displaced due to the rent plus program. I think that's been made adequately clear.

"Each day for the past week or so we have seen pictures on the front pages of the paper with respect to the situation of beach people. Whether or not you agree with the situation is beside the point for this argument. The fact of the matter is that there are considerable numbers of people living on beaches for whatever the reason, but most certainly including some who are unable to find adequate quarters.

"The Chamber of Commerce and others have proposed certain ways to expedite the development of new housing. If streamlining the process can be done without risk, why hasn't it already been done for the people of Hawaii?

"What impact would homeporting have on our water resources? Oahu already has a water shortage and it is the worst in the Pearl Harbor Base .?... which supplies the water to areas where urban growth would be likely to occur to accommodate the battleship group's personnel and their dependents. Will we be getting water from other sources on other parts of Oahu, for example?

"Mr. President, we have again in the papers, quite recently in the media, the questions to be resolved now about stream flow, and the rights and obligations with respect to small farmers and people who have access to streams and those streams which empty into the ocean. Will we be taking water from the Windward side, for example, and bringing it elsewhere in this instance. Maintenance and other ship related activities obviously will tax the water supply in this area. With our population already straining limits of water consumption, can we afford these additional pressures on our resources?

"Mr. President, I'm raising these questions not because I'm saying that the answer would be negative; I'm saying that these answers should be provided before we simply rush off and say there's going to be a lot of money put into the community with little or no cost to the community.

"My principal reasoning here is that these



questions need to be answered before we all line up in the chorus line.

"What consequences would homeporting have for our long term economic development? The suggestion is that it would broaden Honolulu's economic base, but would it, in fact, increase our dependency?

"What resources will we have to utilize in terms of what economists call an 'opportunity's cost' — resources pumped into the homeport effort that would not be available for other economic development options which might benefit island residents more. Is this a wise commitment?

"Mr. President, let me refer you to a question that I have been raising since I first ran for public office; in fact, a question that I have tried to deal with over a number of years and which we are now addressing in the Kakaako area in particular; that is to say, sewage and drainage.

"One of the reasons, as you know, Mr. President, that I have been an enthusiastic supporter of the hotel room tax for a number of years, including those when you were in the Legislature and before I was elected to it, was that we have a serious sewer problem in this state, particularly in the area coming out of Kaimuki, Palolo, down Kapahulu Avenue into Makiki through Kakaako and down to Ala Moana and through Waikiki. We are talking about tens of millions of dollars necessary investment just in our sewer and drainage facilities alone, which has been neglected for a long, long time. Again, recent events as reported in the media indicate that the Palolo-Makiki-Kaimuki area alone, the main drainage there, the main sewer there, may cost upwards of \$60 million if we start on it today, simply to repair and bring up to standard. It does not really address the problem going down Kapahulu Avenue into and through Waikiki and Ala Moana.

"Mr. President, these are the kinds of costs that I'm talking about that we must address in any event. We need to have a resolution about where we're going to put our resources.

"How would the homeport affect schools? Mr. President, I have raised this question on the floor and will not carry further with it today other than to reiterate it.

"Will we need to build new schools? Will we get our impact-aid money? What would be the influx of a group of military dependent children on this education that local students receive and of course that education which the military dependent students would receive as well?.

"The schools are already under

tremendous pressure. Could they successfully absorb the additional students? I don't believe that question has been adequately addressed.

"What impact would homeporting have on other public institutions, human services agencies and the quality of life?

"A Police Department study recently revealed one of the hidden costs of hosting a large military population, and my committee has become aware of it just this year, exceptionally high rates of traffic fatalities and exceptionally high rates of instances of family violence, and instances wherein because of the pressures associated with the tough life that by necessity is invoked when you have families following military personnel, that many of them have difficulties that need to be resolved and we want to be helpful. They are residents here of the State of Hawaii while they are here and we are obligated as friends and neighbors as well as fellow citizens to be of use and to be available to them. But nonetheless, there are costs associated with it, genuine costs that have to be taken into account.

"Finally, Mr. President, in this respect, I would ask that we take into account whether or not the homeporting situation will be such that we have to engage in commitments, monetary commitments, which this Legislature either has not made or will be made in our name and we will be expected to follow upon. I notice that there is in a, for example, in our bond issue, if I'm not mistaken, a million dollars for dredging of the harbor. I'm not sufficiently conversant with it at this time to know whether that is a necessity regardless of whether the battleship group is homeported here or whether it is there to accommodate the battleship group should it arrive. If it is, then that is a cost, then, that has not been fully explained to people. Will there be other associated costs that this Legislature will be expected to fund in order to do this.

"So, Mr. President, my reason in sum, then, for opposing the resolution is that on the whole it gives the impression that all the questions have not only been asked, but that they have been answered adequately and that all the costs, in terms of a benefit ratio, have been measured soberly and with due deliberation by this Legislative body and I do not think that this is the case. I believe that, should it be determined that there is a strategic necessity for a battleship group to be maintained in the Pacific and that strategic necessity incorporates the islands of Hawaii as the place where this battleship group should be, then by all means, we should try to find a way to accommodate it within the confines of that decision. But I would maintain to you, Mr. President, that under no circumstances, even if such a

decision is made, should the responsibility of the Federal Government be lessened. Case in point — the dredging.

"I fail to understand why, if the answer to my rhetorical query was that the dredging of the harbor was something that was going to be necessitated by the battleship group but not if we did not have the group coming, then why should we put up the money? On the other hand, if the battleship group coming here necessitates that dredging, is it not the obligation of the Federal Government through the Department of Defense to provide that money? I think the answer would be yes.

"I think that if strategic considerations are such that a battleship group or any other military activity is to be placed here in the State of Hawaii, then it is up to the Department of Defense as a cost of doing business, the defense business, to provide those funds. If it can provide funds for General Dynamics to have Halloween parties and banquets, and if it can provide outrageous profits to defense contractors, if it can have a wastrel attitude, an attitude almost incomprehensible, in terms of its ability to absorb and tolerate waste in expenditures in the Department of Defense and in the Pentagon, most surely then, when you are dealing with taxpayers whose only purpose is to make legitimate inquiry as to what is expected of them, that the Department of Defense not only share the cost but bear the burden of those costs legitimately associated with the homeporting of a battleship group or any other military activity within the confines of the United States."

Senator Kuroda also spoke on the resolution as follows:

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

"It was I who introduced the companion Senate resolution to H.C.R. 78. The contents of the Senate resolution are not as comprehensive as H.C.R. 78; however, as Senator Kawasaki stated, the Senate resolution was almost identical to the H.C.R.

"I don't think that we have all the answers to the questions that Senator Abercrombie has raised. However, if we wait to try to get the answers to these questions, we will truly miss the boat.

"Let me address myself to one issue among the many that have been brought up in opposition to the homeporting request by the state and that is housing.

"Let me call the Senators' attention to H.C.R. 78, on the second page in the 'Be it further resolved' paragraph, and it's explained in the committee report that this

'Be it further resolved' has been included in here and let me read it: 'Be it further resolved that the State of Hawaii work closely with the Hawaii Economic Development Project Homeport Task Force to provide, as a general target, at least on a one-to-one ratio corresponding to the number of housing units for local needs versus the number of housing units for U.S. Navy needs for public housing;'.

"Mr. President, the question has been asked and is always asked, why is not an effort made to provide more affordable housing for civilians? We could look at this homeporting issue from a positive view, which is, that because of this issue, greater effort is centered upon and greater recognition is now given to the issue of providing more affordable homes for civilians. So, what I would like to suggest to the proponents of the effort to provide more affordable homes for civilians, and I am one of them, is that we should pursue and press and continue to press for more civilian housing, as we work toward building homes for the Navy personnel."

Senator Young then remarked as follows:

"Mr. President, just in comment.

"My only hope is that in the event that we don't get homeporting here, hopefully, a hundred percent of housing would be utilized for the civilian sector. In other words, if we're going to build 2,300 homes for the military then perhaps if we don't get homeporting we could have 4,600 homes for our civilian population. Thank you."

The motion was put by the Chair and carried and H.C.R. No. 78, H.D. 2, entitled: "HOUSE CONCURRENT RESOLUTION URGING THE SECRETARY OF THE NAVY TO HOMEPORT A BATTLESHIP AND NINE ASSOCIATED SHIPS AT PEARL HARBOR," was adopted on the following showing of Ayes and Noes:

Ayes, 20. Noes, 1 (Abercrombie).  
 Excused, 4 (Cayetano, Cobb, Hee and Henderson).

House Concurrent Resolution No. 131:

On motion by Senator Cobb, seconded by Senator Soares and carried, H.C.R. No. 131, entitled: "HOUSE CONCURRENT RESOLUTION RECOGNIZING MAY, 1985, AS BETTER HEARING AND SPEECH MONTH," was adopted on the following showing of Ayes and Noes:

Ayes, 21. Noes, none. Excused, 4 (Cayetano, Cobb, Hee and Henderson).

House Concurrent Resolution No. 25:

By unanimous consent, H.C.R. No. 25,

entitled: "HOUSE CONCURRENT RESOLUTION URGING HAWAII'S CONGRESSIONAL DELEGATION TO EXAMINE AN ALTERNATIVE SUCH AS THE VARIABLE HOUSING ALLOWANCE (VHA) PROGRAM AS A SUBSTITUTE FOR THE 'RENT PLUS' PROGRAM FOR THE MILITARY IN HAWAII," was referred to the Committee on Government Operations.

#### House Concurrent Resolution 40, H.D. 1:

By unanimous consent, H.C.R. No. 40, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE UNITED STATES DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS, PACIFIC OCEAN DIVISION, HAWAII, TO INCORPORATE AQUACULTURE OUTFALLS AND RELATED STRUCTURES AND APPURTENANCES UNDER THE GENERAL (REGIONAL) PERMIT SYSTEM OF THE UNITED STATES CLEAN WATER ACT," was referred jointly to the Committee on Agriculture and the Committee on Economic Development.

At 1:01 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 1:04 o'clock p.m.

#### House Concurrent Resolution No. 62, H.D. 1:

On motion by Senator Cobb, seconded by Senator Soares and carried, H.C.R. No. 62, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION RECOGNIZING 1985 AS THE INTERNATIONAL YOUTH YEAR (IYY) IN ACCORDANCE WITH THE DECLARATION OF THE UNITED NATIONS," was adopted.

#### House Concurrent Resolution No. 67, H.D. 1:

By unanimous consent, H.C.R. No. 67, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE LEGISLATIVE AUDITOR TO CONDUCT A PROGRAM AND BUDGET REVIEW OF THRIFT GUARANTY CORPORATION," was referred to the Committee on Legislative Management.

#### House Concurrent Resolution No. 88, H.D. 2:

By unanimous consent, H.C.R. No. 88, H.D. 2, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE DEVELOPMENT OF A LISTING OF REPAIR AND MAINTENANCE PROJECT NECESSARY TO BRING ALL PUBLIC BUILDINGS UP TO AN ACCEPTABLE STATE OF REPAIR AND TO ESTABLISH A PREVENTIVE MAINTENANCE PROGRAM TO KEEP THE FACILITIES IN THAT ACCEPTABLE STATE FOR ITS DESIGNED LIFE," was referred jointly to the Committee on Government Operations and the Committee on Ways and Means.

#### House Concurrent Resolution No. 106:

By unanimous consent, H.C.R. No. 106, entitled: "HOUSE CONCURRENT RESOLUTION URGING THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY TO INCLUDE SIX PESTICIDE CONTAMINATED CENTRAL OAHU WELLS ON THE NATIONAL PRIORITIES LIST OF ELIGIBLE PROJECTS FOR CLEANUP MONEYS UNDER THE FEDERAL SUPERFUND AND REQUESTING CONGRESS TO EXPLICITLY PROVIDE THAT PESTICIDE CONTAMINATED WATER WELLS ARE ELIGIBLE FOR CLEANUP UNDER THE SUPERFUND," was referred to the Committee on Health.

#### House Concurrent Resolution No. 117, H.D. 1:

By unanimous consent, H.C.R. No. 117, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING AN INTERIM COMMITTEE EXPLORATION OF ALTERNATIVES FOR IMPROVING THE EFFECTIVENESS OF STATE ENVIRONMENTAL PROGRAMS," was referred to the Committee on Legislative Management.

#### House Concurrent Resolution No. 125:

By unanimous consent, H.C.R. No. 125, entitled: "HOUSE CONCURRENT RESOLUTION RELATING TO THE COMMENDATION OF THE UNIVERSITY OF HAWAII SEA GRANT COLLEGE PROGRAM," was referred to the Committee on Higher Education.

#### House Concurrent Resolution No. 126, H.D. 1:

By unanimous consent, H.C.R. No. 126, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION URGING THE UNITED STATES CONGRESS TO EXTEND FEDERAL ENERGY TAX CREDITS FOR THE INSTALLATION OF ENERGY CONSERVING DEVICES," was referred to the Committee on Energy.

#### House Concurrent Resolution No. 124, H.D. 1:

Senator Cobb moved that H.C.R. 124, HD. 1, be adopted, seconded by Senator Soares.

Senator Kuroda rose to speak on the resolution as follows:

"Mr. President, rising to speak in favor of H.C.R. 124, requesting the establishment of a sister province-state relationship between the Province of Ilocos Sur, Republic of the Philippines and the State of Hawaii, I would like to enter a few remarks into the Journal.

"It is only obvious that the Senate

delegation leader should be Senator Cayetano but, Mr. President, I have not heard Senator Cayetano sing or even hum any song, much less a Filipino song, and there definitely is a need for a Senator to accompany Senator Cayetano on this important mission, someone who can sing 'Dahil Sayo.' (Senator Kuroda sang a few words of 'Dahil Sayo.') So, therefore, Mr. President, I volunteer. Thank you."

Senator Abercrombie then added:

"Mr. President, it is obvious that we still need to seek someone who can sing that particular song. (Laughter.)

"Mr. President, it is also an answer to the good Senator's question about having never heard Senator Cayetano sing, let alone hum. There is very good reason for that. Some of us have heard those pitiful attempts. (Laughter.)"

The motion was put by the Chair and carried, and H.C.R. No. 124, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE ESTABLISHMENT OF A SISTER PROVINCE-STATE RELATIONSHIP BETWEEN THE PROVINCE OF ILOCOS SUR, REPUBLIC OF THE PHILIPPINES AND THE STATE OF HAWAII," was adopted.

House Concurrent Resolution No. 141, H.D. 1:

By unanimous consent, H.C.R. No. 141, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO CODIFY AND CONVERT CERTAIN AQUATIC RESOURCES MANAGEMENT PROVISIONS OF THE HAWAII REVISED STATUTES TO HAWAII ADMINISTRATIVE RULES," was referred to the Committee on Economic Development.

House Concurrent Resolution No. 142, H.D. 1:

by unanimous consent, H.C.R. No. 142, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE CONVENING OF A TASK FORCE TO STUDY THE ISSUE OF HOMELESSNESS IN HAWAII AND TO DEVELOP SHORT-TERM AND LONG-TERM SOLUTIONS TO THIS MOST CRITICAL PROBLEM," was referred to the Committee on Housing and Community Development.

The Chair then made the following observation:

"At this time the Chair would like to inform the members of the Senate of the present timetable.

"Our latest information from the House is

that they have not yet acted on the budget. Therefore, all bills containing monies will have to wait pending passage of the budget bill. Rather than sit here and wait until that action is taken by the House, we will take a recess and reconvene the Senate at 2:15 p.m."

At 1:08 o'clock p.m., on motion by Senator Cobb, seconded by Senator Soares and carried, the Senate stood in recess until 2:15 o'clock p.m.

#### AFTERNOON SESSION

The Senate reconvened at 2:30 o'clock p.m.

The Chair then announced as follows:

"Members of the Senate, we have been informed by the House that they will be in recess until 3:30 p.m. this afternoon. They have not yet addressed the state budget. Our pending pieces of legislation are dependent upon the House passing the budget, before we can act on them.

"Since we are unable to take any action at this time, we will take another recess and come back at 4:00 p.m."

At 2:33 o'clock p.m., on motion by Senator Cobb, seconded by Senator Soares and carried, the Senate stood in recess until 4:00 o'clock p.m.

#### NIGHT SESSION

The Senate reconvened at 10:25 o'clock p.m.

#### MATTERS DEFERRED FROM EARLIER ON THE CALENDAR

#### FINAL READING

Senate Bill No. 64, S.D. 2, H.D. 2:

On motion by Senator Cobb, seconded by Senator Soares and carried, S.B. No. 64, S.D. 2, H.D. 2, entitled: "A BILL FOR AN ACT RELATING TO DOMICILIARY CARE," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

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

Senate Bill No. 1354, S.D. 1, H.D. 2:

On motion by Senator Cobb, seconded by Senator Soares and carried, S.B. No. 1354, S.D. 1, H.D. 2, entitled: "A BILL FOR AN ACT RELATING TO SOCIAL SERVICES AND HOUSING," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1

(Abercrombie).

Conf. Com. Rep. No. 63 (H.B. No. 99, H.D. 1, S.D. 2, C.D. 1):

Senator Yamasaki moved that Conf. Com. Rep. No. 63 be adopted and H.B. No. 99, H.D. 1, S.D. 2, C.D. 1, having been read throughout, pass Final Reading.

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

"Mr. President, I rise to speak in favor of Conference Report 63, House Bill 99.

"I would like to insert for the record a statement — a declaration for exceeding the judiciary general fund expenditure ceiling.

"In order to comply with Article VII, Section 9, of the State Constitution and Section 37-93 of the Hawaii Revised Statutes, I hereby declare that the Judiciary Budget has exceeded the general fund expenditure ceiling by \$3,807,050 in fiscal 1985-86 and \$843,483 in fiscal year 1986-87. The rate by which the appropriations exceed the expenditure ceiling is 10 percent and 9.4 percent for fiscal years 1986 and 1987, respectively.

"The following are reasons for exceeding the general fund expenditure ceiling:

"1. Public's demand for swifter judicial process;

"2. Public's demand for tougher laws;

"3. Increasing responsibilities being placed on the Judiciary that were once assumed by the Executive branch, such as telephone and maintenance expenses; and

"4. Public's increased awareness of their legal rights which have led to increased number of court cases.

"Thank you."

The motion was put by the Chair and carried, and Conf. Com. Rep. No. 63 was adopted and H.B. No. 99, H.D. 1, S.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE JUDICIARY," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

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

Conf. Com. Rep. No. 64 (H.B. No. 463, H.D. 2, S.D. 2, C.D. 2):

Senator Yamasaki moved that Conf. Com. Rep. No. 64 be adopted and H.B. No. 463, H.D. 2, S.D. 2, C.D. 2, having been read throughout, pass Final Reading, seconded by Senator Cayetano.

Senator McMurdo rose to speak on the measure as follows:

"Mr. President, I rise to speak in favor of this bill which could be described not as a giant step forward, but certainly as a shuffle in the right direction towards better workers' compensation law.

"I hope that this body will not settle into complacency with the passage of this bill and will in the interim look carefully at ways to amend the law which could result in lowering the tremendous cost of workers' compensation. I would like to see a committee formed in the interim which would consist of members of the Senate and the House, representatives from business and labor, and members of the medical community and the insurance companies. Together, these representatives could discuss frankly their issues and concerns on workers' comp, and perhaps make some solid recommendations to improve this bill for the benefit of all.

"At this point, I am going to vote for the bill as it is. Thank you.

Senator Abercrombie then added his remarks as follows:

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

"Mr. President, I feel that my remarks at the time that the bill passed previously should cover sufficiently my general philosophy with respect to the passage of this bill. My principal complaint at this stage is not about the amount of work that was done with respect to it, but rather that I feel that the workers are the losers in great measure here and are being blamed to some degree for the situation as it exists, at least in the minds of many people; whereas, the solutions proposed in some instances do not really bring any relief to the employer.

"The insurance companies still find themselves in a position where even if savings should accrue from the three-day period, which is a part of this bill, that they will not necessarily or by any means be passed on to the employers. There's no guarantee that that will happen. On the other hand, it is quite true and can be argued that there are many positive sides to this bill with respect to the state-funded insurance plan in particular, and some of the medical fraud stipulations and other stipulations which have remained in this bill from the Senate version which passed over to the House.

"Nonetheless, Mr. President, I feel that fundamentally the bill establishes the idea that the workers, as opposed to either the administration of the present law or the machinations of the insurance companies,

are at fault, and that the employers will receive some false assurance that significant savings will come their way.

"It may be, that should this bill pass, that some savings would accrue, that is to say, the employers would be entitled to them if they could get them. But I see that both the workers and the employers in this instance are still at the tender mercies of the insurance companies, at least until the state-funded competitive insurance system is under way. So, should it pass, I look to that to be the positive impact of this bill, but I think that the principle associated with workers' compensation in denying workers who are legitimately injured on the job that a compensation which is rightfully theirs is not a way to handle the question of workers' compensation. I believe that there is an emotional reaction to that that has overshadowed the facts of the matter, and I see no reason why those who illegitimately utilize workers' compensation or abuse the system should be the standard by which those who are injured legitimately on the job would be judged. Thank you."

Senator Henderson then spoke on the measure as follows:

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

"This bill addresses maybe one, two, three, four, or five parts of the problem with workers' compensation. When we look at the bill we find that there is a tremendous responsibility placed on the director of the Department of Labor and Industrial Relations. I don't see him here tonight but I wish he were here because I think it's important that he be here to understand the burden that's being placed on him by this bill. He has the responsibility to bring back rationality and reason to workers' compensation in the State of Hawaii.

"The workers' compensation law in this state is not any different from all the other states in the nation, except we have the worst record of utilization of any state. I think the burden falls on the director to correct that situation.

"This bill, Mr. President, appropriates some \$1,450,000 to the director of the Department of Labor and Industrial Relations to address the problems with workers' compensation. This state is known for throwing money at problems, and we've done it again. We've thrown a \$1,450,000 at the problem of workers' compensation. That's money, Mr. President, the taxpayers pay. It doesn't come out of a special fund or insurance premiums under workers' compensation. It comes from the tax dollars that the people of this state pay to the State of Hawaii.

"The second matter, Mr. President, is the insurance commissioner. The insurance commissioner is going to receive \$200,000. So now there is over \$1,650,000 of money we have allocated towards correcting workers' compensation. Under this bill, the insurance commissioner is given \$200,000 for the biennium to hire actuaries, accountants, and attorneys to question the filings of the insurance companies, and that might be very good because maybe we need to do that.

"In addition, this bill gives standing to the employers in any hearings for rate making or rate filing procedures. I feel that's probably a good idea.

"The bill also provides for three calendar days with no retroactivity when somebody is injured on the job. I think that's probably one of the few recommendations that Haldi made, and Haldi made 33 recommendations, that are incorporated in this bill.

"Of course, the other thing, Mr. President, and this is a negative thing, is the state fund. There is no indication at all, absolutely no indication, that the state fund is going to solve the workers' compensation problems of the State of Hawaii. The experience the insurance companies have had parallels those who are self-insured, and there's no indication at all that by starting a state fund we're going to solve the problems of workers' compensation in Hawaii.

"The last thing, Mr. President, is presumption. We have not addressed it and this is probably the bottom line on worker's compensation in Hawaii — the presumption clause.

"Somehow, Mr. President, in 1963 we passed a bill where we recodified the workers' compensations laws in this state, and we changed the first part of the presumption clause for no reason. Even Professor Reisenfeldt, the man who wrote the recodification and wrote the report that suggested we should change our workers' compensation laws had no explanation. I talked to him, Mr. President, about four or five days ago, and he has no recollection of why they would ever change that particular part of our presumption clause. But, we changed it.

"Anyway, Mr. President, my real complaint tonight is, and I'm speaking in favor of the bill, is the process we went through. The process we went through, Mr. President, was one of backroom deals; of holding committee reports and bills in final draft form, S.D. 1's, until there was no way that we could amend them, on the floor of the Senate. Even when the bill came into Ways and Means there was no way we could amend or ask for amendments in Ways and

Means. Even on the floor of the Senate, there was only a perfunctory vote up or down on what we felt were constructive amendments to the workers' compensation law, and that's not good.

"We talk about open political process, Mr. President, what you talked about when you first took the office of president, and I find that that's not happening here. We had a very closed situation with workers' compensation. I think we've had a very closed situation with the pay bill for the executive and judiciary employees. It's not good. I think what you espoused in the past is gone by the board. We do not have the kind of open and full discussion that we should have; that we used to have. We're not having it now.

"The only other thing I can say about the process, Mr. President, I think it's good that the Governor got personally involved. I think it's good that the director of Labor and Industrial Relations got personally involved. I think that it's important that they understand, and I think they do, the problems with workers' compensation. And I think it's important that they direct their efforts to correct the problems we have in the Department of Labor and Industrial Relations and how the law is administered.

"And I only hope, Mr. President, that the courts hear what we're talking about here in the Legislature and understand what needs to be done with the definitions that are not in the law but, Mr. President, are in the committee report. Now, whoever heard of putting something they wanted to be in the law in the committee report. That's nonsense.

"When you talk about defining substantial evidence, which is a major part of the presumption clause, which is the bottom line of workers' compensation, and putting that definition for whatever reason, Mr. President, in the committee report and not in the bill, I do not understand that. Until we get those kinds of definitions into the law, we will not have true reform with workers' compensation.

"I ask all of you to listen to what I said, to vote for this bill because it's a step forward, but next year, let's address the problem.

"Thank you."

Senator Yamasaki then spoke on the measure as follows:

"Mr. President, I rise to speak for the bill without reservation.

"Mr. President, as a result of the conference draft that was circulated, we have received, and you have received, I believe, communications from private

industry representing their feelings towards the conference draft and I would like to read into the record some of the statements that we have received attributed to this bill.

"From Theo H. Davies Company signed by David A. Heenan, President and Chief Executive Officer, dated April 19, 1985, a copy of which I have received, addressed to you Senator Richard Wong, President:

'We at Theo Davies appreciate very much the considerable effort you and your members have given to amend the current Statutes relating to Worker's Compensation. We request that you and your colleagues vote in favor of the Standing Committee Report of your Conference Committee regarding this important measure.'

"Next we have a letter from CILO, Ken Takenaka, Executive Director, dated April 19, 1985, to the Honorable Mamoru Yamasaki:

'We have reviewed the drafts of H.B. 463, H.D. 2, S.D. 2, C.D. 1, and although the bill does not include all of the amendments that our industry would have like to see in the bill, by and large, the bill provides some very meaningful changes that will help lower the cost of workers' compensation within the construction industry.

'We realize that reform of the workers' compensation law has not been an easy task with many competitive points of view, and proposed solutions to a very complex chapter of our law.

'We feel that the bill provides many changes in the workers' compensation law that will help our industry and therefore, urge you to vote for passage of H.B. 463, H.D. 2, S.D. 2, C.D. 1.'

"Also from the Inter-Industry Study Council, Sam Caldwell, President, dated April 19, 1985:

'Our group met this morning to discuss the Conference Draft of House Bill 463, and to develop a position on the bill. We were pleased to have an opportunity to hear Governor Ariyoshi tell us of the trials in the efforts to put together fair, meaningful legislation in Workers' Compensation.

'Although we are disappointed that several of the areas of reform we have been espousing have not been adopted by the Legislature, we believe that on the whole House Bill 463, Conference Draft 1, will provide a good start toward the goal of achieving meaningful reform of the Workers' Compensation Act. As representatives of a large portion of the business community, we support the draft

and urge you to enact it into law.'

"Thank you very much."

The motion was put by the Chair and carried, and Conf. Com. Rep. No. 64 was adopted and H.B. No. 463, H.D. 2, S.D. 2, C.D. 2, entitled: "A BILL FOR AN ACT RELATING TO WORKERS' COMPENSATION," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

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

At 10:44 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 10:50 o'clock p.m.

Conf. Com. Rep. No. 65 (H.B. No. 134, H.D. 1, S.D. 1, C.D. 1):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Conf. Com. Rep. No. 65 was adopted and H.B. No. 134, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR COLLECTIVE BARGAINING COST ITEMS," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

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

Conf. Com. Rep. No. 66 (H.B. No. 146, H.D. 1, S.D. 1, C.D. 1):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Conf. Com. Rep. No. 66 was adopted and H.B. No. 146, H.D. 1, S.D. 1, C.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 Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 67 (H.B. No. 147, H.D. 1, S.D. 1, C.D. 1):

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, Conf. Com. Rep. No. 67 was adopted and H.B. No. 147, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII PUBLIC EMPLOYEES HEALTH FUND," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 68 (S.B. No. 1198, S.D. 2, H.D. 1, C.D. 1):

Senator Yamasaki moved that Conf. Com. Rep. No. 68 be adopted and S.B. No. 1198, S.D. 2, H.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Cayetano.

Senator Abercrombie rose to speak on the measure as follows:

"Mr. President, I'd like to rise and speak in favor of this bill.

"Mr. President, passage of this bill is the end of a long road for a great many people whose faith in government has been seriously eroded as a result of the failure of the two companies in particular, that are addressed in this bill.

"Mr. President, there is no need this evening to go into a long or detailed history of what has taken place other than to say that I think that some members of the public at large may not fully understand what is being accomplished with this bill. I think that it is to the credit, in particular, of the Ways and Means Committee, its chairman and members, and the efforts of Senator Cayetano in particular in the conference with respect to resolving this bill, that we have before us a vehicle whereby those who have been injured, those who have been victimized in the collapse of these two companies in particular, Manoa Finance and Great Hawaiian Realty, will see within their lifetimes, literally for some of them, justice in the form of their \$10,000 deposits which were ostensibly guaranteed by the Christ Guaranty Corporation and by extension the State of Hawaii. At the same time, the public interest is protected.

"Those funds which will be put forward out of the general revenues are adequately secured. I need not go into those details for purposes of this evening's discussion either. Suffice to say not only are they adequately secured but you have a happy combination then in which the public funds necessary to effect a solution for those who were victimized will not be put forward in a manner that will leave the public bereft of an opportunity to recover those funds. As a result, I think this is a bill which clearly serves the public interest as well as the personal desires and necessities of those who deposited their money in these two companies with full faith that the State of Hawaii would assist them should anything go wrong.

"The difference here, Mr. President, and I think it's important to have on the record, is that the overwhelming majority of the deposits in these companies did so at the behest of officers and employees of those companies who, in my judgment, made false and/or misleading claims to the people who were making the deposits as to what was expected of them and what they could expect in return from the State of Hawaii in



terms of protection. Protection of those funds which had been invested.

"Mr. President, what remains now after the passage of this bill is for a vigorous investigation to be made into the transactions which took place in these companies which resulted in the collapse, and if an indictment is warranted, that it be vigorously pursued. If necessary and if the State of Hawaii is reluctant to pursue such an investigation, I most seriously urge the Prosecutor of the City and County of Honolulu, Mr. Marsland, to pursue it. If it turns out in the interim that this is not possible for lack of jurisdiction, I believe that it is not only a possibility but an obligation on the part of this Legislature to see to it that the Prosecutor is empowered to carry forward such an investigation and to make such indictments as may be warranted. Only in this manner do I believe that the public will be fully satisfied.

"To simply make restitution, if you will, to those who were victimized and to expect the taxpayers of the state, which include of course the depositors, to share in that restitution and not at the same time pursue possible criminal indictments, should they be warranted, would be in my judgment a very, very bad precedent and would most certainly not keep the faith with those taxpayers and depositors who are depend on us, by means of this bill, to see to it that justice is done in this state.

"In sum, then, Mr. President, I'm very, very grateful to those who helped put this bill forward. I can recall very, very well being with people in the first days of the collapse of these companies when there was hopelessness and despair, when there was such an utter sense of loss, not only financially but loss of faith, a crippling loss of faith in those institutions and in those people in whom so much trust had been placed, and to see month after month the efforts of the despositors committee and the many, many people who came to all the meetings, who gave of their time and their efforts and their emotions, who organized themselves and forged a new bond with one another in order to see that backing would be received for this bill.

"To go through all of that all of these many, many months and to see it come to fruition in this bill this evening is very, very gratifying. It is not only an opportunity for us to do the right thing, but it will be an element in the progress of this Legislature and in the accomplishments of this Legislature of which we may be truly proud.

"Thank you, Mr. President."

Senator Kawasaki then remarked as follows:

"Mr. President, in rising to speak against passage of this bill, I'd like to direct a few questions to the chairman of the Senate Conference Committee, strictly in regard to the total cost implications, the total net loss to the taxpayers of this state because of the failure on the part of the Thrift Guaranty Corporation program to take care of the losses incurred by the taxpayers at this point."

The Chair posed the question to chairman of the Conference Committee and Senator Yamasaki answered:

"Mr. President, I'd like to yield to my counsel."

The Chair then directed the question to Senator Cayetano who responded:

"Mr. President, could we have the sergeant-at-arms bring the blackboard out.

"Mr. President, it's difficult to, I think, determine the full costs. We did have it broken down but it is my understanding that if the assets of Manoa Finance are not sufficient to cover the monies put up by the Thrift Guaranty members, then those assets that amount to about \$28 million will not be applied to the \$27 million that was advanced to Thrift in previous years. The state will put up, as we all know, \$9.5 million that will be covered by a first lien property or assets to include \$7 million approximately, or \$7.5 million, in accounts receivables which the trustee in bankruptcy has analyzed and believes to be collectible.

"There is approximately \$13 million in accounts receivable outstanding but \$7 million or \$7.5 million of these accounts receivables are deemed to be collectible. And the state has the first lien against that asset. The state also has the first lien against \$2 million expected to be derived from the sale of properties on the Mainland, properties of the project called 'The Japan Center,' I believe. The sale price is believed to exceed \$3 million and it was agreed that \$2 million of that will go to cover the \$9.5 million put up by the state in which the state has first lien.

"Also, there is approximately \$3.5 million coming from a settlement. This settlement stems from a case involving the Pacific Standard Company and a savings and loan in Alaska. The conservative estimate of the settlement is that it would be \$3.5 million; the high side is that it may be \$10 million. So the state's \$9.5 million fund money is covered.

"As to the \$27 million previously advanced by the state, the way this bill works, there will be a cross-lien, the excess of which will be applied to retire the \$27 million. In other words, the Thrift members

will borrow \$21.2 million that will be covered by approximately \$28 million of Manoa Finance real estate and that is a value that is based on tax assessed values. The state's lien, of course as I said earlier, is \$9.5 million.

"Should the assets covering the Thrift lien exceed the amount borrowed by the Thrift members then that money will go to pay the state's \$9.5 million lien should the assets which are for that lien not be sufficient. In the event, however, after both first liens are paid and there is an excess, that money will go to pay the \$27 million.

"All in all, it seems to me that this bill is the best solution, if one can call it a solution, to what is a very, very difficult situation. Under any circumstance, one could almost kiss away the \$27 million previously advanced by the state. However, under the circumstances of the provisions set forth in this bill, the state stands to recover at least a substantial portion of that."

Senator Kawasaki continued:

"I thank Senator Cayetano for the detailed explanation. Now, can I inquire as to the rationale that prompted the framers of this bill and the conferees in not requiring the loan companies to continue paying their assessments to the Thrift Guaranty Corporation, as was a condition when the Thrift Guaranty Corporation entity was first developed?"

Senator Cayetano answered:

"Mr. President, that was a very difficult proposition for both the House and Senate conferees to swallow, but what we hoped for in the situation at large and what was the reality are two different things.

"The reality of the situation was that the Thrift Guaranty assessments would not even cover the interest owed on the \$27 million. Moreover, the reality of the situation also included the fact that GECC, one of the Thrift members which would have been responsible for approximately 26 or 27 percent of the assessments because it had that much of the deposits, threatened to walk away from the situation. By walking away from the situation, I mean threatened to cut off taking deposits and that would have meant the loss of 26 or 27 percent of their assessments because the way the law is framed, the assessments are based on a percentage formula based on the amount of deposits each member held.

"If GECC left, as they threatened to do, and we have to keep in mind that unlike First Hawaiian Bank which owns Hawaii Thrift and Loan and unlike Bank of Hawaii which owns Bancorp and unlike Finance

Factors, all three of which are very substantial and respected financial institutions in this state having had a long standing history, GECC is a relative newcomer, and throughout the nation Hawaii is the only state in which GECC accepts public deposits. Therefore, GECC took the position that if they were forced to pay the assessments they would close up.

"This in my view and I think this view was shared by all of the Senate conferees, and eventually I think the reality of this matter prevailed on the House, would have led to Hawaii Thrift and Loan bailing out of receiving public deposits as well as Bancorp and as well as Finance Factors. After all, when 26 or 27 percent of the share leaves, you are left holding the bag.

"Furthermore, it was explained to the conferees that with the new FDIC requirements there is no longer any attractiveness in doing business as an industrial loan company, and therefore, it would have been comparatively easy for Hawaii Thrift and Loan, for example, or First Hawaiian Bank to convert its branches of Hawaii Thrift and Loan into branches of First Hawaiian Bank and that created all kinds of problems for us. So the decision to back off from the assessments was based, I think, on a cold, objective analysis of the legal reality of the situation the state found itself in."

Senator Cobb then remarked as follows:

"Mr. President, if I may elaborate just briefly on the answer given by the Transportation Committee chairman in response to the questions of the vice president.

"In addition, Hawaii Thrift and Loan consists of approximately 40 percent of Thrift Guarantee. On January 1 of 1986 the last remaining restriction of the bank zoning law will be lifted so that any financial institution is free to set up however many branches of banks they so desire. This has a direct bearing on the question of whether or not Hawaii Thrift through its parent company, First Hawaiian, would have elected to continue taking Thrift deposits or could have simply converted any time after January 1, 1986 to a series of branches of the First Hawaiian Bank, and thus not only would the 26 or 27 percent of GECC be gone, but also then the additional 40 percent participation by Hawaii Thrift and Loan would have been gone because they would have then converted to, or could have converted to branches of First Hawaiian Bank.

"And of course, as everyone may be aware, once they stop taking Thrift deposits or stop functioning as an industrial loan company in that process, then there can no

longer be any assessments. So that was very much an additional consideration and reason that was presented to the conferees and had to be explained in some detail to the members of the other House.

"Thank you."

Senator Kawasaki then continued:

"Mr. President, not having had the benefit of a legal education, I now need to pose a question to Senator Cayetano as to what is the possibility of an ordinary citizen bringing suit against the State of Hawaii for the Legislature not requiring the loan companies to continue paying the assessments as provided by law when we created the Thrift Guaranty Corporation?"

Senator Cayetano responded:

"Mr. President, if I may ask for a clarification of that question, is the question, what is the Legislature's liability or is it the state?"

Senator Kawasaki answered:

"The state's liability and the possibility of a suit by a private citizen?"

Senator Cayetano responded:

"I have not researched that question, of course, but it would seem to me that if the Legislature saw fit to change the law, there would be no liability on the part of the state. After all, the executive executes the law and we pass them.

"The question of a private citizen suing the state, that is a very difficult proposition. Some private citizens got together and sued Great Hawaiian and were tossed out of court ... excuse me, they sued the bank examiner ... and these were depositors of Great Hawaiian, and they were tossed out of court by Judge Huddy on the basis that the bank examiner had immunity because he had discretionary authority in this area.

"If in my view, and one of the problems we had in dealing with this question is that we were unprepared in the sense that no one, certainly no one here at the Legislature, had the resources or the information to analyze the civil liability potential of the Thrift members because of the actions of the board of directors. It would seem to me that if there is any liability, if I were the private citizen bringing suit, that there would be a better chance of prevailing against the Thrift members because of the actions of the Thrift board of directors. The suit would have to be based on a breach of fiduciary duty, rather than having anything to do with the assessments in particular."

Senator Kawasaki then continued:

"I thank Senator Cayetano for that explanation.

"Mr. President, in continuing to speak against passage of this bill, let me explain to you that I can't vote for this bill just as long as the state does not require the members of the Thrift Guaranty Corporation to live up to their contractual obligations and continue paying their annual assessments. I think it is awfully important for us here to remember that it was only at the insistence on the part of the loan companies, now the members of the Thrift Guaranty Corporation, that the Legislature created the Thrift Guaranty Corporation to protect these same loan companies.

"The loan companies agreed at the time of the creation of the Thrift Guaranty Corporation that they would responsibly pay their annual assessments to the Guaranty Corporation as a condition of its creation. This, let us remember, at a time when the collapse of THC and other problems had created a great risk of an industry-wide run on deposits. The industry, in effect, was pulled from disaster and saved by us by the creation of the Thrift Guaranty Corporation, and indeed some companies thrived thereafter.

"I firmly believe that we should require the loan companies to honor their obligations under the agreement of the Thrift Guaranty statute. The healthy companies took and enjoyed benefits of the guaranteed program. Why should we burden the taxpayers of this state further by allowing these companies to avoid paying their bills?

"The Thrift Guaranty Corporation has always been controlled by its members. The directors of the Thrift Guaranty Corporation have the power with the approval of the bank examiner to (1) investigate the financial condition and management of any of its member loan companies; (2) to impose needed reasonable restrictions and conditions upon the activities and the operations of its members, as it found necessary, to protect the interest of the depositors; (3) they have the power and the authority to make recommendations to the bank examiner as to actions reasonably necessary to protect depositors further.

"When the law was first passed, it was known to all of them that some of the companies were in trouble. Prudent action should have been undertaken by the directors representing the members of the Thrift Guaranty Corporation at that time. It seems to me the Thrift should not be allowed to renege and complain about being

required to continue paying their assessments needed to pay part of the losses suffered by innocent depositors. As someone stated, is it fair that they should have taken the benefits for seven years and then leave the depositors or other taxpayers of this state holding the bag, partly as a result of their negligence.

"I am unable, in good conscience to incur further burden on the taxpayers of this state by voting for this bill as it is written and as it emerged from the conference committee."

Senator Cayetano then spoke on the measure as follows:

"Mr. President, rising to speak in favor of the bill and in response to the previous speaker, let me say that when I first began looking into this matter, I shared the good Senator's concerns and to some degree I still share those concerns, but as more information became available to me there was one conclusion that I reached and I think anyone who looked at the information at hand could not help but reach the same conclusion.

"The Thrift members are not all at fault as Senator Kawasaki seem to paint them because we here at the Legislature, and I was a member of the Legislature when the Thrift Guarantee law was passed, we here are also partly to blame. At the time we were considering the bill, some of the better managed financial institutions in town, First Hawaiian Bank was one of them, Mr. Taba who I think is from American Savings (I'm not sure but we all know who he is) is another, came forward and testified at the hearing that if the Legislature were to pass a law which made it a condition of doing business in this state as an industrial loan company which imposed such a condition on those companies that they would have to join something like the Thrift, then there should have been a pre-clearance requirement. This advice was ignored.

"In retrospect, it seems that some members of the Legislature knew a little more about the financial plight of these companies than others did, and I include myself in the others because at that time I was in my second year in the House and knew nothing ... probably, only knew where the restroom was.

"I am informed that the day after the Governor signed the bill or shortly thereafter, one of the companies failed. And so the Thrift got off on the wrong foot and it was down hill after that.

"There's a lot of blame that can be passed around; certainly there's blame, I think, at the Legislature because there were people here who were swayed, I think, by the

influence of some of the industrial loan companies, refused to look at the facts objectively, and perhaps the judgment was clouded by the plight of some of these industrial loan companies.

"There was also some blame, I think, to be laid at the members of the Thrift, particularly the board of directors, for not living up to the duties recited by Senator Kawasaki and certainly those that are clearly set forth in the law. I guess we can lay some blame at the feet of the depositors for maybe not reading the fine print too clearly. Certainly, we tried in the law to make certain that depositors would know that the Thrift was not an agency or instrumentality of the state or Federal Government. There is a provision in the law which requires the Thrift companies who advertise to include such a warning. So, there's blame to go all around. The unfortunate part about it was that we have no legal analysis because the bank examiner's office probably is not equipped to do it, and in fact, has not done it and has concentrated, instead of just trying to resolve the problem. So, the better course of action, it seemed to me, would be to cut our losses and step away from this thing.

"The House had a terrible proposal. They wanted to create a board of political appointees, and that was about the last thing that I think we wanted to do. So, it's a policy decision. Cut your losses or continue the assessments and get involved in what obviously will be a costly and long litigation. The conferees chose the former."

Senator Cobb then said:

"Mr. President, I rise to speak in favor of the measure. In doing so, I would echo some of the comments of the previous speaker with respect to the lack of a pre-clearance requirement and would point out that from 1980 on, as he is familiar with, we have been seeking federal insurance for all thrift companies, which as you know does have a very stringent audit and pre-clearance requirement to insure that their loan ratio, their liquidity ratio and their cash on hand is sufficient for the purpose of their deposits. Although that idea was first advanced by me and my committee members in 1980, it took until 1983 to get that passed.

"During that course of time both Manoa Finance and Great Hawaiian went under. Several other smaller companies went under with far less impact. At the time the original Thrift Guaranty was passed, there were about 20 industrial loan companies.

"At the time that the federal insurance requirement went into effect, that based on a 1983 law that we finally passed effective July 1, 1984, there were at that time 16

industrial loan companies. One chose not to continue accepting Thrift deposits, at least in part I am informed, because of their inability to meet the federal pre-clearance requirements, and so there were 15 such companies that qualified. Today, I am informed, there are 11 such companies still in business. So, it has been winnowing down process, but I think the most important thing is that the law now properly requires the pre-clearance requirement which should have been done as far back as 1977 when this measure was first passed, of providing for Thrift Guaranty.

"Furthermore, Mr. President, I think it's important to note from the standpoint of a taxpayer's risk exposure or liability in this particular bill has been minimized with the priority of the first lien that the state will have on the \$9.5 million and the cost attachment on a junior basis for the lien from the other \$21.2 million which will be borrowed by the private sector.

"I agree very strongly with the comments of the Transportation chairman that had we gone along with the plan from the other house, the risk exposure of the taxpayer would have been \$27 million plus \$32 million or a total of \$59 million of taxpayers' money put at risk with no assurance whatsoever that the state appointed board could have conducted a type of liquidation that will be conducted by the private sector.

"So, in effect, the provisions of this bill provide that the private sector would do the job and that the taxpayers will be at minimal risk with this bill to the tune of \$9.5 million and that risk itself will be fully collateralized on a basis of a first lien. I think it is the most responsible position to take and provides a ready-made solution for the parties at hand, including the depositors.

"Thank you."

Senator Yamasaki then said:

"Mr. President, I rise to speak in favor of the bill and in doing so I'd like to acknowledge at this time my appreciation to the two previous speakers who were the primary conferees that put the package together and I want to thank you very much in behalf of the State Senate."

Senator Soares then remarked as follows:

"Mr. President, would the chairman of the conference committee yield to a question, please? I think I should ask Senator Cayetano."

The Chair posed the question and Senator Cayetano having answered in the affirmative, Senator Soares asked:

"Could you explain for the members'

benefit, from the conferees' standpoint, I think it would be important that you explain for the members the cross-lien relationship that Senator Cobb spoke about ... how that's going to work."

Senator Cayetano answered:

"Mr. President, as you know, it was difficult to do even with a blackboard.

"Mr. President, I wonder if we can call a recess so I can go over there and draw a picture for Senator Soares. That would be easier to explain."

The Chair responded:

"He was there."

Senator Cayetano continued:

"Okay. Would you ask him the question for whom now? I thought I explained it earlier. Anybody else want to know besides him?"

The Chair responded:

"In the interest of time, for those that want to seek this information, I think we've had sufficient discussion on the measure."

Senator Abercrombie then said:

"Mr. President, I think the question was in order."

At 11:24 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:26 o'clock p.m.

Senator Cayetano then continued:

"Mr. President, I believe Senator Soares has seen the light."

Senator Soares answered:

"Mr. President, I've seen the light."

The motion was put by the Chair and carried, and Conf. Com. Rep. No. 68 was adopted and S.B. No. 1198, S.D. 2, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE INDUSTRIAL LOAN COMPANY GUARANTY ACT," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Kawasaki).

Conf. Com. Rep. No. 69 (S.B. No. 463, S.D. 1, H.D. 2, C.D. 1):

On motion by Senator Yamasaki, seconded by Senator Chang and carried, Conf. Com. Rep. No. 69 was adopted and S.B. No. 463,

S.D. 1, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE RELIEF OF CERTAIN PERSONS' CLAIMS AGAINST THE STATE AND PROVIDING APPROPRIATIONS THEREFOR," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

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

Conf. Com. Rep. No. 70 (S.B. No. 20, S.D. 1, H.D. 1, C.D. 1):

Senator Yamasaki moved that Conf. Com. Rep. No. 70 be adopted and S.B. No. 20, S.D. 1, H.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Hagino.

Senator Kawasaki rose to inquire:

"Mr. President, I have a question to be directed to the chairman of the Ways and Means Committee."

The Chair posed the question and Senator Yamasaki answered in the affirmative.

Senator Kawasaki asked:

"Is there a requirement in the final version of the bill that requires matching on the part of the sugar industry itself as was the requirement in past bills of this nature?"

Senator Yamasaki answered:

"I believe it does."

Senator Kawasaki further asked:

"What is the matching formula?"

Senator Yamasaki answered:

"On line 8 of page 2...."

At 11:28 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

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

Senator Kawasaki then continued:

"Mr. President, the chairman of Ways and Means Committee has answered my question to my satisfaction."

The motion was put by the Chair and carried, and Conf. Com. Rep. No. 70 was adopted and S.B. No. 20, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR SUGAR RESEARCH AND DEVELOPMENT," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Conf. Com. Rep. No. 75 (S.B. No. 471, S.D. 2, H.D. 1, C.D. 1):

By unanimous consent, action on Conf. Com. Rep. No. 75 and S.B. No. 471, S.D. 2, H.D. 1, C.D. 1, was deferred to the end of the calendar.

Conf. Com. Rep. No. 77 (S.B. No. 384, H.D. 1, C.D. 1):

Senator Yamasaki moved that Conf. Com. Rep. No. 77 be adopted and S.B. No. 384, H.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Mizuguchi.

Senator Abercrombie spoke on the measure as follows:

"Mr. President, I wish to speak in favor of this bill merely with the reservation that it also include, if I'm not mistaken, the Goodfellow Bros., Inc. case, which I have spoken of on this floor before, and with that reservation, speak favorably."

The motion was put by the Chair and carried, and Conf. Com. Rep. No. 77 was adopted and S.B. No. 384, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO STATE BONDS," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Senate Bill No. 1089, S.D. 2, H.D. 1:

Senator Yamasaki moved that S.B. No. 1089, S.D. 2, H.D. 1, having been read throughout, pass Final Reading, seconded by Senator Chang.

Senator Abercrombie spoke on the measure as follows:

"Mr. President, I believe this bill should be opposed for reasons that I discussed at some length on the floor previously which I will be happy to recite all over again, if anybody wants me to go into it. Is that your desire? Is that what the nod of your head over to this side means?"

The Chair responded:

"Does that mean further discussion or are we taking the matter up? If not, we can take this to the end of the calendar."

By unanimous consent, action on S.B. No. 1089, S.D. 2, H.D. 1, was deferred to the end of the calendar.

### THIRD READING

House Bill No. 20, H.D. 2:

On motion by Senator Yamasaki, seconded

by Senator Mizuguchi and carried, H.B. No. 20, H.D. 2, entitled: "A BILL FOR AN ACT REALTING TO THE COMPENSATION OF CERTAIN PERSONS UNDER THE CRIMINAL INJURIES COMPENSATION ACT AND PROVIDING APPROPRIATIONS THEREFOR," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

House Bill No. 1272:

On motion by Senator Yamasaki, seconded by Senator Mizuguchi and carried, H.B. No. 1272, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS TO ASSIST INDUSTRIAL ENTERPRISES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

#### SENATE RESOLUTIONS

The following resolutions (S.R. Nos. 186 to 194) were read by the Clerk and were disposed of as follows:

S.R. No. 186, entitled: "SENATE RESOLUTION RETURNING ALL BILLS, CONCURRENT RESOLUTIONS, AND RESOLUTIONS TO THE CLERK'S DESK," was offered by Senators Kuroda and Henderson.

On motion by Senator Cobb, seconded by Senator Soares and carried, S.R. No. 186 was adopted.

S.R. No. 187, entitled: "SENATE RESOLUTION RELATING TO THE PRINTING OF THE JOURNAL OF THE SENATE," was offered by Senators Kuroda and Henderson.

On motion by Senator Cobb, seconded by Senator Soares and carried, S.R. No. 187 was adopted.

S.R. No. 188, entitled: "SENATE RESOLUTION AUTHORIZING THE PRESIDENT TO APPROVE THE JOURNAL OF THIS SENATE FOR THE SIXTY-FIRST DAY," was offered by Senators Kuroda and Henderson.

On motion by Senator Cobb, seconded by Senator Soares and carried, S.R. No. 188 was adopted.

S.R. No. 189, entitled: "SENATE RESOLUTION AUTHORIZING THE PRESIDENT TO DESIGNATE THE EMPLOYEES WHO WILL WORK AFTER ADJOURNMENT," was offered by Senators Kuroda and Henderson.

On motion by Senator Cobb, seconded by Senator Soares and carried, S.R. No. 189 was adopted.

S.R. No. 190, entitled: "SENATE RESOLUTION AUTHORIZING THE PRESIDENT TO EXPEND FUNDS AFTER ADJOURNMENT," was offered by Senators Kuroda and Henderson.

On motion by Senator Cobb, seconded by Senator Soares and carried, S.R. No. 190 was adopted.

S.R. No. 191, entitled: "SENATE RESOLUTION REGARDING COMPLETION OF THE WORK OF THE THIRTEENTH LEGISLATURE SUBSEQUENT TO THE ADJOURNMENT THEREOF," was offered by Senators Kuroda and Henderson.

On motion by Senator Cobb, seconded by Senator Soares and carried, S.R. No. 191 was adopted.

S.R. No. 192, entitled: "SENATE RESOLUTION RECOGNIZING WITH GRATITUDE EACH OF THE MINISTERS OF RELIGION WHO OPENED A DAY OF THE SENATE, THIRTEENTH LEGISLATURE, 1985, STATE OF HAWAII, WITH AN INSPIRATIONAL INVOCATION," was offered by Senators Kuroda and Henderson.

On motion by Senator Cobb, seconded by Senator Soares and carried, S.R. No. 192 was adopted.

S.R. No. 193, entitled: "SENATE RESOLUTION EXPRESSING DEEPEST APPRECIATION TO THE MEMBERS OF THE VARIOUS MEDIA FOR THEIR COVERAGE OF THE ACTIVITIES OF THE THIRTEENTH LEGISLATURE, REGULAR SESSION OF 1985," was offered by Senators Kuroda and Henderson.

Senator Cobb moved that S.R. No. 193 be adopted, seconded by Senator Soares.

Senator Abercrombie remarked:

"Mr. President, I merely wish to say at this time that I for one have been happy to provide these people with an opportunity to earn a very, very good living."

The motion was put by the Chair and carried and S.R. No. 193 was adopted.

S.R. No. 194, entitled: "SENATE RESOLUTION INFORMING THE HOUSE AND GOVERNOR THAT THE SENATE IS READY TO ADJOURN SINE DIE," was offered by Senators Kuroda and Henderson.

By unanimous consent, action on S.R. No. 194 was deferred to the end of the calendar.

MATTERS DEFERRED FROM  
EARLIER ON THE CALENDAR

FINAL READING

Conf. Com. Rep. No. 75 (S.B. No. 471, S.D. 2, H.D. 1, C.D. 1):

By unanimous consent, action on Conf. Com. Rep. No. 75 and S.B. No. 471, S.D. 2, H.D. 1, C.D. 1, was deferred to the end of the calendar.

Senate Bill No. 1089, S.D. 2, H.D. 1:

Senator Yamasaki moved that S.B. No. 1089, S.D. 2, H.D. 1, having been read throughout, pass Final Reading, seconded by Senator Chang.

Senator Kawasaki remarked as follows:

"Mr. President, may I request of Senator Abercrombie, perhaps an abbreviated version of his explanation as to why he opposes this bill. My memory kind of lapsed and I don't quite recall the cogent arguments he presented against passage of this bill."

Senator Abercrombie responded:

"Mr. President, may I make an inquiry of the previous speaker. Did his memory lapse because his brains fell out? (Laughter)"

Senator Kawasaki answered:

"Perhaps because there must be an impostor sitting in my seat...(more laughter)."

Senator Abercrombie then continued:

"Mr. President, with respect to this particular bill, you may recall that my principal objection here was that, and it may relate in fact to one of our previous bills where Manoa Finance was concerned, Thrift Guaranty, that we seem to accept incompetence as a matter of course in the state. In this particular instance, this happened to be a highway situation on another island, the County of Maui, and it would appear that while the state was at fault ... and I am of course reading the record here in making a judgment interpretation based upon that record is presented to the Senate and to the Legislature.

"It would appear that the state had considerable blame to assume in the engineering and in the design of this highway and that the specifications that were put forward to the company were inadequate to the task, to say the least. But to my knowledge or at least to the point that I have been able to discover to this point, no one was ever reprimanded; no one

is to blame; no one must accept any responsibility. There's no obligation on the part of state employees to conduct themselves in a manner that is consistent with doing the job correctly, and that if we do not do the job as state employees, why, no one will come and tell us that either we should do it or that there will be any consequence to those actions.

"Mr. President, we have passed a good deal of legislation in past years and this year which require people to accept the consequences of their actions. We can refer to the Department of Education and Chapter 19 and modifications made to the law which we have passed recently that requires certain actions to be taken on the part of school officials when offenses are committed. In other words, there is a consequence to your action, a consequence you should be prepared to pay.

"I can refer to drunk driving bills that have been passed in this Legislature in the recent time as well as this session which require one to bear the consequences of one's actions. We require, seemingly, of the public; we require it of our children; we require it of drivers; we require it in many instances.

"There were questions that were raised tonight as to what would be the consequences of actions taken with the passage of the Manoa Finance bill, the Thrift Guaranty Act modification. What were the responsibilities and obligations of the directors of Thrift Guaranty?

"Virtually bill after bill this evening, you can examine and you will find that in virtually every instance actions have consequences and adults and responsible, mature people are expected to bear the burden of those consequences as a result of the actions taken. And yet in this instance and in other instances that have appeared before the Legislature when I was privileged to be a member of the Ways and Means Committee over time, privileged to be part of sessions ... I believe some were executive sessions, if I'm correct, in which the state's responsibility was explained by members of the Attorney General's staff, we found over and over again that while the taxpayers were expected to bear a fiscal burden, certainly, and we were expected to bear the burden of explaining these bills and these appropriations to the public at large, to our constituents and to the taxpayers, the perpetrators of the activities were not subject to any kind of sanctions that I could discover in any way, shape or form, or were subject to such sanctions as to be so minor that they were inconsequential in effect.

"So, Mr. President, the problem here is not whether the people doing the suing here were entitled to the compensation; that



probably on the whole it might be stated that they are. Nonetheless, the state is unwilling to take this action to court. Unwilling to test, if you will, the responsibility because apparently it feels that the conduct of its own employee or employees was such that it could not withstand the scrutiny of the court, of an impartial jury. Mr. President, that does not speak well for the State of Hawaii in terms of the supervision of its employees. It most certainly does not speak well for our ability to require as a legislature to get the message through to the executive that we expect people to do their jobs, to take responsibility for their jobs and to be prepared to suffer the consequences, at the least, Mr. President, in terms of disciplinary action.

"None to my knowledge was forthcoming in this instance, unless the good Senator who is the chairman of the Ways and Means Committee or anyone else who had this bill, perhaps the Judiciary chairman ... I'm not entirely sure as to the origin of the bill ... could enlighten us as to whether any disciplinary action was taken. I do not believe that that was the case.

"As a result, Mr. President, we find ourselves having to make these enormous payments and literally nothing being done as a consequence of it. The lesson, it seems to me is pretty clear to state employees and it should be a fairly clear message coming from the Legislature. We don't expect it. We just pay the bills every year and if it's not the State of Hawaii and Goodfellow Bros. Inc. this year it will be somebody else next year or some action taken in the past. It seems that there's at least one of these, if not more, every year, and, Mr. President, we don't seem to do anything about it.

"So, I suppose the ... would you like me to pause while Senator Kawasaki comes back? He's missing the benefit, I think, of this analysis.

"Here he is. May I proceed?"

The Chair responded: "Certainly, take your time." (Laughter.)

Senator Abercrombie continued:

"Mr. President, I certainly don't want to abuse the time of this body. I do want to, however, respond briefly to the inquiry of the good Senator. As you know, Mr. President, Senator Kawasaki is famous for his watching of the purse strings of this state, and I'm pleased to be asked by the good Senator to illuminate, if I can for him, another opportunity for him to exercise that good judgment that everyone has come to expect of him. Perhaps, Mr. President, I'm a little off base because I seem to be

turning this into a eulogy for Senator Kawasaki and if you agree that that's the case why, I will cease it."

The Chair answered:

"Would you like to explain it to him, pass the bill and take a recess, perhaps just sit in recess?"

Senator Abercrombie remarked:

"No, I'm not sure he's satisfied at the moment that my explanation is sufficient to ...."

The Chair interjected:

"He's simply enthralled."

Senator Abercrombie continued:

Yes, I can see that. (Laughter.)

"In that case, Mr. President, I will say in conclusion that I feel that it would be a good idea to send a message, for once at least, that we expect the people who are employed in the State of Hawaii to do their duty and we expect the state to meet its responsibilities and therefore I would urge in this instance a 'no' vote."

Senator Kawasaki then remarked as follows:

"Mr. President, rising to speak in favor of this bill, I just want to comment here that I do not for a moment have any doubts about Senator Abercrombie's ability to hold everybody spellbound when I enjoyed the brief respite."

Senator Yamasaki then spoke on the measure as follows:

"Mr. President, speaking for the bill and in response to the second to the last speaker, I don't think that there was any disciplinary action taken of any state employee or employees. I don't think that any of the state employees were at fault in this project.

"As explained to us by the Deputy Attorney General, the consultant who was used in the project made a miscalculation on the amount of soil that was excavated and transferred to another site of the same project. As a result of the miscalculation, there was considerable delay because they had to bring soil from another source, from a distant area, which caused the delay.

"I believe that in the discussion of the bill, we said that there was a serious need for us to review the bonding requirements of consultants. We thought that we would be doing that during this session but it is one of the items that fell between the big crack.

"Thank you."

Senator Henderson also spoke on the measure as follows:

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

"My understanding of the problem, from the chairman of Ways and Means, was that the state did the whole road, the whole project, and then by its own restrictions imposed cut off areas in the project which meant that, where the contractor had bid on the project based on taking cuts to use for fills in the project, he was not able to do that. He then had to go out and get other sources of fill when he had planned to take it from other parts of the project.

"This is a good example, Mr. President, of how restrictive the state is on business activity. They should have allowed the contractor, when he bid on the whole project, to pursue the whole project and not put constraints on how he could perform his job. And I think that he's entitled to his compensation of \$2,750,000, and I think he's probably entitled to more. I think he asked for \$12 million.

"It's strictly the negligence of the State of Hawaii and the manner in which they ran the project, and I think we shouldn't do that anymore.

"Thank you very much."

Senator Chang then remarked as follows:

"Mr. President, without contradicting any of the previous speakers, I would just like to note that the project director is no longer employed by the State of Hawaii."

Senator Abercrombie then added:

"Mr. President, I want to thank the chairman of the Ways and Means Committee for his explanation and, perhaps, not in rebuttal but in amplification of the remarks made by the Minority Leader, as the chairman of Ways and Means has often indicated to me and to others, you may ask but you may not always receive, so it's quite possible that \$12 million was asked but to the best of my knowledge or my information of the bill some \$2.7 million is what's about to be received, if the bill is passed on.

"But, Mr. President, the reason I rise is not so much in rebuttal to the Ways and Means chairman, but to indicate that I quite agree with his analysis, but this is part of the problem. The state has a penchant for hiring these consultants, and these consultants always lead us down the road to perdition and ruin, and I think we have to take responsibility. The state must take responsibility for the hiring of these consultants and perhaps we should be a bit

more circumspect when these consultants are hired to make sure that we don't find ourselves in this situation.

"I well remember, Mr. President, one of the conditions which caused me to think about running for the Legislature and this may show how serious it was, the consequences for the state, I did run, and that happened to be when I was a student at the University of Hawaii. There was a parking garage built in the quarry and I found that there had to be a change order at the time (this was some years ago) for \$500,000 because it was sinking. I thought that was incredible that anybody could build a parking garage in a quarry and not realize the kind of soil that existed in the quarry. Anybody who's spent any time there as I have as a student since 1959 would know that, at least. And so I went over, myself, as a lay person, the specifications that had been put forward for this project. Now, I'm not an engineer but I'm not a complete idiot at the same time and as long as no one would make a point of inquiry on that at the moment, I'll go on and indicate that I saw that the specifications for the core borings ... now this was a project at the time for \$8.6 million ... \$8.6 million ... we're talking about the late 60's now. You can imagine what the cost of that would be at the present time. It might even cost more than the baseball stadium.

"The fact was the core borings for that were in two contracts, \$10,000 and \$11,000, if you can believe it. And on the basis of those borings, the project was undertaken. And, of course, a work change order ensued because it started to sink.

"I also recall the F building or G building, one of the alphabet buildings that the University of Hawaii with the School of Business Administration falling apart ... falling down. Well, they built that where the keawe trees were near my office, the office that I had, an old wooden building that had lasted a helluva long time. Interesting, I was in an office in a wooden building that had been there for 30 years, and they put up a multi-million dollar concrete building, as a result of the consultants to the State of Hawaii, that didn't last five years for it fell down.

"So, these consultants have come in time and time again, just in my own experience and I'm sure others on this floor can amplify the situation in other instances, and no one is ever responsible. No one ever takes responsibility. This would not be tolerated in a private sector, but it seems to be more often than not a situation that we not only tolerate in the public sector, but it seems to be that old cliché, 'well it's close enough for government work.' And I don't think that's the kind of thing that we want to put forward to the taxpayers of this state.

"So at this particular time, even though I recognize the good work done by the Ways and Means Committee on this issue, I feel that for symbolic purposes, if for no other, that a 'no' vote, at least one should be recorded, and that if anything is to come of it, at the very least, I would hope that the word would go out that we should be a bit more careful with respect to the hiring of consultants and at best that this kind of thing would not happen again.

"Thank you."

Senator Henderson then added:

"Mr. President, if you are an employer and you hire consultants, or if you are the administration and you hire consultants and the consultants make a mistake, who's responsible? Not the consultant; the person that hired them is responsible. So I would say that the administration is responsible for all these mishaps, the Goodfellow problem, the University of Hawaii problem and the many other problems we've had in this state.

"If a consultant is hired for whatever reason, not by bid but by selection, and he gives bad advice, I would say that the person that's responsible is the person that hired him.

"If you are in business and you are the employer and you're making decisions, and you hire a consultant, and he makes a bad mistake, you're responsible, not the consultant and I would say, Mr. President ...."

Senator Abercrombie interjected:

"Mr. President, would the Senator yield?"

Senator Henderson answered:

"No, I won't yield. I won't yield. I'll say this. If you hire somebody and you put your trust in him and he makes a mistake, you are responsible, not the consultant ... not the consultant. So I would say that the good Senator from the 19th District is mistaken."

Senator Abercrombie then said:

"Mr. President, the good Senator from the 19th District might be mistaken but not the one from the 16th."

Senator Henderson answered:

"Mr. President, I was wrong, the 16th."

The motion was put by the Chair and carried, and S.B. No. 1089, S.D. 2, H.D. 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR PAYMENT OF SETTLEMENT BETWEEN THE STATE OF HAWAII AND GOODFELLOW BROS., INC." having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, 1 (Abercrombie).

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

#### ADJOURNMENT

At 12:00 o'clock midnight, the Senate of the Thirteenth Legislature of the State of Hawaii, Regular Session of 1985, adjourned Sine Die.