

TWENTY-SIXTH DAY

Thursday, February 27, 1986

The Senate of the Thirteenth Legislature of the State of Hawaii, Regular Session of 1986, convened at 11:38 o'clock a.m., with the President in the Chair.

The Divine Blessing was invoked by the Reverend Roy Brichard, Metropolitan Community Church of Honolulu, after which the Roll was called showing all Senators present.

The President announced that he had read and approved the Journal of the Twenty-Fifth Day.

The following introductions were made to the members of the Senate:

Senator Chang, on behalf of Senator Holt and himself, introduced a reading class from Central Intermediate School, accompanied by their teachers, Carolyn Len, Rose Loui, and Amy Takaki.

Senator Aki introduced a group of local residents, which included citizens from his district who work on Kwajalein.

HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 20 to 82) were read by the Clerk and were disposed of as follows:

Hse Com. Nos. 20 to 82, transmitting the following House Bills which passed Third Reading in the House of Representatives on February 26, 1986, were placed on file and, on motion by Senator Cobb, seconded by Senator Soares and carried, said House Bills passed First Reading by title and were referred to committee as follows:

Hse. Com. No. 20 - H.B. No. 420, entitled: "A BILL FOR AN ACT RELATING TO THE EXPIRATION OF DRIVER'S LICENSE," was referred to the Committee on Transportation;

Hse. Com. No. 21 - H.B. No. 1183, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INSURANCE," was referred to the Committee on Consumer Protection and Commerce, then to the Committee on Judiciary;

Hse. Com. No. 22 - H.B. No. 1316, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO REFUNDS AND EXCHANGES," was referred to the Committee on Consumer Protection and Commerce;

Hse. Com. No. 23 - H.B. No. 1689-86, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO DURABLE POWER OF

ATTORNEY FOR HEALTH CARE," was referred to the Committee on Health, then to the Committee on Judiciary;

Hse. Com. No. 24 - H.B. No. 1716-86, entitled: "A BILL FOR AN ACT RELATING TO BALL OR MARBLE MACHINES," was referred to the Committee on Government Operations;

Hse. Com. No. 25 - H.B. No. 1795-86, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HORIZONTAL PROPERTY REGIMES," was referred to the Committee on Consumer Protection and Commerce;

Hse. Com. No. 26 - H.B. No. 1797-86, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO COUNTY LICENSES," was referred to the Committee on Government Operations;

Hse. Com. No. 27 - H.B. No. 1826-86, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INTOXICATING LIQUOR," was referred to the Committee on Government Operations;

Hse. Com. No. 28 - H.B. No. 1830-86, entitled: "A BILL FOR AN ACT RELATING TO ABANDONED VEHICLES," was referred to the Committee on Transportation;

Hse. Com. No. 29 - H.B. No. 1859-86, entitled: "A BILL FOR AN ACT RELATING TO MOTOR VEHICLE ACCIDENT REPARATIONS," was referred to the Committee on Consumer Protection and Commerce;

Hse. Com. No. 30 - H.B. No. 1869-86, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ALARM BUSINESSES," was referred to the Committee on Consumer Protection and Commerce;

Hse. Com. No. 31 - H.B. No. 1904-86, entitled: "A BILL FOR AN ACT RELATING TO CEMETERIES AND MORTUARIES," was referred to the Committee on Consumer Protection and Commerce;

Hse. Com. No. 32 - H.B. No. 1907-86, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO BOXING COMMISSION," was referred to the Committee on Consumer Protection and Commerce;

Hse. Com. No. 33 - H.B. No. 1971-86, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO RIGHTS OF ENTRY," was referred to the Committee on Agriculture;

Hse. Com. No. 34 - H.B. No. 1972-86, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PROHIBITION OF ENTRY OF ANIMALS WITHOUT INSPECTION," was referred to the Committee on Agriculture;

Hse. Com. No. 35 - H.B. No. 1976-86, entitled: "A BILL FOR AN ACT RELATING TO HEALTH CERTIFICATE," was referred to the Committee on Agriculture;

Hse. Com. No. 36 - H.B. No. 1977-86, entitled: "A BILL FOR AN ACT RELATING TO RULES GOVERNING THE INSPECTION, QUARANTINE, DISINFECTION, OR DESTRUCTION OF ANIMALS," was referred to the Committee on Agriculture;

Hse. Com. No. 37 - H.B. No. 1978-86, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ANIMAL QUARANTINE," was referred to the Committee on Agriculture;

Hse. Com. No. 38 - H.B. No. 1979-86, entitled: "A BILL FOR AN ACT RELATING TO NOTIFICATION OF ARRIVAL OF ANIMALS," was referred to the Committee on Agriculture;

Hse. Com. No. 39 - H.B. No. 1980-86, entitled: "A BILL FOR AN ACT RELATING TO BREEDING OF ANIMALS IN QUARANTINE," was referred to the Committee on Agriculture;

Hse. Com. No. 40 - H.B. No. 1981-86, entitled: "A BILL FOR AN ACT RELATING TO FORFEITURE OF ANIMALS," was referred to the Committee on Agriculture;

Hse. Com. No. 41 - H.B. No. 1984-86, entitled: "A BILL FOR AN ACT RELATING TO DESTRUCTION OF ANIMALS FERAE NATURAE," was referred to the Committee on Agriculture;

Hse. Com. No. 42 - H.B. No. 1986-86, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HARBORING MONGOOSE," was referred to the Committee on Agriculture;

Hse. Com. No. 43 - H.B. No. 1987-86, entitled: "A BILL FOR AN ACT RELATING TO COOPERATION WITH FEDERAL AUTHORITIES," was referred to the Committee on Agriculture;

Hse. Com. No. 44 - H.B. No. 1988-86, entitled: "A BILL FOR AN ACT RELATING TO DISPOSAL OF TUBERCULOUS ANIMALS," was referred to the Committee on Agriculture;

Hse. Com. No. 45 - H.B. No. 1989-86,

entitled: "A BILL FOR AN ACT RELATING TO GLANDERS AND FARCY," was referred to the Committee on Agriculture;

Hse. Com. No. 46 - H.B. No. 1995-86, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO DRUG PRODUCT SELECTION," was referred to the Committee on Health;

Hse. Com. No. 47 - H.B. No. 2003-86, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO POISONS," was referred to the Committee on Health;

Hse. Com. No. 48 - H.B. No. 2004-86, entitled: "A BILL FOR AN ACT RELATING TO AGENT ORANGE," was referred to the Committee on Health;

Hse. Com. No. 49 - H.B. No. 2005-86, entitled: "A BILL FOR AN ACT RELATING TO APPLICATION PROCEDURES FOR ENVIRONMENTAL PERMITS," was referred to the Committee on Health;

Hse. Com. No. 50 - H.B. No. 2012-86, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC HIGHWAYS," was referred to the Committee on Transportation;

Hse. Com. No. 51 - H.B. No. 2027-86, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC UTILITIES," was referred to the Committee on Economic Development;

Hse. Com. No. 52 - H.B. No. 2031-86, entitled: "A BILL FOR AN ACT RELATING TO THE BOXING COMMISSION," was referred to the Committee on Consumer Protection and Commerce;

Hse. Com. No. 53 - H.B. No. 2036-86, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE BOARD OF REGISTRATION OF PROFESSIONAL ENGINEERS, ARCHITECTS, SURVEYORS, AND LANDSCAPE ARCHITECTS," was referred to the Committee on Consumer Protection and Commerce;

Hse. Com. No. 54 - H.B. No. 2053-86, entitled: "A BILL FOR AN ACT RELATING TO HEARING AID DEALERS AND FITTERS," was referred to the Committee on Consumer Protection and Commerce;

Hse. Com. No. 55 - H.B. No. 2054-86, entitled: "A BILL FOR AN ACT RELATING TO THE MOTOR VEHICLE INDUSTRY," was referred to the Committee on Consumer Protection and Commerce;

Hse. Com. No. 56 - H.B. No. 2104-86, entitled: "A BILL FOR AN ACT RELATING TO HEALTH," was referred to the Committee on Health;

Hse. Com. No. 57 - H.B. No. 2113-86, entitled: "A BILL FOR AN ACT RELATING TO DENTISTRY," was referred to the Committee on Consumer Protection and Commerce;

Hse. Com. No. 58 - H.B. No. 2128-86, entitled: "A BILL FOR AN ACT RELATING TO AIRCRAFT SERVICING VEHICLES," was referred to the Committee on Transportation;

Hse. Com. No. 59 - H.B. No. 2194-86, entitled: "A BILL FOR AN ACT RELATING TO CONDOMINIUMS," was referred to the Committee on Consumer Protection and Commerce;

Hse. Com. No. 60 - H.B. No. 2281-86, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ENVIRONMENTAL QUALITY," was referred to the Committee on Economic Development;

Hse. Com. No. 61 - H.B. No. 2596-86, entitled: "A BILL FOR AN ACT RELATING TO MOPEDS," was referred to the Committee on Transportation;

Hse. Com. No. 62 - H.B. No. 2730-86, entitled: "A BILL FOR AN ACT RELATING TO ENVIRONMENTAL QUALITY ENFORCEMENT," was referred to the Committee on Health;

Hse. Com. No. 63 - H.B. No. 1720-86, entitled: "A BILL FOR AN ACT RELATING TO EMPLOYEES OF PUBLIC UTILITIES," was referred to the Committee on Economic Development;

Hse. Com. No. 64 - H.B. No. 1938-86, entitled: "A BILL FOR AN ACT RELATING TO BANK LOANS AND INVESTMENTS," was referred to the Committee on Consumer Protection and Commerce;

Hse. Com. No. 65 - H.B. No. 1941-86, entitled: "A BILL FOR AN ACT RELATING TO BANKING," was referred to the Committee on Consumer Protection and Commerce;

Hse. Com. No. 66 - H.B. No. 2029-86, entitled: "A BILL FOR AN ACT RELATING TO REGULATORY LICENSING REFORM," was referred to the Committee on Consumer Protection and Commerce;

Hse. Com. No. 67 - H.B. No. 2041-86, entitled: "A BILL FOR AN ACT RELATING TO THE PEST CONTROL INDUSTRY," was referred to the

Committee on Consumer Protection and Commerce;

Hse. Com. No. 68 - H.B. No. 2043-86, entitled: "A BILL FOR AN ACT RELATING TO REAL ESTATE," was referred to the Committee on Consumer Protection and Commerce;

Hse. Com. No. 69 - H.B. No. 2044-86, entitled: "A BILL FOR AN ACT RELATING TO SANCTIONS," was referred to the Committee on Consumer Protection and Commerce;

Hse. Com. No. 70 - H.B. No. 2046-86, entitled: "A BILL FOR AN ACT RELATING TO CIVIL PENALTIES," was referred to the Committee on Consumer Protection and Commerce;

Hse. Com. No. 71 - H.B. No. 2047-86, entitled: "A BILL FOR AN ACT RELATING TO CONSUMER PROTECTION," was referred to the Committee on Consumer Protection and Commerce;

Hse. Com. No. 72 - H.B. No. 2048-86, entitled: "A BILL FOR AN ACT RELATING TO LICENSE DENIAL APPEALS," was referred to the Committee on Consumer Protection and Commerce;

Hse. Com. No. 73 - H.B. No. 2049-86, entitled: "A BILL FOR AN ACT RELATING TO CHIROPRACTIC," was referred to the Committee on Consumer Protection and Commerce;

Hse. Com. No. 74 - H.B. No. 2050-86, entitled: "A BILL FOR AN ACT RELATING TO CONTRACTORS," was referred to the Committee on Consumer Protection and Commerce;

Hse. Com. No. 75 - H.B. No. 2051-86, entitled: "A BILL FOR AN ACT RELATING TO DENTAL HYGINISTS," was referred to the Committee on Consumer Protection and Commerce;

Hse. Com. No. 76 - H.B. No. 2052-86, entitled: "A BILL FOR AN ACT RELATING TO THE BOARD OF REGISTRATION OF PROFESSIONAL ENGINEERS, ARCHITECTS, SURVEYORS, AND LANDSCAPE ARCHITECTS," was referred to the Committee on Consumer Protection and Commerce;

Hse. Com. No. 77 - H.B. No. 2112-86, entitled: "A BILL FOR AN ACT RELATING TO DENTISTRY," was referred to the Committee on Consumer Protection and Commerce;

Hse. Com. No. 78 - H.B. No. 2114-86,

entitled: "A BILL FOR AN ACT RELATING TO HEARING AID DEALERS AND FITTERS," was referred to the Committee on Consumer Protection and Commerce;

Hse. Com. No. 79 - H.B. No. 2115-86, entitled: "A BILL FOR AN ACT RELATING TO NURSING," was referred to the Committee on Consumer Protection and Commerce;

Hse. Com. No. 80 - H.B. No. 2116-86, entitled: "A BILL FOR AN ACT RELATING TO PSYCHOLOGISTS," was referred to the Committee on Consumer Protection and Commerce;

Hse. Com. No. 81 - H.B. No. 2193-86, entitled: "A BILL FOR AN ACT RELATING TO SECURITIES," was referred to the Committee on Consumer Protection and Commerce;

Hse. Com. No. 82 - H.B. No. 2375-86, entitled: "A BILL FOR AN ACT RELATING TO MOTOR VEHICLE INSURANCE," was referred to the Committee on Consumer Protection and Commerce;

At 11:42 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:45 o'clock a.m.

SENATE CONCURRENT RESOLUTION

S.C.R. No. 29, entitled: "SENATE CONCURRENT RESOLUTION CONGRATULATING CORAZON AQUINO ON RESTORING TRUE DEMOCRACY IN THE PHILIPPINES," was offered by Senators Kawasaki, Cobb, Hee, B. Kobayashi, Cayetano, Solomon, Matsuura, Yamasaki, McMurdo, Kuroda, Young, Chang, Holt, Abercrombie, Fernandes Salling, Soares, A. Kobayashi, Henderson, Toguchi, Aki, Machida, Wong, Mizuguchi, Hagino and George, and was read by the Clerk.

Senator Kawasaki moved that S.C.R. No. 29 be adopted, seconded by Senator Cayetano.

Senator Kawasaki then rose to speak in support of S.C.R. No. 29 and S.R. No. 52 as follows:

"Mr. President, I think it is entirely appropriate that the Senate of the State of Hawaii, by means of this resolution and S.R. No. 52, convey to President Aquino and all the people of the Philippine Islands our deep respect and admiration for this magnificent display of human courage.

"The pages of human history are replete with shining examples of the indomitable,

unquenchable thirst on the part of human hearts to have freedom. And these resolutions, I believe, convey to all the people of the Philippine Islands and to the entire world, the State of Hawaii's deep admiration for the great sacrifices made by literally thousands of people who, in effect, gave their lives so that the people of the Philippine Islands again be given hope to exist as free citizens of the world. I am glad to move for the adoption of this resolution. I urge for the unanimous vote on this resolution".

The motion was put by the Chair and carried, and S.C.R. No. 29 was adopted.

SENATE RESOLUTION

S.R. No. 52, entitled: "SENATE RESOLUTION CONGRATULATING CORAZON AQUINO ON RESTORING TRUE DEMOCRACY IN THE PHILIPPINES," was offered by Senators Kawasaki, Cobb, Hee, B. Kobayashi, Cayetano, Solomon, Matsuura, Yamasaki, McMurdo, Kuroda, Young, Chang, Abercrombie, Holt, Fernandes Salling, Soares, A. Kobayashi, Henderson, Toguchi, Aki, Machida, Wong, Mizuguchi, Hagino and George, and was read by the Clerk.

On motion by Senator Kawasaki, seconded by Senator Cayetano and carried, S.R. No. 52 was adopted.

ORDER OF THE DAY

MATTERS DEFERRED FROM WEDNESDAY, FEBRUARY 26, 1986

THIRD READING

Senate Bill No. 1840-86:

On motion by Senator Chang, seconded by Senator Cayetano and carried, S.B. No. 1840-86, entitled: "A BILL FOR AN ACT RELATING TO LIMITING COMMERCIAL EXPLOITATION OF CRIME," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

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

FINAL READING

Senate Bill No. 92, S.D. 1, H.D. 1:

On motion by Senator Aki, seconded by Senator Matsuura and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 92, S.D. 1, and S.B. No. 92, S.D. 1, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO COMMERCIAL MARINE DEALERS," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1

(Kawasaki).

At 11:48 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.

At this time, Senator Kawasaki rose on a point of personal privilege and stated the following:

"Mr. President, I rise on a point of information -- in this case, providing information.

"Mr. President, as you know, there was scheduled yesterday a public hearing on the resolution requesting the President and the Congress to deny sanctuary to the Marcos family.

"After hours of testimony, very meaningful and profound testimony, the committee at this point is now considering many facets of the serious testimony that was presented. Because people have inquired as to what the disposition of that resolution was and what the decision of the committee was, and recognizing that there were simultaneous committee meetings that required many members of the committee and others invited to that hearing to leave, we are still considering the ultimate outcome of the resolution.

"We are waiting for information that we are seeking and so a decision has not as yet been made. That will come later on. I just wanted to let you know the status of that particular hearing."

The Chair then asked Senator Kawasaki, "That is information for this body, is that correct?"

Senator Kawasaki replied in the affirmative.

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

The Senate reconvened at 11:59 o'clock a.m.

At this time, the Chair made the following remarks:

"Before proceeding with the order of business, I would like to respond with reference to the inquiry made by Senator Kawasaki. For the purpose of the record, I asked Senator Kawasaki to hold the resolution. At the time of the hearing yesterday, the resolution really had been drafted over 48 hours prior to the hearing. And within the span of the previous 48 hours, as you well know, the circumstances in the Philippines had turned most dramatically.

"I had talked to Senator Kawasaki yesterday and asked him to withhold the resolution because the resolution addressed itself to the resignation of President Marcos and also to the sentiment that we should not grant him sanctuary here in Hawaii. At the time of the hearing, I felt personally that the issue was moot because President Marcos had left the Philippines, and secondly, because he had already arrived in Hawaii. Therefore, I asked Senator Kawasaki not to pass the resolution out of his committee. His feeling at the time was that he owed the witnesses the opportunity to express their opinions, pro and con. On the record, that is exactly what took place.

"I don't want it misconstrued that we in the Senate are necessarily siding with the Governor or siding with the President. I think the real truth of the matter is that there's a great deal of divisiveness in the Filipino community. And I thought that the first basic step for us was to hear the people's opinions and try to understand their feelings, and after that try and get the Filipino community together. I think the step was taken yesterday.

"Again, the change of events which would have surprised most of us was that the President of the Philippines offered the first step when she was asked whether President Marcos should be extradited back to the Philippines, and her answer was, no, that she would let things heal. I think that that is what is needed most and want to make that point very clear.

"Evidently, a number of us have been receiving calls from members of the Filipino community expressing great shock and dismay at what we were doing here. I want to make it very, very clear that I made a very personal appeal to Senator Kawasaki to keep that resolution in his committee. And as he has indicated to you, he is still not totally satisfied. He is going to look into the whole question of sanctuary, and I think that's only fair. However, I will continue to try and convince Senator Kawasaki that I think the time has come for healing and in that healing process, of getting the Filipino community united into one effort for the good of the Filipino people. And I think all of us agree with that position.

"If there are any questions from the press or the media or other interested people, please come to my office and perhaps we can sit down and go into a more detailed explanation of what took place."

Senator Cayetano made the following comments in response to the Chair's remarks:

"Mr. President, I think you have managed to show once again what we all know about Senator Kawasaki, that is, depending on the

way the question is asked, he may do the exact opposite. So, Mr. President, you should make sure that you ask the question in the proper way. And I also want to thank you for agreeing to allow me to lead the Senate delegation to the Philippines after the session is over."

At this time, Senator Henderson rose on a point of personal privilege and asserted the following:

"Mr. President, I rise on a point of personal privilege. Mr. President, last night in the Ways and Means Committee, the members were given a memo written by Bruce Honda, State Tax Department attorney, and State Tax Director Herbert Dias. This memo stated, in effect, that a loophole had been created in law which could eliminate some \$400 million from the state's \$650 million a year general excise tax base. This perceived loophole deals with the treatment of non-taxable reimbursements.

"Now, I'm not here to debate the Tax Department's interpretation of Act 303. Suffice it to say that it is but one interpretation. What bothers me are the consequences of this interpretation and the impact it is going to have on other matters that will come before this body this session. For example, we are considering a hotel room tax, the funding of a proposed convention center, and measures to improve our much maligned business climate. The Tax Department's reading of Act 303 and their forecast of its consequences have, in effect, thrown a monkey wrench into all our considerations of the past seven weeks.

"So what can be done about the matter? First of all, there is nothing I know of which would prevent the Tax Department from adopting rules which narrowly define what a reimbursable cost or advance is. Under Chapter 91, the definition of a rule is a statement which implements, interprets, or prescribes law or policy. It would seem that the immediate fix is for the Tax Department to do just that: adopt a rule equitably interpreting what a reimbursable cost or advance is. Furthermore, it is my understanding that the amendment causing all this furor in Act 303 deals with an exemption from general excise tax law. As such, it is subject to strict statutory rules of construction, as are all exemptions of this nature which have been examined by our courts.

"Secondly, thought should be given to retroactively amending Act 303 to eliminate the perceived problem. Perhaps an amendment of this sort would not pass constitutional muster, but is an avenue which should certainly be explored.

"Finally, I thought we had a compromise

solution with the proposed Senate Draft 2 of Senate Bill 1965, offered by the Ways and Means chairman, which would address the majority of the problems covered by Act 303.

"Mr. President, I personally don't agree that the problem will lead to a loss of revenue of \$400 million. Furthermore, I don't believe we should cast aside all the hard work we have put in on the hotel room tax, the convention center, and in a tax reform package to improve our business climate. I urge all of my colleagues to examine the situation in more depth and take measures such as I have outlined previously to eliminate or minimize the perceived problem. It would be a shame and a disservice to the people of this state to permit this development to scuttle all of the work we have done so far this session, without more in-depth investigation of this problem. Thank you."

Senator Yamasaki also rose on a point of personal privilege and made the following statements:

"Mr. President, I also would like to request permission to speak on this subject that has been entertained by Senator Henderson. Mr. President, last evening as I returned to my desk in my office, there was a copy of a letter from the Director of Taxation, Mr. Herbert Dias, and from the Attorney General of the State, Corinne Watanabe, addressed to the Honorable Richard S.H. Wong, Senate President, and the Honorable Mamoru Yamasaki, Chairman, Senate Ways and Means Committee, regarding 'Act 303, S.L.H. 1985 - Situations Where Taxpayers Are Taking Advantage of the Benefits of Act 303.' It states:

'For your consideration and information in regards to S.B. No. 1965, SD2, we relate the following situations where taxpayers are taking advantage of the benefits that may inure under Act 303:

1. The most obvious is the much publicized statement by Mayor Frank Fasi that MTL, Inc., has not paid general excise taxes since July, 1985. Actually, the July taxes were paid but no payments have been made since August.

MTL asserts that it has not realized any gross income for purposes of our general excise tax law because whatever moneys it receives from the City and County of Honolulu constitutes excluded reimbursements. MTL bases its claim on a reading of Act 303 that reimbursements do not constitute gross income. Only additional consideration received constitutes gross income subject to

excise taxation. MTL argues that it annually expends funds for the operation and maintenance of buses for the City; accordingly, amounts it receives from the City merely reimburses them for these costs and expenses.

The potential revenue impact is approximately \$1.5 million per year.'

"The letter further continues as item 2:

'2. In a recently-concluded settlement of a proposed assessment of general excise taxes to Life Care Center of America, an out-of-state hospital management corporation, the attorney and the corporations' CPA urged the nontaxability of the gross receipts derived from a contract to manage a nursing home on the island of Hawaii for Hilo Medical Investors, Ltd. arguing that Act 303 deemed these payments to constitute exempt reimbursements. They reasoned that the management corporation purchased the services from its Oklahoma-based home office, accordingly, it was merely being reimbursed its costs from the County of Hawaii.

The proposed assessment totaled \$66,252.00.

'3. The various shopping center associations have made inquiries whether or not Act 303 would exempt dues and assessments received from their tenant members. The assessments derive from services performed by the association such as public relations, advertising, etc., where the services are purchased from third parties (public relations firms, newspaper and magazine advertisements) and the cost is pro-rated and assessed to the member tenants.

'4. Architectural firms have filed amended returns claiming refunds by virtue of claimed reimbursements that should not be subject to general excise taxation under Act 303. In one case, the architect had initially reported a gross income of an amount in excess of \$1.2 million and paid taxes thereon. He recently filed an amended return by excluding claimed reimbursements of \$400,000. The taxpayer is, therefore, claiming a reduction in his taxable gross income by 33%. The claimed reimbursements involve only amounts paid to other contractors for services required in the performance of architectural services.

'5. A taxpayer doing business as manager and operator of condominium hotels resisted a proposed assessment of \$90,000. The taxpayer claimed the assessment should be in the neighborhood of \$20,000 because the Department's computation included reimbursed expenses that are properly excluded from excise taxation by Act 303. The claimed reimbursements included only amounts the taxpayer had contracted and paid out, such as accounting fees. In this case the claimed reimbursements would have reduced the taxable base by nearly 75%.

'6. Parent corporations which provide centralized management and administrative services to their subsidiaries have urged the value of the services furnished and performed constitute excludable reimbursements. The cost of the services are allocated to the subsidiaries and recovery of these costs reduces the expenses incurred by the parent.

'7. In the recently concluded Annual Meeting of the Hawaii Society of Public Accountants, a number of CPAs approached representatives of the Department of Taxation and related they see unlimited possibilities by which income may be excluded from the general excise tax base under Act 303. This is a frightening revelation because there is no way to detect the nature and amounts of income that may be excluded. If the CPAs are talking about excluding recoveries of all costs that comprise the price base, the general excise tax becomes a meaningless tax. For one thing, the Act will have converted the general excise tax from a gross receipts to a net income tax. If the general excise tax is to remain a viable tax, there will have to be a tremendous increase in the tax rates for all activities to make up for the lost revenue.

'8. In meetings with the audit staff of the Department of Taxation, a CPA has related that he has been advising his clients of the benefits to be derived from Act 303 but that he will not disclose to the Department what he has been telling the clients.'

"So, Mr. President, based on this letter and from the testimony that we have received on, I believe, Senate Bill 1965 on 'gross up,' the Department of Taxation has said that there will be an erosion of our tax base that might approximate \$400 million. And according to the letter there will be

many, many more requests for reimbursements, and if this is so, we are really going to erode our tax base and I believe that there will be an erosion. And therefore, I said to the committee last evening that the chairman is going to propose some changes to the bills that we have before us.

"These changes that I said to the committee that I will be recommending will be: first, to repeal Act 303, Session Laws of Hawaii, 1985; second, restore Chapter 237-20 as it appeared before Act 303, 1985; and third, the effective date will be upon approval and be retroactive to July 1, 1985.

"Also, I made a statement to the committee that in light of this revelation that the chair is going to recommend reconsideration of items that we have approved that concerns affiliated corporations, common paymasters, merchant association, 'gross-up' and reimbursements, except that exemption for prescription drugs will be continued.

"And on the bills that are pending on the convention center, I said that the chair is going to recommend that all sites for convention centers — Fort DeRussy, Fort Armstrong, the golf course, the zoo — all of these recommended sites will be treated equally in determining what site will be the best for the convention center. Also, on the room tax, we had a position of increasing the room tax to 2%, and because hotels will also be involved and I know this because the representatives of the hotel industry came before us to request that the hotels be also included in the 'gross up' because they have a similar situation that the tour people have. Therefore, I believe that the accountants representing the hotels are certainly going to submit their requests for reimbursement. And therefore, I recommended to the committee that we seriously consider increasing the levy of room tax from 2% to 3% and as much as 4%, and to cover all services related to tourism.

"And finally, I said that we may have to seriously consider the administration's proposal to increase our general excise from 4% to 5% so that we will have sufficient funds in the event these corporations are successful in obtaining their reimbursements as they claim. And I believe that this is something that we must seriously consider if it is going to erode our tax base as much as \$400 million. Unless we take some counter-actions the State will be led into bankruptcy. And in view of the federal Gramm-Rudman law that is before us, five years from now in 1991, I think that the state is going to be in a terrible fix. I want to seriously consider — and probably this will be before the committee and before you.

"We want to apprise you of the situation

because this is a serious matter. We cannot erode our tax base as much as \$400 million or more. Therefore, Mr. President, I intend to pursue this subject so that we will be able to protect the integrity of the fiscal situation of the State of Hawaii for the benefit of the people. As you know, we have tried to address, to improve the business climate of the State of Hawaii, and last session's Act 303 was a recommendation from the business sector, from the Chamber of Commerce, from the Tax Foundation, to do something about this situation on 'gross up.'

"We believed that we were honestly making an attempt to improve the business climate. And now, today, we find ourselves eroding the tax base of the State of Hawaii. I think that it is a very serious subject, and I want to apprise this body on the predicament I am in as chairman of the Ways and Means Committee to make sure that there are sufficient funds to carry out the programs of the State of Hawaii and to make sure that the fiscal integrity of the state is preserved. Thank you, Mr. President."

Senator Cayetano then added his comments:

"Mr. President, having heard the chairman's remarks, I feel very concerned. I am not in the Ways and Means Committee, and I would hope that the President would see fit to have a caucus on this matter because the chairman is calling for, I think he said, a counter-move. I don't want us to use nuclear weapons to deal with what may not be a big problem. I think this is a subject which maybe requires the wisdom of all senators and I think we should be briefed accordingly.

Senator Kawasaki then asked the following of the Chair:

"Mr. President, may I request of the chairman of the Ways and Means Committee that he pass out to each member of the Senate here a copy of the lengthy statement he just made for further perusal. And further, may this be an object lesson to all of us that when we make statutory changes to our tax laws, we do it very carefully because often we have done it in a rather cavalier fashion and we find ourselves in a dilemma. As to the changes that brought about this dilemma, a very simple answer is to repeal some of these changes we made."

Senator Soares rose to add his remarks:

"Mr. President, I rise on a point of personal privilege.

"I have to react to what happened last night on two points. First is a question to you, Mr. President. The letter that was

read by the committee chairman was dated February 21st addressed to you. The letter was stamped by either your office or his office, February 26th, five days later. I gather a menehune or some angel dropped the letter on my good chairman's desk while he was having dinner last night. I'm wondering what happened between the 21st and the 26th. It was actually last night and my concern last night, and I want to put it on the record today.

"I'm very concerned about it because we violated a Senate rule last night, Senate Rule 19, requiring 48 hours on decision-making hearings or other committee hearings. The bill we're talking about was not before the committee last night. It was not on the agenda; it was not up for discussion. In fairness to the committee chairman, I was concerned and still am concerned that we violated a rule to bring it before the committee, discussed the impact of what is one man's opinion on a bill we had agreed on before. And I raised it last night and I raise it again, we cannot afford to violate our Rules and accept communications from one person, stop the proceedings, and all of a sudden shelve all the rest of the bills to react to a very serious concern. And I agree with him, this is a very serious concern. But the procedure of the Senate was violated, and I'd like to ask you a question, Mr. President. What happened to that letter between the 21st and the 26th?"

The Chair replied that he didn't know but would find out.

Senator Soares continued as follows:

"I appreciate hearing that, because five days went by and all of a sudden in a very heavy hearing, we're dividing ourselves by having a letter come to our attention that was written five days earlier, which could have been brought in the morning or in a recess. And in fairness to the chairman, he tried to explain that, but my feeling is the choice of words should have been set up where he would do something else rather than have that bill before us."

The Chair then answered:

"If I may respond, very simply, I don't know what the communication problem was with that letter. I'll be able to tell you later on. Secondly, it was not a decision-making meeting, and only one which merely reflects what the chairman's concern is on the matter, and ..."

Senator Soares interjected and said, "Mr. President, point of order, we were in a meeting on decision-making last night."

The Chair then asserted as follows:

"Yes, but the letter was not by subject like a bill. It was just an addendum to what was being discussed, as I understand it. And through that discussion, my understanding is there was a great furor over what was being done. My feeling about the whole matter is that, first of all, in response to Senator Cayetano's inquiry, this matter is by no means going to be taken lightly. I am really looking forward to what Ways and Means is going to recommend as a committee, and certainly we will have a caucus on it, as you will also have the opportunity for a caucus. There would be more than sufficient time to discuss the matter, I am sure. I don't usually take sides from the podium but I do feel that this matter is of serious importance. Therefore, I think everyone in the Senate should be involved and we'll see that something will happen in that respect. There will be sufficient time for public notices, public reaction and member input."

Senator Soares then proposed the following:

"Mr. President, I would suggest very strongly then in view of the serious matter of this correspondence to the state of the state that we have a committee of the whole of all of us. It is very important that all senators be privy to what the status of events might be because \$400 million is a lot of bucks."

The Chair responded as follows:

"I would take exception to that except to say the committee will make the recommendation to the full body and then if so desired we can get in with the committee as a whole. That's the way I run the Senate and I await the chairman and the committee's recommendation. Until such time, we will forward whatever information that we are able to gather from the administration to all the members of the Senate so that they be apprised as to what is going on. And as you mentioned, it's a matter of great, major proportion, and I think the underlying consideration in the whole discussion has to be to maintain the fiscal integrity of the state. I think that's what we're all looking forward to doing. We'll get there."

At this time, Senator Abercrombie also rose on a point of personal privilege and remarked as follows:

"Mr. President, I don't want anything to get lost in terms of the perspective here, so I'll speak on personal privilege, if you will grant it to me.

"Mr. President, in all of the discussion here, and I feel for Senator Yamasaki on this because he has been the subject — and by extension, the Ways and Means

Committee and the Legislature — to a virtually unending barrage of criticism concerning what is termed the business climate. What you have here at base is not a failure of the Legislature but the good-faith attempt of the Legislature to respond to this criticism, and what happens? The very people who have been carrying the torch about a bad business climate, and how we have to make it better for business, are the first to turn to corporate greed and try to undermine the good faith and goodwill of the Legislature in passing this bill.

"Everybody knows, including the thieving accountants that are involved in this, and all of the merchants' associations and the hotels, everybody that comes and says that we should sacrifice for them. The same kind of people who came to the Ways and Means Committee yesterday and said, 'no matter what you do in the Legislature, and no matter what you pass in terms of a hotel room tax, we want it all and we want to control it all.' And these are the people who came to us last year and the year before talking about business climate. I hope the people of this state understand. The next time you hear from the Chamber of Commerce and the rest of the people who come here and berate us for what we failed to do, in terms of recognizing their problems, have taken the very first opportunity that they have to try and turn it around and undermine the state, and to take advantage for their own private interests.

"As you listen to Senator Yamasaki recite from the letter written to the President and to him, as chairman of the Ways and Means Committee, look at the individuals and corporations and the business interests that are represented in this gleeful attempt to try and destroy the tax base of the state, if they can get away with it. Everybody knows exactly what the intent of that bill is and they know exactly what they are doing, and I hope we have it in mind the next time you hear all this bleeding from so-called business sector in this state about a bad business climate."

Senator McMurdo then made the following comments:

"Mr. President, I feel that I must rise in defense of the chairman of the Ways and Means Committee. I've been one of the people who has been foremost in watching sunshine laws and acts that might violate it. I was at that meeting last night and I feel that what the good Senator did was absolutely apropos. It was time that this kind of news was out. It was a public meeting. There was no decision-making involved, and it was a great shock to all of

us, including the chairman. I applaud him for his effort in making this come out immediately, as he did last night, instead of waiting for a small meeting of people or something like that. So, I felt that he did not violate the sunshine law, but was within the spirit of it, certainly. Thank you."

Senator Yamasaki then stated as follows:

"Mr. President, in response to the second to the last speaker, I did make reference to Senate Bill 1965, which was not on the agenda, and that was correct that it was proper for me not to make any reference to Senate Bill 1965 because that was not part of the agenda. And therefore, I quickly noticed and I withdrew that reference to Senate Bill 1965, so that was withdrawn from the table, Mr. President. Thank you."

Senator Henderson then responded as follows:

"Mr. President, I don't think we're finding fault with the chairman of Ways and Means. I'd like to make sure that my remarks weren't interpreted that way. I think the problem lies really with the Tax Office in the fact that they have not written rules and regulations, implementing Act 303, and therein lies the problem. And I think therein would lie the solution. Thank you."

The Chair made the following remarks:

"Just as a comment, Senator Henderson, to your remarks, I recall that this bill was supposed to take care of a person who owned a boat, and what we find ourselves with is an aircraft carrier. That's what ... (Senator Henderson added, 'the whole Navy ... '). Right, and it started off as an attempt, really, to help a small businessman who people felt was being treated unfairly. That's the irony of the thing, and like you said, instead of getting a battleship, we got the whole Navy.

"I look forward with all seriousness to the recommendation that will be made by the Ways and Means people, and if a further meeting is required, certainly, the Chair would have no objection of calling a committee of the whole. So I want to assure all the Senators that we will await the recommendation from Ways and Means and act accordingly."

ADJOURNMENT

At 12:35 o'clock p.m., on motion by Senator Cobb, seconded by Senator Soares and carried, the Senate adjourned until 11:30 o'clock a.m., Friday, February 28, 1986.